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UNAFEI

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I. Report of the Main Activities and Events of the Year 1989

Introduction

In 1989 the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) organized a five week international seminar (81st) and two three-month international training courses (82nd and 83rd), which were regular training programmes conducted at UNAFEI's headquarters in Fuchu, Tokyo. A total of 84 government officials engaged in criminal justice administration from 32 countries, mainly in Asia and the Pacific region, participated in these regular training programmes. Appendix I shows a breakdown of these participants by country.

UNAFEI also organized (1) the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region, in collaboration with the Economic and Social Commission for Asia and the Pacific (ESCAP), and (2) the International Workshops on Victimology and Victim's Rights, in collaboration with the World Society of Victimology.

Besides these activities, UNAFEI also endeavored to perform research activities, provide information services and promote co-operation among related agencies, institutions and organizations.

The main activities and events of the year 1989 are summarized hereafter.

Regular Training Programmes

1. The 81st International Seminar (6 February-11 March)—Advancement of the Integration of the Criminal Justice Administration

The main theme for this Seminar was selected in consideration of the following reasons.

In most countries, criminal justice administration is carried out by several independent agencies, such as the police, prosecution, the judiciary, and the probation, correction and rehabilitation organs. Such separation is necessary for various reasons, such as the prevention of the abuse of power, maintenance of suitable specialization, protection of the fundamental rights of individuals, ensurance of adequate management, and so forth.

However, such separation tends to cause each agency to be unconcerned with the overall effective administration of criminal justice as a whole. Lack of mutual understanding and co-operation among the agencies is often pointed out in many countries. At the same time, criminal justice administration is a continuous flow of procedures, and any problems hampering one agency's functions have a great impact on the functions of other agencies, sometimes impeding fair and effective administration as a whole. Furthermore, the most serious problems in criminal justice administration are often related to several agencies and cannot be solved through one agency's efforts if there is not full understanding and co-operation from other related agencies.

Therefore, in order to achieve an overall fair and effective criminal justice administration, it is imperative that each agency has full and precise knowledge about the problems with which the other agencies are faced, and that each agency takes every possible measure on its part to ease such problems.

On the basis of this understanding, the aim of this Seminar was to provide participants

with an international forum to study and discuss together the most momentous issues selected from each component of the criminal justice system, namely: the police, prosecution, the judiciary, the correctional and rehabilitation services.

For this International Seminar, the following five sub-topics were selected:

1. Fair administration of police responsibility and provision of services to the public: the basis for public co-operation
2. The exercise and control of prosecutorial discretion
3. The independence of the judiciary and control of judicial discretion
4. Prison overcrowding and its countermeasures
5. Advancement of non-custodial measures for offenders

The reasons for selecting these issues were as follows:

Social development is often accompanied by urbanization and industrialization, which tend to cause the public to become indifferent and less co-operative towards police activities. On the other hand, criminal activities are becoming more and more sophisticated (becoming internationalized), and further co-operation from the public is necessary for the police to effectively detect and investigate such criminal activities. Therefore, how to obtain public co-operation is a pressing problem for the police, and this problem must be resolved by gaining the public's trust in the fair administration of police responsibility and the provision of services to the public.

In a considerable number of countries, public prosecutors are given discretionary power to decide on non-prosecution even if there is sufficient evidence to prove the guilt of the offender. In some countries, this discretionary power is fully utilized and it is considered a valuable contribution not only to the reduction of the court's caseload and to the realization of a speedy trial, but also to the quicker resocialization of offenders at an early stage without imposing upon them the burden and stigma of formal trial procedure. However, no one can deny that there is the possibility of abuse or mis-use of this discretionary power and in some other countries such discretionary power is even considered to be legally unjustified. The discretionary power has an effect on the operation of criminal justice systems and, in particular, on the size of prison populations both at the pre-trial and trial stages, and this issue is also included in the items to be discussed at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Therefore, the exercise and control of prosecutorial discretion is undoubtedly an issue which deserved the thorough study and discussion by the participants in this Seminar.

An independent judiciary is a prerequisite for securing fair criminal justice administration, but at the same time, disparity in sentencing is a widespread problem in many countries. Sentencing policies also have a great effect, particularly on the issue of overcrowding in prisons. In these circumstances, sentencing guidelines have been established in a considerable number of countries and the international community is interested in issues that may arise from their use. Therefore, the independence of the judiciary and control of judicial discretion were selected as a sub-topic for this Seminar.

It is widely acknowledged that prison overcrowding has reached critical levels in many countries and that it is one of the most pressing problems presently facing criminal justice administration. Not surprisingly, therefore, it is one of the main topics of the Eighth United Nations Congress. It is also another problem which can be solved only through an integrated approach, that is, through full understanding and co-operation among related criminal justice agencies. Prison overcrowding was also an appropriate and timely topic

to be discussed at the Seminar.

Non-custodial measures for offenders are widely advocated, either because they can contribute to minimizing the negative effects of imprisonment or because they can help ease the problem of prison overcrowding. The Seventh United Nations Congress emphasized that non-custodial sanctions are a more humane way of facilitating rehabilitative efforts and that these are more likely to be successful when the public is involved. In order to contribute to the sound advancement of non-custodial measures, UNAFEI has been actively involved in producing the United Nations Draft Standard Minimum Rules for Non-Custodial Measures ("The Tokyo Rules"). The first draft was formulated as a result of discussions at the 75th International Training Course at UNAFEI. The Tokyo Rules will be proposed at the Eighth United Nations Congress. Therefore, "Advancement of Non-Custodial Measures for Offenders" was also a timely and suitable topic for this Seminar.

A total of 30 participants representing twenty-one countries, i.e., Argentina, Bangladesh, Barbados, China, Ecuador, Fiji, Hong Kong, Indonesia (two participants), Kenya, Malaysia, Mozambique, Nepal, Nigeria, Paraguay, the Philippines (two participants), Saudi Arabia, Sri Lanka (two participants), Sudan, Thailand (two participants), Western Samoa and Japan (six participants) attended the Seminar. The participants of this Seminar were senior police officers, public prosecutors, judges, senior prison officers and other high-ranking officials. A list of the participants is found in Appendix II-1 and the programme of the Seminar is shown in Table 1.

Table 1: Outline of the Programme (81st Seminar)

Total: 112 hours

	Hours
1) Self-Introduction and Orientation for the Course	2
2) Experts' Lectures	22
3) Faculty Lectures	8
4) *Ad Hoc* Lectures	2
5) Individual Presentations on the Main Theme of the Seminar	30
6) General Discussions and Report-Back Sessions	15
7) Visits of Observation	8
8) Nagano Trip	2
9) Kansai Trip (including Visits to Kyoto Juvenile Classification Home and Kyoto District Public Prosecutor's Office)	12
10) Evaluation and Individual Interviews	4
11) Closing Ceremony	1
12) Reference Reading and Miscellaneous	6

Among the various programmes of the Seminar, special emphasis was placed upon individual presentations by the participants and subsequent general discussions with regard to the above-mentioned five sub-topics. Through the general discussion sessions, the participants exchanged their views and experiences on the above issues and worked out five extensive reports of their discussions. The summarized contents of the reports are as follows:

a) Fair administration of police responsibility and provision of services to the public: the basis for public co-operation

The participants extensively discussed and examined various police roles and functions, analyzed in depth the problems that police encounter in their day to day duties, and explored the most suitable and effective measures that can be taken to overcome such problems.

b) The exercise and control of prosecutorial discretion

The participants inquired into and examined the various systems and rules concerning prosecutorial discretion, and explored the most effective and suitable safeguards against the possible abuse of prosecutorial discretion.

c) The independence of the judiciary and control of judicial discretion

The participants analysed the scope and rationale of the independence of the judiciary, examined various factors affecting judicial independence, and explored the most suitable countermeasures against inappropriate discretion and sentencing disparities.

d) Prison overcrowding and its countermeasures

The participants surveyed the present situation of participating countries concerning prison overcrowding, examined and analysed its various causes, and then explored possible countermeasures against such overcrowding.

e) Advancement of non-custodial measures for offenders

The participants sought and examined effective methods of implementing non-institutional measures, and then analysed the present systems and situations of non-custodial measures of the countries represented in the Seminar.

For the Seminar, UNAFEI invited the following six visiting experts from overseas countries: Mr. Hetti Gamage Dharmadasa, Commissioner of Prisons in Sri Lanka; Dr. Peter Johan Paul Tak, Professor in the Faculty of Law at the Catholic University of Nijmegen in the Netherlands; Dr. Cicero C. Campos, Chairman of the National Police Commission in the Philippines; Dr. Heinrich Kirschner from the Federal Republic of Germany, a Director in the Federal Ministry of Justice with Responsibility First for Administration and Subsequently for Criminal Law; Mr. Yu Shutong, an Advisor to the Commission on Internal and Judicial Affairs, the National People's Congress of the People's Republic of China; and Mr. John Wood, Head of the Serious Fraud Office in Great Britain. They delivered a series of lectures and guided discussions on issues related to the main theme. An *ad hoc* lecturer and faculty members of UNAFEI also delivered lectures and guided discussions on various relevant topics. A list of lecturers and lecture topics is shown in Appendix II-2 and a list of reference materials distributed is in Appendix II-3.

The participants visited the following criminal justice or related agencies or institutions for the purpose of observing the operations and discussing practical problems with officials and staff members: the Supreme Court, Ministry of Justice, Kyoto Juvenile Classification Home, Kyoto District Public Prosecutor's Office, Fuchu Prison.

2. The 82nd International Training Course (17 April-6 July)—Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders

It is well recognized that the maintenance of a stable social order is one of the fundamental requirements for a country to achieve balanced development in terms of social

welfare as well as economic growth. In search of this goal, various countries in the region have been implementing new ideas and policies relating to the prevention of crime and the rehabilitation of offenders.

Within the criminal justice administration as a whole, correctional facilities are particularly responsible for providing offenders who are likely to pose a threat to society or who require corrective supervision and training with various rehabilitative programmes while keeping them in safe custody in an attempt to reintegrate them into society.

There is, however, increasing debate in western countries about whether or not custodial sentences inflict unnecessary pain upon the offender and that the effectiveness of institutional correctional programmes is questionable when compared with the amount of funds allocated for the administration of such programmes.

On the other hand, countries in Asia and the Pacific region are equally confident that correctional facilities are capable of providing treatment programmes which can help imprisoned offenders live in society as law-abiding citizens.

In this regard, the corrections administration is required to develop new programmes and policies so as to keep pace with the progress of society.

Faced with some serious problems, countries of the region are trying to undertake new projects regarding the rehabilitation of prisoners. Improved training of corrections officials as well as the application of advanced technology to the field of security, administration and educational programmes have also been encouraged.

This Course was therefore organized to provide participants, mainly from Asia and the Pacific region, with an opportunity to (a) analyze the actual conditions and effectiveness of the treatment programmes which have recently been introduced, (b) identify some basic conditions in order to achieve close co-operation between community-based treatment and custodial supervision for more effective rehabilitation of offenders, (c) examine successful cases for the development of effective and efficient administration of correctional facilities, and (d) investigate methods of implementing the Standard Minimum Rules for the Treatment of Prisoners and some safeguards for the protection of prisoners' rights.

This Course was also intended to clarify the problems of imprisonment to be discussed at the Eighth United Nations Congress for the Prevention of Crime and the Treatment of Offenders in 1990.

A total of twenty-nine participants and one observer representing the following fifteen countries attended the Course: Brazil (two participants), China, Fiji, Hong Kong, Korea, Malaysia, Marshall Islands, Papua New Guinea (two participants), Peru, the Philippines (two participants), Saint Lucia, Saudi Arabia, Sri Lanka (two participants), Thailand (two participants) and Japan (ten participants and one observer). They consisted mainly of government officials with relatively senior positions in corrections and probation services. A list of participants is found in Appendix III-1 and Table 2 shows the outline of the Course Programme.

During the Course, special emphasis was placed upon participant-centered activities such as comparative study, group-workshops and other programmes in which the participants were required to take part in collective discussions, actively and constructively utilizing their knowledge and experience. The comparative study was organized to discuss topics related to the main theme of the Course. It consisted of individual presentations in which each participant presented his or her country's paper, and then all the participants discussed the issues involved in the country's paper. Group-workshops were conducted to give the participants an opportunity to discuss issues and problems which face them in their daily work. The participants were divided into four groups according to the similarity

Table 2: Outline of the Programme (82nd Course)

Total: 232 hours

	Hours
1) Self-Introduction and Orientation for the Course	2
2) Experts' Lectures	32
3) Faculty Lectures	12
4) *Ad Hoc* Lectures	18
5) Individual Presentations on the Main Theme of the Course	29
6) Group Workshops	20
7) Plenary Meetings and Report-Back Session	10
8) Field Work	8
9) Visits of Observation	44
10) Nikko Trip (Visit to Tochigi Prison for Women)	8
11) Hiroshima-Kansai Trip (Visit to Marugame Girls' Training School and Uji Juvenile Training School)	16
12) Athletic Meeting and Other Activities	10
13) Video and Film Show	2
14) Evaluation and Individual Interviews	5
15) Closing Ceremony	2
16) Reference Reading and Miscellaneous	14

of topics they selected. Each group selected a chairperson and rapporteur. The results of each workshop were subsequently reported at a plenary session by the rapporteur and further discussion by all the participants followed. The topics discussed in each group were as follows:

a) The extent of overcrowding, causes and feasible measures to cope with the problem

The participants surveyed the current situations concerning the overcrowding in respective countries and explored various types of countermeasures to alleviate the problem, and then carefully examined the feasibility as well as possible advantages and disadvantages of such measures when they are actually implemented.

b) The development of effective alternatives to imprisonment and other related issues

The participants thoroughly examined various kinds of alternatives to imprisonment available before the trial, at the trial and after the trial stage. They also discussed and analysed substantial problems which stand in the way of more effective implementation of non-custodial measures as well as feasible solutions for such problems.

c) Treatment programmes for specific categories of offenders

The participants exchanged their knowledge and discussed with one another in order to develop more effective and proper correctional programmes for long-term prisoners, physically and mentally handicapped prisoners, and juvenile offenders. Various kinds of programmes for these special categories of offenders were proposed and then carefully examined and evaluated by the participants.

d) Staff training and other issues regarding the improvement of correctional administration

The participants extensively discussed various measures and schemes that would ensure and further develop the ability and skills of correctional staff who play a vital role in the treatment and rehabilitation of offenders. They also discussed and examined the protection of prisoners' human rights as well as effectiveness of institutional correctional treatment.

For the course, UNAFEI invited five visiting experts from overseas countries: Mr. Clair A. Cripe, General Counsel, Bureau of Prisons, Department of Justice, U.S.A.; Mr. Gordon H. Lakes, Former Deputy Director General of the Prison Service, England and Wales, United Kingdom; Mr. Chan Wa-Shek, Commissioner of Correctional Services, Hong Kong; Dr. Theodore N. Ferdinand, Professor and Director of the Center for the Study of Crime, Delinquency, and Corrections, Southern Illinois University at Carbondale, U.S.A.; and Mr. Hassan El-Saati, Professor, the Arab Security Studies and Training Center. They delivered a series of lectures and guided discussions on the issues related to the main theme. Nine *ad hoc* lecturers, the Director, Deputy Director and other faculty members of UNAFEI also gave lectures on relevant topics. Appendix III-2 shows the list of these lecturers and their lecture topics, and a list of reference materials distributed to the participants is found in Appendix III-3.

The participants visited eighteen criminal justice and related agencies and institutions with the entire group and ten in small groups (field work) to observe their operations and to discuss practical problems with their officials and staff members: Supreme Court, Ministry of Justice Fuchu Prison, Showroom of Nippon Electric Co., Ltd. (NEC), Tochigi Prison for Women, Yokohama Customs House, Tokyo Probation Office, Kanto Regional Parole Board, Tokyo Juvenile Classification Home, Tokyo Metropolitan Police Department, Hachioji Medical Prison, Kawagoe Juvenile Prison, Nissan Motor Co., Ltd., Maruyama Plant, Ohme Factory of Toshiba Electric Co. Ltd., Training Institute for Correctional Officers, Marugame Girls Juvenile Training School, Uji Juvenile Training School, Tokyo District Court, Tokyo Family Court, Tokyo Public Prosecutors' Office, Ichihara Prison, Ishihara Juvenile Training School, Kofu Probation Office, Rehabilitation Aid Hostel "Yamanashi Itoku-Kai," Kurihama Juvenile Training School, Yokohama District Court, Yokohama District Public Prosecutors' Office. Furthermore, the participants had a series of discussions with Japanese volunteer probation officers who were invited to UNAFEI during the Course.

3. The 83rd International Training Course (4 September-24 November 1989)—Crime Prevention and Criminal Justice in the Context of Development

The main theme for this Course was selected in consideration of the following factors.

In the past, the issue of crime or criminals was discussed from the viewpoint of the matter of individual criminals or victims. But it has been gradually recognized that the phenomena of crime are deeply related to and affected by overall socio-economic development on one hand, and that crime affects such overall socio-economic development on the other hand. The concept of socio-economic development in this context has been taken in a broad sense encompassing economic, political, social, cultural, environmental and institutional elements. It is also well recognized that the maintenance of a stable social order is one of the fundamental requirements for a country to achieve balanced development in terms of social welfare as well as economic growth. In search of this goal, various countries have been implementing new ideas and policies relating to the prevention of crimes.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Milan in 1985, emphasized the importance of this issue and unanimously adopted "Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order." These "Guiding Principles" stress that progress at ensuring peace in the world and social justice by means of a comprehensive and integrated approach should be planned and properly implemented on the basis of the contributions of various factors, including more effective programmes of crime prevention, more fair and humane policies of criminal justice and increased concern and protection for the rights of the victims of crime. These policies should not only reduce the human and social costs of criminality, but also help to establish safeguards to ensure equitable and full public participation in the development process, thereby enhancing the viability of national development plans, programmes and actions.

The Seventh United Nations Congress not only established these "Guiding Principles" but also requested that the issue be examined by the Eighth Congress. The provisional agenda of the Eighth Congress, which will be conducted in 1990, indicates that "Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation" will be discussed as the first of the five substantive topics.

Against such a background, it is considered propitious and important to examine in this Course the reality of crime prevention and criminal justice in the context of development and to discuss various issues in line with the above-mentioned "General Principles" adopted at the Seventh Congress and the topic relating to the provisional agenda of the Eighth Congress.

On the basis of this understanding, the Course was intended to provide the participants with an international forum to jointly study and discuss the realities and perspectives of crime prevention and criminal justice in the context of development.

The following items were among the sub-topics discussed during the Course:

(1) Major crimes affected by development or affecting development, and countermeasures against them;

(2) Search for a comprehensive and integrated approach to fair and effective crime prevention policies and strategies with special emphasis on the protection of the rights of victims and the incorporation of such policies and strategies into overall national development plans;

(3) The response of the criminal justice system to development and human rights; and

(4) International co-operation in crime prevention and criminal justice, and the role of the United Nations in this field.

There was a total of twenty-seven participants from sixteen countries, viz., Costa Rica, Fiji, India, Indonesia, Kenya, Korea, Malaysia, Nepal, the Philippines (two participants), Saudi Arabia, Singapore, Sudan, Tanzania, Thailand (two participants), Zambia and Japan (ten participants). The participants were relatively senior police officers, public prosecutors, judges, prison officers, etc. A list of the participants is found in Appendix IV-1 and the programme of the Course is shown in Table 3.

During this Course, and likewise in other courses, strong emphasis was placed upon participant-centered activities such as comparative study, group workshops and other programmes in which all the participants took part most actively and constructively.

A comparative study programme was organized to discuss the above-mentioned issues.

Table 3: Outline of the Programme (83rd Course)

Total: 232 hours

	Hours
1) Self-Introduction and Orientation for the Course	2
2) Experts' Lectures	33
3) Faculty Lectures	16
4) *Ad Hoc* Lectures	20
5) Individual Presentations on the Main Theme of the Course	27
6) Group Workshops	20
7) Plenary Meetings and Report-Back Session	5
8) Field Work	8
9) Visits of Observation	36
10) Nikko Trip (Visit to Kitsuregawa Branch Attached to Kurobane Prison)	8
11) Hiroshima-Kansai Trip (Visit to Marugame Girls' Training School and Kyoto Probation Office)	16
12) Athletic Meeting and Other Activities	12
13) Video and Film Show	2
14) Evaluation and Individual Interviews	6
15) Closing Ceremony	2
16) Reference Reading and Miscellaneous	25

It consisted of individual presentations in which each participant was allocated one hour for the presentation of his/her country's paper, after which participants exchanged their views and analyzed the actual situations in respective countries. Following the individual presentations, group workshops were conducted to give the participants an opportunity to further discuss issues and problems which face them in their daily work. The participants were divided into four groups according to the similarity of topics they had selected. Each group selected a chairperson and rapporteur. The results of each workshop were subsequently reported at a plenary session by the rapporteur and further discussion by all the participants followed. The summarized contents of discussions in each group are as follows:

a) Major crimes affected by development or affecting development, and countermeasures against them

The participants analysed the present situations relating to major crimes which pose the most serious threat to social development, such as environmental offences, economic crime, drug crime, problems caused by illegal immigrants and terrorism, in their respective countries, and then discussed possible countermeasures for these major crimes.

b) Search for a comprehensive and integrated approach to fair and effective crime prevention policies and strategies with special emphasis on the protection of the rights of the victims and the incorporation of such policies and strategies into overall national aevelopment plans

Discussions were concentrated on such relevant issues as (1) the significance of inter-agency co-ordinated action; (2) the adequacy of laws to protect victims; and (3) juvenile delinquency and the protection of juvenile rights. The participants examined actual situations with regard to these issues and explored various effective and proper solutions.

c) The response of the criminal justice system to development and human rights

The participants discussed the role and responsibility of each segment of the criminal justice system in response to social development with analysis of various problems with which criminal justice agencies are presently faced. The participants also discussed the response of the criminal justice system to human rights in the context of social development.

d) International co-operation in criminal justice administration

The participants examined, based on the "Guiding Principles" set out in the Seventh United Nations Congress, new forms of crime which have relevance in the context of development, and then explored proper modalities of international co-operation and measures useful in dealing with problems encountered in combating such crimes.

For the course, UNAFEI invited eight visiting experts from overseas countries: Dr. Hans J. Schneider, Director and Professor, Department of Criminology, University of Westfalia, Federal Republic of Germany; Dr. Satyanshu K. Mukherjee, Principal Criminologist, Australian Institute of Criminology; Ms. Aglaia Tsitsoura, Head of the Division of Crime Problems, Directorate of Legal Affairs, Council of Europe; Mr. H. Adi Andojo Soetjipto, Deputy Chief Justice, Supreme Court of the Republic of Indonesia; Mr. Abdelaziz Abdalla Shiddo, Member of the United Nations Committee on Crime Prevention and Control; Mr. Ugljesa Zvekic, First Research Officer, United Nations Interregional Crime and Justice Research Institute; Mr. Reynaldo J.D. Cuaderno, Executive Deputy Commissioner, National Police Commission, Republic of the Philippines; and Mr. Jae In Yoo, Director of the Inspection Division, Supreme Public Prosecutors' Office, Republic of Korea. They delivered a series of lectures and guided discussions on the issues related to the main theme. Ten *ad hoc* lecturers and the Director, Deputy Director and other faculty members of UNAFEI also gave lectures on relevant topics. Appendix IV-2 shows the list of these lecturers and their lecture topics, and a list of reference materials distributed to the participants is found in Appendix IV-3.

The participants visited the following fifteen criminal justice and related agencies and institutions with the entire group and nine in small groups (field work) to observe their operations and to discuss practical problems with their officials and staff members: Supreme Court, Ministry of Justice, Fuchu Prison, Tokyo Bay Traffic Advisory Service Center, National Chuo Youth Center, Kitsuregawa Branch of Kurobane Prison, Tokyo Metropolitan Police Department, National Diet, Tama Juvenile Training School, Ohme Factory of Toshiba Electric Co., Ltd., Kawagoe Juvenile Prison, Tokyo Plant of Bridgestone Corporation, Yokohama Maritime Safety Agency, Marugame Girls Juvenile Training School, Kyoto Probation Office, Tokyo District Court, Tokyo District Public Prosecutors' Office, Rehabilitation Aid Hostel "Keiwa-en", Kofu District Court, Kofu District Public Prosecutors' Office, Shizuoka Probation Office, Tochigi Prison for Women, Suifu Juvenile Training School, and Mito Juvenile Classification Home.

The Expert Group Meeting on Adolescence and Crime Prevention In the ESCAP Region

General Assembly resolution 40/35 on the development of standards for the prevention of juvenile delinquency calls on the regional commissions and the United Nations region-

al institutes for the prevention of crime and the treatment of offenders to establish joint programmes in the field of juvenile justice and the prevention of juvenile delinquency. In particular, that resolution requests the regional commissions and regional institutes to devote special attention to: (a) studying the situation of juveniles at social risk and examining the relevant policies and practices of prevention within the context of socio-economic development and (b) intensifying efforts in training, research and advisory services for the prevention of juvenile delinquency.

In pursuance of the above directive, the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region was jointly organized by the Economic and Social Commission for Asia and the Pacific (ESCAP) and the UNAFEI in co-operation with the Government of Japan. The Meeting was held at UNAFEI Headquarters, Fuchu, Tokyo, from 3 to 10 August 1989.

The objective of the Meeting was to provide a forum for social development and criminal justice experts to discuss the following issues concerning adolescence and crime prevention in the ESCAP region: patterns of juvenile justice; effects of the social environment on juvenile offence; and juvenile justice administration. On the basis of its discussion of the afore mentioned issues, the Meeting was expected to formulate recommendations on the prevention of juvenile offence and the treatment of juvenile offenders. The Meeting was also intended to provide a regional contribution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Havana in 1990, especially with regard to topic 4 of the Congress, namely "the prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions."

The Meeting was attended by twenty-one experts from the following ESCAP members and associate members: Bangladesh, Fiji, Hong Kong, India, Japan, Malaysia, Nepal, Papua New Guinea, the Philippines, Republic of Korea, Singapore, Sri Lanka and Thailand. A list of participants in the Meeting is shown in Appendix V.

After extensive discussions on the above issues, the Meeting adopted the following recommendations:

Plan for Action

The Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region, organized by ESCAP and UNAFEI in co-operation with the Government of Japan and held at Fuchu, Tokyo, 3-10 August 1989,

Recalling General Assembly resolution 40/35 on the development of standards for the prevention of juvenile delinquency, which calls upon the regional commissions and the regional institutes for the prevention of crime and the treatment of offenders to establish joint programmes for the promotion of juvenile justice and the prevention of juvenile delinquency,

Further recalling the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), which constitute a vital contribution to the protection of young people's rights, and recognizing the need to strengthen implementation of the Beijing Rules in countries of the ESCAP region in the context of youth development,

Bearing in mind the recommendations of the ESCAP/UNAFEI Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth, held at Fuchu, Tokyo, 15 to 20 July 1985,

Recognizing the need to adopt an integrated approach to youth development and juvenile justice administration, as contained in the report of the above-mentioned ESCAP/UNAFEI Workshop,

Noting that adolescence is a transitional phase between the dependency of childhood and the responsibilities of adulthood and that the situation of rapid social and economic change prevailing in the ESCAP region exacerbates the difficulties experienced by young people in the process of their maturation to adulthood,

Expressing concern that the growing incidence and the widening patterns of juvenile crime and delinquency in Asia and the Pacific are symptomatic of the functional failures of particular socio-economic systems, institutions and relations in the process of rapid development,

Recognizing that most juveniles who come into conflict with the law live in situations of deprivation and neglect and do not have equal access to socio-economic opportunities,

1. Recommends that the prevention of crime and the administration of juvenile justice should be pursued within a framework of integrated social development and that international efforts in this regard should be directed toward the establishment of a just economic order focusing on the well-being of the vulnerable and marginalized young members of society,

2. Requests UNAFEI, which had initiated the process for the formulation of the "Beijing Rules," to undertake, in co-operation with ESCAP, the formulation of standard minimum rules for the prevention of juvenile delinquency and youth crime, taking into account the recommendations of the present Expert Group Meeting and other relevant United Nations guidelines,

3. Calls upon donor Governments, international funding agencies and other organizations to provide ESCAP with the requisite financial and staff resources to strengthen its provision of advisory services and technical assistance to members and associate members of ESCAP in the prevention of juvenile delinquency and the administration of juvenile justice and, in this regard, to enhance linkages among all sectors within a broad social development framework,

4. Calls upon members and associate members of ESCAP to implement the following recommendations of the present Meeting, taking into consideration the situational context of each country.

Recommendations

A. Guiding principles

1. An integrated approach to addressing broad socio-economic issues in the prevention of juvenile offence should be developed and implemented by all government agencies whose activities affect youth development, including those in the fields of education, employment, social services and juvenile justice administration.

2. Socio-economic development policies, particularly in relation to industrialization and urbanization, should be carefully planned and implemented with a view to causing minimum disruption of family cohesiveness and weakening of social relations in the community. In this regard, poverty alleviation policies should receive the highest priority in developing countries.

3. Systematic efforts should be made to expand and strengthen the capacity of the family and community to undertake the socialization of the young, to mobilize people's participation in the care and protection of the young and to prevent juvenile delinquency and youth crime.

4. Guidance, counseling and other supportive social services should be provided not only for young persons but also for their parents and other care-takers of youth to provide

means for early intervention and to prevent the young from drifting into juvenile delinquency and youth crime.

5. Ethical conduct, respect for the law and the development of social skills should be incorporated, in an appropriate manner, into education curricula.

6. In the socialization of young people, increased emphasis should be placed on strengthening indigenous cultural values and a sense of pride in the cultural traditions of the countries in the region, as a crucial aspect of strengthening the sense of identity and belonging of young people in the context of rapid socio-economic change.

7. Young persons in conflict with the law should be provided full access to legal protection and legal services, with due care and attention to their long-term well-being. In this regard, differential treatment of juvenile offenders should be adopted. Further, special consideration should be given to the following characteristics of juvenile delinquents: chronological age, mental age, social background, nature of crime, motivation to commit crime and determination to be reformed. However, excessive tolerance of juvenile crime should not be encouraged.

8. Young persons in conflict with the law should be provided with appropriate opportunity to mature into responsible and productive citizens through education and rehabilitation programmes aimed at improving their social and vocational skills and strengthening their moral values and self-esteem.

9. Alternatives to detention of juvenile offenders should be considered. Detention and incarceration should be used as a last resort and, in that process, no minor or juvenile should be exposed to victimization and/or subjected to the negative influence of adult criminals.

10. Juveniles who are incarcerated in correctional institutions should be provided with academic education, vocational training, social skills training, recreation, religious guidance and other services necessary for the improvement of their character and social adaptiveness, while bearing in mind that maintenance of positive contact with the family and community would facilitate their re-integration into society.

11. Non-institutional correctional measures for delinquent adolescents should be fully utilized and should be expanded to the fullest extent possible so that incarceration in correctional institutions would be the last resort in the absence of other, more appropriate measures.

12. Community-based programmes established in lieu of the incarceration of juvenile delinquents should be structured by both government agencies and non-governmental organizations so as to include all sectors of the community in the effort to prevent juvenile delinquency and recidivism.

B. Preventive social measures

(a) Overall national development planning

1. Governments should, within the context of their overall national planning systems, adopt an integrated and intersectoral approach to youth development as a means of preventing juvenile delinquency and youth crime. In this connection, each country should institute a national co-ordinating body comprising of the various concerned sectors dealing with related issues, such as youth development, social services, employment, education, health, housing and justice. The co-ordinating body would be responsible for monitoring the youth development-related work of each concerned agency/sector to ensure a coherent approach to addressing youth concerns.

2. National development planning agencies should not only focus on direct investment

in the economic sectors but should give due consideration to social investment in youth, particularly investment in young human resources and aspects concerning the quality of life such as health, education, social services, housing and culture. Such investments in youth would, over the long run, provide high social rates of return and contribute to economic growth and social development through their impact on the productivity of young human resources. Governments should, therefore, provide sufficient allocation of financial and other resources to ministries and agencies working in the social field, with particular attention to youth-related matters.

3. Policy makers and planners in the economic sector should take into consideration the social implications of economic programmes on young people. They should pay special attention to the effects on youth of economic adjustment policies, through those policies' effects on employment, prices, the balance of trade and the availability of such essential social services as education, health, shelter, minimum income maintenance and the like.

4. Non-governmental organizations should be given every opportunity to play an integral role in national policy-making and planning in the field of youth development. In this connection, government agencies and non-governmental organizations should co-operate in a concerted manner to promote the delivery of social services to young people. Furthermore, governments should provide institutional and other support to non-governmental organizations to ensure their continued viability as providers of social services to youth.

5. Youth development policies, plans and programmes should address the concerns of specific target groups of youth, including such disadvantaged and vulnerable groups as migrant youth, street children, school drop-outs, disabled youths, and youths in criminogenic situations such as drug abuse and prostitution.

6. Governments should strengthen their information and research systems' capabilities in youth-related sectors so as to provide a sufficient body of information and analysis for effective policy-making and planning for youth development.

7. Adequate provision should be made by governments to promote the preservation of indigenous values and traditions as a countermeasure against the negative effects of modernization on youth.

(b) Family

1. National policies and programmes should be instituted and strengthened to support the capacity of the family to fulfill its functions as a cohesive unit in society and as a provider of basic social services.

2. Programmes to strengthen parental skills should be consciously planned and implemented by national Governments.

3. Family life education should be incorporated in school curricula to prepare young people for adulthood. Such education programmes should focus on such issues as the changing role of men and women in society (including the sharing of parental and domestic responsibilities), sex education, family planning and family life.

4. Twenty-four-hour crisis care services should be established to provide information and assistance to family members, particularly young people who are victims of exploitation and abuse.

(c) Community

1. Governments should make adequate provision for the establishment of strong community-based social institutions run and organized by community associations, youth and other recreational clubs, counseling centres and residential committees.

2. Policies favouring the decentralization of relevant industries and featuring the provision of training skills and credit facilities for the self-employment of young people should be devised in order to stem the tide of youth migration from rural to urban areas.

3. Effective training programmes for voluntary community workers and youth leaders should be implemented to ensure leadership continuity in community associations and youth clubs. This should help to ensure that community-level programmes and activities related to the needs of young people be effectively implemented.

4. The private sector, particularly entrepreneurs, should be mobilized to provide guidance to young people on business management skills to ensure the successful implementation of self-employment projects by young people

5. Outreach programmes should be established in receiving communities for new migrant youths to facilitate their assimilation in the new environment.

6. Structured programmes should be instituted in communities to guide refractory juveniles to become reintegrated in communities.

7. Efforts should be made to promote positive peer group influence within the community. In this connection, the formation of youth clubs managed by young people themselves should be encouraged so that positive peer group influence could be extended to involve youth in socially constructive activities.

(d) Education

1. The status of the teaching profession should be upgraded so as to attract into the education system additional well-qualified teachers who are highly responsive to the needs of young people.

2. Innovative alternatives to formal classroom education, such as "street educators," on-the-job education, apprenticeship education and education programmes through the mass media should be considered so as to extend education to all sectors of the community, including street children, young slum dwellers, working youth and others.

3. The education system should, aside from providing academic training, also provide avenues for vocational training to enable young people who are not academically inclined to obtain marketable skills.

4. Parent-teacher associations should be made an integral part of the school system to enable parents to play a greater role in the academic and social progress of their children.

5. The concept and practice of student counseling should be promoted in the education system.

6. Programmes should be undertaken by schools and non-governmental organizations to promote non-sexist and non-violent behaviour among young people, particularly with a view to pre-empting sex-related crimes and other forms of violent behaviour.

7. Human rights awareness programmes should be introduced into the educational curricula to increase the social responsibility of youth.

8. In recognizing the potential beneficial role of the mass media in guiding young people to be law-abiding citizens, the mass media should be called upon to assume a more responsible civic role. In particular, television should incorporate positive social values in programming. At the same time, efforts should be made to minimize programmes that stimulate juvenile crime and delinquency, particularly those that glorify crime and sensationalize instances of violent and destructive behaviour.

C. Measures on juvenile justice administration

1. Efficient juvenile justice administration should be promoted through the re-education

and reorientation of the police personnel engaged in handling juvenile delinquents. Special juvenile justice bureaus should be set up and should be manned by personnel who are specially trained to deal with young offenders. Further, an integrated approach to training on broad socio-economic issues should be emphasized in juvenile justice administration.

2. Standard national guidelines should be evolved in line with the Beijing Rules to assist the prosecution agencies in investigating cases of juveniles in conflict with the law.

3. Frequent consultation between judges and personnel of other concerned agencies should be undertaken to promote better understanding of the social circumstances of juvenile offenders so as to enable all criminal justice personnel to adopt a more humane and realistic approach in the disposition of cases.

4. Efforts should be made to undertake a careful classification of juvenile offenders entrusted to the care of institutions, the community or fit persons, for the improved rehabilitation of those juveniles.

5. Measures should be undertaken to provide and strengthen after-care services to discharged juvenile offenders both by government agencies and non-governmental organizations, especially with a view to the prevention of recidivism.

6. Research and evaluation of institutional and community-based training and rehabilitation programmes should be undertaken with a view to strengthening the positive impact of such programmes on juvenile offenders.

7. Measures should be undertaken to enhance the role of community organizations in the rehabilitation of juvenile offenders and their reintegration into society.

8. The countries of the region should make special efforts to incorporate the "Beijing Rules" in their respective legal, administrative and social development frameworks.

D. Regional co-operation

1. The "international year of the family," which is expected to be proclaimed by the United Nations General Assembly, should focus on the socialization of young persons as one of its main themes. The effectiveness of socialization would serve as a preventive measure against juvenile delinquency and youth crime.

2. The formulation by ESCAP of a regional social development strategy, mandated by the Commission in its resolution 45/1, should include measures dealing with crime prevention and criminal justice administration, taking into account the Beijing Rules and other relevant international instruments.

3. ESCAP and UNAFEI should take joint action to support national implementation of the Beijing Rules and the "Guidelines on Social Measures for the Prevention of Crime Among Youth and on Juvenile Justice" as well as follow-up of the recommendations of the present Meeting.

4. ESCAP and UNAFEI should periodically examine the efficacy of efforts concerning youth crime prevention and criminal justice administration of young offenders through the convening of regional meetings among social development and criminal justice personnel.

5. ESCAP and UNAFEI should jointly assist Governments in strengthening national co-ordinating bodies for youth development with a view to promoting an integrated approach to the prevention of crime among youth and the administration of criminal justice with particular reference to young people. In this regard, assistance should be provided to national co-ordinating bodies to establish mutually supportive linkages with other concerned agencies in diverse sectors of national development.

6. ESCAP and UNAFEI should explore the possibility of forming mobile interdisciplinary training teams to provide technical support services at the national and subregional

levels to formulate and implement strategies for the prevention of youth crime and the treatment of young offenders.

7. Efforts should be made by UNAFEI and ESCAP, in co-operation with government agencies in the fields of social development and justice, to develop a standardized system for the collection and comparative analysis of information pertaining to the prevention of crime among youth and the administration of justice for young offenders.

The International Workshops on Victimology And Victim's Rights

The International Workshops on Victimology and Victim's Rights were jointly organized by UNAFEI and World Society of Victimology from 16 to 17 October 1989 in the main conference hall of UNAFEI. Many eminent scholars and practitioners from various countries as well as all the participants of the 83rd International Training Course of UNAFEI participated in the International Workshops. A list of participants in the Workshops is shown in Appendix VI.

In the Workshops, various important themes of victimology's theory and policy were discussed in depth. Each session consisted of the presentation by a speaker on important topics of victimology and victim's rights, which was followed by thorough discussion on the topics among the speaker, discussants and all the participants. The speakers and their topics in respective sessions were as follows:

Session 1.
Speaker: Dr. Leroy L. Lamborn, Professor of Law, Wayne State University, U.S.A.
Topic 1) The Role of the Victim in the American Criminal Justice Process
2) The United Nations Declaration on Victims: Implementing the "Abuse of Power" Provisions

Session 2.
Speaker: Dr. Hans J. Schneider, Professor/Director, Department of Criminology, University of Westfalia, Federal Republic of Germany
Topic 1) Victimology: Basic Theoretical Concepts and Practical Implications
2) From Criminal Policy to Victim Policy: New Tendencies in the Reform of Criminal Law, Criminal Procedure and Corrections

Sessions 3.
Speaker: Dr. Hans. H. Kuhne, Professor, Faculty of Law, University of Trier, Federal Republic of Germany
Topic Victim's Rights in European Penal Procedure Laws

In the final session (Session 4), the chairperson summarized the preceding sessions, and the participants further discussed the related issues such as the theoretical background of victimology, prevention of victimization, victim's rights in national legislations and at an international level.

The presentation papers of the speakers and the report of the discussion at the Workshops will be published in the Resource Material Series of UNAFEI.

Other Activities and Events

1. Research Activities

A. Research on alternatives to imprisonment

An overview of alternatives to imprisonment in Asia and the Pacific region was prepared by UNAFEI's staff covering twelve major countries, namely: China, Fiji, India, Indonesia, Japan, Korea, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand and Hong Kong. These were selected mainly because substantial data was available. The research entailed review of all alternative measures to imprisonment at all stages of criminal proceedings including investigation, prosecution, adjudication and the follow-up after disposition.

Case studies on probation in Japan were undertaken by UNAFEI staff. It was compiled using data available at UNAFEI and also additional information from selected agencies for the administration of probation in Japan such as the Ministry of Justice. The study includes detailed information on overall administration of probation in Japan including the legal framework, sentencing practices, supervision of probationers, and evaluation of the system. It was also completed in December, 1989.

B. Third United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies

UNAFEI formulated, in collaboration with the Australian Institute of Criminology (AIC), the first draft of Regional Report for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This regional report was intended to analyze the responses to the Third United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies (1980-1986), and to draw conclusions and propose recommendations regarding crime prevention and control in Asia and the Pacific region.

The first draft of the report was compiled from discussions on the occasion of the Workshop for analysing data from the Third United Nations Survey coinciding with the Eighty-Third UNAFEI International Training Course. The Workshop was attended by 27 representatives of 16 countries mainly from Asia and the Pacific region. It was organized to deliberate the responses to the Third United Nations Survey, to draw up the regional report in accordance with the structure which received unanimous approval at the meeting held at Helsinki from 10 to 11 December 1988. The expert presiding over the Workshop was Dr. Satyanshu Kumar Mukherjee, Principal Criminologist at the Australian Institute of Criminology, who has made a most valuable contribution as an editor of the regional report. The following visiting experts also participated in the Workshop: Mr. Adi Andojo Soetjipto, Deputy Chief Justice (Indonesia); Ms. Aglaia Tsitsoura, Head of the Division of Crime Problems, Council of Europe; and Mr. Abdel Aziz Abdalla Shiddo, Member of the Committee on Crime Prevention and Control. The Workshop was intended to identify wide-ranging criminal issues and to make recommendations regarding both crime control policy and further development of data collection and analysis in Asia and the Pacific region.

The structure for the regional report is as determined at the meeting at Helsinki on December in 1988. Part one, Conclusion and Recommendations. Part two, Statistics, Part three, Dynamics in Criminal Justice (including socio-economic and socio-cultural factors, crime prevention strategies and law enforcement/criminal justice strategies). Part four,

Criminal Justice Profile. The Workshop focused on the issues related to part one and three. Part four presents a profile of crime trends and criminal justice administration regarding Asian and Pacific countries or territories which responded to the United Nations Survey questionnaire: Vanuatu, Thailand, Sri Lanka, Singapore, the Philippines, Pakistan, New Zealand, Nepal, Maldives, Malaysia, Republic of Korea, Kiribati, Japan, Indonesia, India, Fiji, China, Brunei Darussalam, Bangladesh and Australia.

2. Information Services

During the year 1989, UNAFEI published Resource Material Series No. 34 which contains articles and reports presented in the 78th International Seminar and the 79th International Training Course, and Resource Material Series No. 35 which consists of the Annual Report for 1988 and articles and reports produced in the 80th International Training Course. Three Newsletters (Nos. 68-70) were published summarizing the contents and results of the 81st International Seminar and 82nd and 83rd International Training Courses.

As in previous years, UNAFEI endeavoured to collect statistics, books and other materials on crime conditions and criminal and juvenile justice administrations not only in Asian countries but also in other countries. In addition to collecting information, UNAFEI made every effort to disseminate the information and to respond to requests for information from many agencies and individuals.

3. Co-operation with Related Institutions and Organizations

(1) Seminar on drug problems

UNAFEI has been closely co-operating with other United Nations Regional Institutes.

An example of this co-operation is a series of regional seminars on effective countermeasures against drug offences and advancement of criminal justice administration in Latin America and the Caribbean, organized by ILANUD and co-sponsored by the Government of Costa Rica, Japan International Co-operation Agency (JICA) and UNAFEI.

The project was planned and organized based on the recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to the effect that co-ordination of activities among U.N. regional and interregional institutes be intensified. The above-mentioned organizations including ILANUD and UNAFEI jointly endeavored to realize the project, and under the agreement of the organizations, the seminars were intended to provide high-level governmental officials from various countries in Latin America and the Caribbean with an international forum to jointly study and discuss relevant issues. Issues of special concern included prevention of drug abuse and control of drug trafficking in the Region, as well as promotion of regional and inter-regional co-operation in combating drug problems.

The first seminar under this agreement was held at ILANUD headquarters from 5th to 17th March 1989, and a total of 21 governmental officials from 15 countries of the region participated. The second seminar was held also at the ILANUD headquarters from 26 November to 9 December 1989 with the participation of 23 governmental officials from 19 countries in the region. UNAFEI sent experts including its Deputy Director to the seminars to assist the programme and deliver lectures on the relevant issues.

This project is expected to continue for five years.

(2) ASSTC exchange programme of experts

Since 1987, UNAFEI has endeavored to maintain the closest possible contact with the

Arab Security Studies and Training Center (ASSTC) in Riyadh, Saudi Arabia.

Officials of ASSTC often visit UNAFEI to provide guidance, undertake consultations and give lectures. Their lectures drew much attention and were very interesting for the participants of the International Training Course in UNAFEI. At the same time, UNAFEI dispatches staff to ASSTC.

During 1989, UNAFEI invited a professor of the ASSTC as a visiting expert, and dispatched a faculty member of UNAFEI to the ASSTC.

II. Work Programme for the Year 1990

In 1990, besides conducting three regular international training courses and a seminar for public officials mainly in Asia and the Pacific region (84th to 86th), UNAFEI will be involved in other important regional and inter-regional projects. Most of these activities have been planned in line with UNAFEI's continuing policy to make every effort to contribute to international endeavors regarding matters of urgent necessity in close co-operation with the United Nations, the governments in Asia and other regions, and related organizations and institutions. The following are several work programmes for the year 1990 as envisaged at this time.

Regular Training Programmes

1. The 84th International Seminar

The 84th International Seminar will be held from 29 January to 3 March 1990 with the main theme "Policy Perspectives on Contemporary Problems in Crime Prevention and Criminal Justice Administration."

The most salient event in the field of crime prevention and criminal justice in 1990 is the Eighth United Nations Congress on the Prevention of crime and the Treatment of Offenders to be held in Cuba from August 27th to September 7th. Through discussions by representatives of member states and experts, the Congress intends to enhance international co-operation in crime prevention and criminal justice for the twenty-first century. Five agenda items for the Congress cover contemporary and urgent problem for which policy perspectives and practical countermeasures are required. The five agenda items of the Congress are as follows:

1) Crime prevention and criminal justice in the context of development;
2) Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures;
3) Effective national and international action against: a) organized crime; b) terrorist criminal activities;
4) Prevention of delinquency, juvenile justice and the protection of the young; and
5) United Nations norms and guidelines in crime prevention and criminal justice.

Many important and pressing problems in crime prevention and criminal justice in various regions including Asia and Pacific are highlighted in each of the five topics.

Based on the above understanding, this Seminar is intended to provide participants mainly from Asia and the Pacific region with an international forum to jointly study and discuss contemporary problems and overall issues in line with the above-mentioned agenda of the Eighth United Nations Congress.

A total of 30 participants will participate in the Seminar. The participants of this Seminar will be senior police officials, public prosecutors, judges, senior prison officers, and other high-ranking officials mainly from Asia and the Pacific region.

During the Seminar, individual presentation sessions will be organized to discuss the above-mentioned topics from the viewpoint of comparative study. Each participant will be allocated one hour for the presentation of his or her country's paper which introduces actual situations, problems and future prospects with respect to one or more of the topics, and following the presentation, all the participants will have an opportunity to exchange their views on and discuss the problems of respective countries represented.

General discussion sessions will be conducted in order to further examine and discuss each of the above-mentioned topics. All participants will exchange and discuss their views, based on the abundant information and knowledge obtained through the individual presentation sessions and lectures of the visiting experts and *ad hoc* lecturers. For each general discussion session, a chairperson and rapporteur will be selected from among the participants. Through the general discussion sessions, the participants are expected to draft five extensive reports on the above-mentioned topics.

2. The 85th International Training Course

The 85th International Training Course will be held from 9 April to 30 June 1990 with the main theme, "Wider Use and More Effective Implementation of Non-custodial Measures for Offenders."

Overcrowding in prisons, both of remand and convicted prisoners, can be interpreted as one of the outcomes of the ineffective administration of a criminal justice system as a whole. Long detention of large numbers of alleged offenders awaiting trial indicates inefficient and delayed investigations, prosecutions and trials. Excessive use of imprisonment in sentencing creates prison overcrowding which aggravates the dehumanizing situation in prisons and the ineffectiveness of rehabilitation under adverse conditions. In fact, many countries in Asia and the Pacific region are facing prison overcrowding, resulting in difficulties for the prison administration in maintaining security and in providing programmes for prisoners' rehabilitation.

As one of the means to serve to reduce the population of remand and convicted prisoners, various non-custodial measures for offenders have been introduced at the levels of both law and practice. At the pretrial stage, efforts have been made to speed-up investigations, prosecutions and trials and to release alleged offenders on bail, and even pretrial diversions have been applied in some countries. In sentencing, an increasing range of non-custodial sanctions, such as suspended sentence, probation, community service order, have been developed. Parole, remission, furlough and work-release programmes have been implemented at the post-trial stage.

Not only by facilitating the reduction of prison population do non-custodial sanctions justify themselves. They are more humane than custodial sanctions, since they allow offenders to live in the community without disrupting links with their families and do not impose psychological and economic burdens on offenders and their families. They are less criminogenic in not carrying such a visible social stigma that prevent reintegration of

offenders into society. There is no doubt that they are more cost-effective compared with custodial sanctions.

While the greater use of non-custodial penal measures is certainly desirable, there are many obstacles to it in most of the countries in the region. Those obstacles include lack of social acceptance of non-custodial measures, criminal justice officials' distrust of the effectiveness and severity of those measures, insufficient allocation of manpower and financial resources to the administration of non-custodial measures, and inadequate management of the implementation of the non-custodial measures.

Efforts should be made to better inform the general public of the importance and advantages of non-custodial measures. Information on non-custodial measures and training are needed for the legal profession and those involved in the application of such measures. However, the most important is that the administrators of those measures have to apply them on a daily basis. More efforts are strongly needed to enhance crime preventive and rehabilitative effects of non-custodial measures.

The question of non-custodial measures for the social integration of offenders is one of the most important and common issues in criminal justice administration over the world. The Seventh United Nations Congress for the Prevention of Crime and the Treatment of Offenders in 1985 discussed this issue and the Eighth Congress in 1990 will further consider it. The Resolution 16 adopted in the Seventh Congress requested the United Nations Committee on Crime Prevention and Control to encourage the United Nations regional institutes including UNAFEI to strengthen their programmes so as to develop effective non-custodial measures. UNAFEI submitted to the Committee the United Nations draft standard minimum rules for non-custodial measures which is called the "Tokyo Rules." The draft is expected to be adopted in the Eighth Congress. Currently, UNAFEI, together with the United Nations Interregional Crime and Justice Research Institute (UNICRI) and the United Nations Criminal Justice Branch, is preparing research on alternatives to imprisonment for the workshop in the coming Eighth Congress.

The aim of the course is to provide participants with an opportunity to study and discuss various problems of non-custodial measures for their wider use and effective implementation from broad views.

3. The 86th International Training Course

The 86th International Training Course will be held from 10 September to 10 December 1990 with the main theme "Search for Effective and Appropriate Measures to Deal with the Drug Problem."

Many countries in the world are now confronted with serious drug problems. Drug abuse and drug-related criminality have become widespread and are of grave concern to both developed and developing countries. Drug abuse is affecting the health and moral fiber of the population, in particular that of youth. A variety of efforts have been undertaken at both national and international levels to respond to the problem. However, despite the concerted efforts of many countries, drug abuse and drug trade are proliferating in most countries. Illicit drug-trafficking by internationally organized criminals has become highly sophisticated, and drug-traffickers and their backers are accumulating increasing wealth from their trade.

Given these conditions, criminal justice administrators need to review carefully and to examine the existing systems and strategies, for the purposes of developing more effective and appropriate measures to deal with the drug problem.

International co-operation of every form needs strengthening for purposes of detecting, investigating, and prosecuting organized illicit drug-traffickers. Recently, significant progress has been made in this field. An example of such progressive measures is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), adopted in December 1988. The Convention and other newly developed international strategies provide for a number of instruments to facilitate international co-operation, including extradition of drug-related criminals, control of money laundering, confiscation and forfeiture of property obtained from illegal drug related activities, and mutual assistance in the investigation, prosecution and adjudication of drug-traffickers. It is therefore imperative for criminal justice administrators to study these international strategies, as well as the practical methods and procedures for their implementation in their respective countries.

Sentencing policies with regard to drug abusers and traffickers are a further important issue. Some disparities in sentencing policies have been found among countries. Certain drug abuses are criminalized in some countries, yet not in others. Some countries are applying severe sanctions for drug trafficking, while others are imposing relatively lenient sanctions. These disparities in sentencing policies among countries may cause difficulties in international co-operation. Therefore, it is considered essential for criminal justice administrators in various countries to exchange their opinions, and jointly discuss appropriate sentencing policies with respect to drug abuse and trafficking.

Treatment of drug abusers and the role of citizens and the community in the prevention of drug abuse are additional important issues. A variety of programmes for treatment of drug abusers as well as for prevention of drug abuse have been implemented in many countries. However, it is reported that these programmes have not always yielded the results expected. It will therefore be timely and useful to exchange the recent experiences of the respective countries, to discuss the relevant issues, to develop such programmes, so that they may become optimally effective.

On the basis of the above, the aim of this Course is to provide participants, mainly from Asia and the Pacific region, with an opportunity to study and discuss more effective and appropriate measures to deal with the drug problem.

Accordingly, the following items will be among the topics for discussion:

1. Present situation regarding drug abuse and drug-related offences;
2. Factors causing and affecting drug abuse and drug-related offences;
3. Efficacy and appropriateness of existing practices of criminal justice systems in dealing with the drug problem and drug-related criminality;
4. The development of new schemes and measures to facilitate the investigation and prosecution of drug-related criminality, including promotion of international co-operation;
5. Appropriate sentencing policies with regard to drug abuse and drug trafficking;
6. Review and examination of strategies and programmes for the treatment of drug abusers, and for the prevention of drug abuse;
7. Possible ways and procedures to develop more effective and appropriate measures to deal with the drug problem.

Nepal-UNAFEI Joint Seminar on the Prevention of Crime and the Treatment of Offenders

The said Joint Seminar is scheduled to be held in Kathumandu, the Kingdom of Nepal, from 12 to 24 March 1990, with the main theme "Towards a More Effective and Integrated System of Criminal Justice Administration."

With the mutual co-operation of the Government of Nepal and UNAFEI, the Seminar attempts to provide the participants with the forum, where policy-makers, high-ranking administrators and other experts working in various fields of criminal justice mechanism can meet together and exchange views, opinions, information and experiences in order to jointly search for the solutions of the various problems which confront the contemporary criminal justice administrators in Nepal.

On the basis of the comparative examination of the criminal justice system between the Nepalese experts and UNAFEI staff, and also on the basis of mutual exchange of views and experiences among the Nepalese experts from various sectors of the criminal justice system, it is expected that the seminar will produce a body of recommendations and/or guiding principles for the establishment of a more effective and integrated system of criminal justice in Nepal.

This project will have two phases. The first week of the operation will be spent in the participation of observation tours by the UNAFEI delegation to various criminal justice agencies in Nepal (e.g., police office, prosecutor's office, court, prison, and other related agencies), which will enable them to have a basic understanding of the existing conditions of criminal justice administration as well as to conduct on-the spot consultations with practitioners. The second week will be fully devoted to the seminar conference. The last day of the seminar will be utilized for the adoption of the final recommendations.

It is expected that a set of recommendations and/or guiding principles for the betterment and improvement of criminal justice administration in Nepal, will be finally produced as the output of the Seminar.

Research Activities

UNAFEI will also conduct various research activities during 1990. Among them will be a study of the implementation of the United Nations norms and guidelines related to crime prevention and criminal justice in the Asian countries, with particular reference to the impediments in the implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and the proposed Standard Minimum Rules for Non-custodial Measures.

The United Nations, aiming at the promotion of the countermeasures to prevent crime and the improvement of practical standards in the treatment of offenders at the international level, has adopted a number of norms and guidelines including the Standard Minimum Rules for the Treatment of Prisoners in 1955 and is expected to adopt the proposed Standard Minimum Rules for Non-custodial Measures at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held this year.

Currently, significant attention is being given all over the world, especially in the developing countries, to the manner in and the extent to which the United Nations norms and guidelines are being implemented, and to the impediments in their full implementa-

tion. A monitoring system has been evolved within the United Nations to focus on formulating effective ways and means to facilitate a practical implementation of such norms and guidelines.

It is, however, difficult for the United Nations to know exactly the actual situation regarding the implementation of these standards solely through the reports furnished by various countries and to propose appropriate measures in this respect.

UNAFEI, in collaboration with the Asia Crime Prevention Foundation, plans to undertake a research study by availing of the UNAFEI alumni network, and intends to make concrete recommendations for a more effective implementation of these United Nations norms and guidelines.

UNAFEI will select a country expert from among the UNAFEI alumni in each country, who is directly engaged in crime prevention or the criminal justice field and will request him or her to prepare a summary report and a final position paper under the rubric "Implementation of the United Nations Norms and Guidelines." UNAFEI researchers will also visit each country for the field research work under this project, and discuss with country experts and representatives of the concerned organizations, to complete the position paper.

UNAFEI researchers will accumulate information and statistics collected by the country experts in the position papers and by themselves.

UNAFEI researchers will complete the final report of this research, by integrating the final position paper of the country expert, the results of the field research and supplementary information.

The results of the research will then be reported to the United Nations at the Eighth Congress on the Prevention of Crime and the Treatment of Offenders, and also be distributed to countries concerned.

III. Conclusion

It is a great honour for the Director of UNAFEI to submit this report, which summarizes the Institute's activities during 1989, hoping that this will be accepted with much satisfaction by the United Nations and the Government of Japan, and that further advice will be furnished in order for UNAFEI to improve its programmes.

Since its establishment more than 27 years ago, UNAFEI has made the utmost effort to meet the needs of the region and other international societies in the field of the prevention of crime and the treatment of offenders. Due to the close co-operation and assistance given by the United Nations, the Government of Japan, the Japan International Co-operation Agency, the Asia Crime Prevention Foundation, governments in and outside the region, visiting experts, *ad hoc* lecturers, former participants and various other organizations, UNAFEI has been able to attain its aims and has gained a favourable reputation among international societies.

To cultivate personnel of ability in the field of crime prevention and the treatment of offenders is truly a matter of difficulty as well as of great importance especially in this region where most countries have been experiencing various types of change including rapid socio-economic development. UNAFEI makes every effort to improve its programmes and activities by utilizing all of the advice and suggestions rendered to the Institute in order to effectively meet the needs and expectations of the respective countries and international societies.

The total number of officials who have participated in UNAFEI training courses and seminars stands at 1,926 at the end of 1989. A list of the distribution of participants by professional backgrounds and countries is shown in Appendix VII.

This report is respectfully submitted to the United Nations and the Government of Japan in compliance with Section 1 (a) of the letter exchanged between the United Nations and the Government of Japan in March 1970.

28 February 1990

Hiroyasu Sugihara
Director, UNAFEI

APPENDIX

Appendix I

Distribution of Participants by Country (81st–83rd)

Country	81st Seminar	82nd Course	83rd Course	Total
Argentina	1			1
Bangladesh	1			1
Barbados	1			1
Brazil		2		2
China	1	1		2
Costa Rica			1	1
Ecuador	1			1
Fiji	1	1	1	3
Hong Kong	1	1		2
India			1	1
Indonesia	2		1	3
Kenya	1		1	2
Korea		1	1	2
Malaysia	1	1	1	3
Marshall Islands		1		1
Mozambique	1			1
Nepal	1		1	2
Nigeria	1			1
Papua New Guinea		2		2
Paraguay	1			1
Peru		1		1
Philippines	2	2	2	6
Saint Lucia		1		1
Saudi Arabia	1	1	1	3
Singapore			1	1
Sri Lanka	2	2		4
Sudan	1		1	2
Tanzania			1	1
Thailand	2		2	4
Western Samoa	1			1
Zambia			1	1
Japan	6	10	10	26
Total	30	27	27	84

Appendix II-1

List of Participants in the 81st International Seminar

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APPENDIX

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Appendix II-2

List of Lecturers and Lecture Topics (81st Seminar)

Visiting Experts
1) *Mr. Hetti Gamage Dharmadasa*
   a) Overcrowding in Prisons and Countermeasures
   b) Non-Institutional Treatment of Offenders
   Electronic Monitoring of Offenders and Home Detention (Annex to Lecture b)
2) *Dr. Peter Johan Paul Tak*
   a) The Advancement of the Fourth Generation of Sanctions in Western Europe
   b) Concepts of Conditional Release in Western Europe
   c) Two Processes of Change in Probation Activities in a Comparative Perspective
3) *Dr. Cicero C. Campos*
   Fair Administration of Police Responsibility and Provision of Services to the Public: The Basis for Public Cooperation
4) *Dr. Heinrich Kirschner*
   a) Integration, Diversion and Resocialization in German Criminal Procedure
   b) Checks and Balances in the German System of Criminal Justice Administration
5) *Mr. Yu Shutong*
   Chinese Criminal Law and Its Recent Development
6) *Mr. John Wood*
   a) Prosecution Policy in England and Wales
   b) Fraud in the European Community

Ad Hoc Lecturer
Dr. David H. Bayley,
Faculty of Law, University of New York State, U.S.A.
Police and Public Cooperation in Japan

Faculty Lectures
1) *Professor Hideo Utsuro* (Director)
   Recent Activities of UNAFEI
2) *Professor Kunihiro Horiuchi* (Deputy Director)
   Current Trends of Criminal Activities in Japan
3) *Professor Norio Nishimura*
   The Criminal Justice System in Japan (2): the Court
4) *Professor Shigemi Satoh*
   The Criminal Justice System in Japan (4): the Probation
5) *Professor Itsuo Nishimura*
   The Criminal Justice System in Japan (1):

the Investigation and Prosecution
6) *Professor Fumio Saitoh*
The Criminal Justice System in Japan (3): the Correction

Appendix II-3

List of Reference Materials Distributed (81st Seminar)

1. Lecturers' Papers
 1) *Mr. Hetti Gamage Dharmadasa*
  a) Overcrowding in Prisons and Countermeasures
  b) Non-Institutional Treatment of Offenders
  Electronic Monitoring of Offenders and Home Detention (Annex to Lecture b)
 2) *Dr. Peter Johan Paul Tak*
  a) The Advancement of the Fourth Generation of Sanctions in Western Europe
  b) Concepts of Conditional Release in Western Europe
  c) Two Processes of Change in Probation Activities in a Comparative Perspective
 3) *Dr. Cicero C. Campos*
  Fair Administration of Police Responsibility and Provision of Services to the Public: The Basis for Public Cooperation
 4) *Dr. Heinrich Kirschner*
  a) Integration, Diversion and Resocialization in German Criminal Procedure
  b) Checks and Balances in the German System of Criminal Justice Administration
 5) *Mr. Yu Shutong*
  Chinese Criminal Law and Its Recent Development
 6) *Mr. John Wood*
  a) Prosecution Policy in England and Wales
  b) Fraud in the European Community
 7) *Mr. Hideo Utsuro* (Director)
  Recent Activities of UNAFEI
 8) *Mr. Kunihiro Horiuchi* (Deputy Director)
  Current Trends of Criminal Activities in Japan
 9) *Mr. Norio Nishimura*
  The Criminal Justice System in Japan (2): the Court
 10) *Mr. Itsuo Nishimura*
  The Criminal Justice System in Japan (1): the Investigation and Prosecution
 11) *Mr. Shigemi Satoh*
  The Criminal Justice System in Japan (4): the Probation
 12) *Mr. Fumio Saitoh*
  The Criminal Justice System in Japan (3): the Correction

2. Statutes of Japan
 1) The Constitution of Japan
 2) Criminal Statutes I and II
 3) Law for Correction and Rehabilitation of Office Law
 4) Court Organization Law and Public Prosecutors Office Law
 5) Laws Concerning Extradition and International Assistance in Criminal Matters

3. Explanation of Some Aspects of Japanese Criminal Justice System
 1) Criminal Justice in Japan
 2) Guide to the Family Court of Japan
 3) Correctional Institutions in Japan
 4) Community-Based Treatment of Offenders in Japan
 5) Summary of the White Paper on Crime, 1988

6) National Statement of Japan for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders

4. UNAFEI Publications
   1) Resource Material Series Nos. 31, 32
   2) UNAFEI Newsletter Nos. 66, 67
   3) Criminal Justice in Asia
      —The Quest for An Integrated Approach—
   4) United Nations Draft Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)
   5) The 25-Year History of UNAFEI
      —Regional Cooperation in Social Defence—
   6) Distribution of Participants by Professional Backgrounds and Countries (Ist Training Course, 2 U.N. Human Rights Courses and I Special Course) (1962-Nov. 1988)

5. Others
   1) Standard Minimum Rules for the Treatment of Prisoners
   2) Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders (Milan, Italy, 26 August to 6 September 1985 A/CONF. 121.22)
   3) Public Administration in Japan
   4) Discussion Guide for the International and Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF. 144/IPM. 1 20 January 1988)
   5) Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic I: "Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation" (Vienna, Austria, 15-19 February 1988 A/CONF. 144/IPM. 1 10 March 1988)
   6) Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic II: "Criminal Justice Policies in Relation to Problems of Imprisonment, Other Penal Sanctions and Alternative Measures" (Vienna, Austria, 30 May-3 June 1988 A/CONF. 144/IPM. 49 June 1988)
   7) Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic III: "Effective National and International Action against (a) Organized Crime; (b) Terrorist Criminal Activities" (Vienna, Austria, 14-18 March 1988 A/CONF. 144/IPM. 2 11 April 1988)
   8) Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic IV: "Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions" (Vienna, Austria, 18-22 April 1988 A/CONF. 144/IPM. 3 11 May 1988)
   9) Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Future Standard Setting" (Vienna, Austria, 27 June-1 July 1988 A/CONF. 144/IPM. 5 11 July 1988)

Appendix III-1

List of Participants in the 82nd International Training Course

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Appendix III-2

List of Lecturers and Lecture Topics (82nd Course)

Visiting Experts

1) *Mr. Clair A. Cripe*
   a) Crowding in Prisons—How do we manage?
   b) Special Offender Programs
   c) International Transfer of Prisoners
   d) Inmate Grievance Systems in the United States
2) *Mr. Gordon H. Lakes*
   a) An Outline History of Organizational Change in the Prison Service of England and Wales
   b) Recent Managerial and Organizational Innovations
3) *Mr. Chan Wa-Shek*
   a) Some Thoughts on Correction within Penal Institutions
   b) Behaviour Adjustment Units
   c) Education and Training as a Tool for Rehabilitation
4) *Prof. Dr. Theodore N. Ferdinand*
   a) Classification and its Uses
   b) The Purposes of Classification
   c) Problems of Classification Systems
   d) Some Additional Problems of the Classification Process
   e) "Why are Crimes and Delinquency So Prevalent in the United States?"
5) *Prof. Hassan El-Saati*
   Islamic Criminal Justice: Legislation and Application

Ad Hoc Lecturers

1) *Mr. Shin'ichiro Tojo*
   Assistant Deputy Vice-Minister of Justice
   Present Conditions and Some Problems in Criminal Justice Administration in Japan
2) *Professor Sadahiko Takahashi*
   Faculty of Law, Kinki University
   Trends and Problems in Corrections in the USA—in Texas and Georgia
3) *Mr. Keiji Kurita*
   Director-General of the Rehabilitation Bureau, Ministry of Justice
   Rehabilitation Services in Japan
4) *Mr. Kazuo Kawakami*
   Director-General of the Correction Bureau, Ministry of Justice
5) *Mr. Takeshi Matsumura*
   Director of the Security Division, Correction Bureau, Ministry of Justice
   Prisoners Grievances and Effective Meth-

ods of Security Control
6) *Dr. Takeshi Iwabori*
Director of Medical Care and Classification Division, Correction Bureau, Ministry of Justice
Introduction to Medical and Health Care Services of Correctional Institutions in Japan
7) *Mr. Masaji Tachibana*
Director of Education Division, Correction Bureau, Ministry of Justice
Educational Measures in Correctional Institutions: Present Conditions and Problems of Correctional Education in Japan
8) *Mr. Yoshio Mizushima*
Director of the Industry Division, Correction Bureau, Ministry of Justice
9) *Mr. Saburo Tsuchimochi*
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Faculty Lectures
1) *Professor Hiroyasu Sugihara* (Director)
The Recent Activities of UNAFEI
2) *Professor Kunihiro Horiuchi* (Deputy Director)
Current Trends of Criminal Activities
3) *Professor Itsuo Nishimura*
The Criminal Justice System in Japan (1): the Investigation
4) *Professor Norio Nishimura*
The Criminal Justice System in Japan (2): the Court
5) *Professor Akio Yamaguchi*
The Criminal Justice System in Japan (3): the Correction
6) *Professor Masakazu Nishikawa*
The Criminal Justice System in Japan (4): the Probation

Appendix III-3

List of Reference Materials Distributed (82nd Course)

1. Lecturers' Papers
1) *Mr. Clair A. Cripe*
a) Crowding in Prisons—How do we manage?
b) Special Offender Programs
c) International Transfer of Prisoners
d) Inmate Grievance Systems in the United States
2) *Mr. Gordon H. Lakes*
a) An Outline History of Organizational Change in the Prison Service of England and Wales
b) Recent Managerial and Organizational Innovations
3) *Mr. Chan Wa-Shek*
a) Some Thoughts on Correction within Penal Institutions
b) Behaviour Adjustment Units
c) Education and Training as a Tool for Rehabilitation
4) *Dr. Theodore N. Ferdinand*
a) Classification and its Uses
b) The Purposes of Classification
c) Problems of Classification Systems
d) Some Additional Problems of the Classification Process
e) "Why are Crimes and Delinquency So Prevalent in the United States?"
5) *Prof. Hassan El-Saati*
Islamic Criminal Justice: Legislation and Application
6) *Prof. Sadahiko Takahashi*
Trend and Problems in Corrections in the USA
7) *Mr. Keiji Kurita*
Rehabilitation Services in Japan

Amnesty Law (Law No. 20, Mar. 20, 1947)
Amnesty Law Enforcement Regulations (Ministry of Justice Ordinance No. 78 Oct. 1, 1947)

8) *Mr. Takeshi Matsumura*
Prisoners' Grievances and Effective Methods of Security Control in Correctional Institutions

9) *Mr. Hiroyasu Sugihara* (Director)
The Recent Activities of UNAFEI

10) *Mr. Kunihiro Horiuchi* (Deputy Director)
Current Trends of Criminal Activities

11) *Mr. Norio Nishimura*
The Criminal Justice System in Japan (2): the Court
Towards an Effective Administration of Criminal Justice: The Role of the Courts—Fair and Speedy Trial

12) *Mr. Akio Yamaguchi*
The Criminal Justice System in Japan (3): the Correction
A Brief Note About The Development of Imprisonment in Japan

13) *Mr. Masakazu Nishikawa*
The Criminal Justice System in Japan (4): the Probation

2. Statutes of Japan
1) The Constitution of Japan
2) Criminal Statutes I and II
3) Law for Correction and Rehabilitation of Offenders
4) Court Organization Law and Public Prosecutors Office Law
5) Laws Concerning Extradition and International Assistance in Criminal Matters

3. Explanation of Some Aspects of Japanese Criminal Justice System
1) Criminal Justice in Japan
2) Guide to the Family Court of Japan
3) Correctional Institutions in Japan
4) Community-Based Treatment of Offenders in Japan
5) Summary of the 1987 White Paper on Crime, 1988
6) 1987 White Paper on Police —Summary—
7) National Statement of Japan for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders
8) Bulletin of the Criminological Research Department, 1988

4. UNAFEI Publications
1) Resource Material Series Nos. 32, 33
2) UNAFEI Newsletter Nos. 67, 68
3) Criminal Justice in Asia—The Quest for An Integrated Approach—
4) Recent Activities of United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
5) Delineation of Crucial Issues of Criminal Justice in Asia
6) First Draft of Proposed United Nations Standard Minimum Rules for the Non-Institutional Treatment of Offenders

5. Others
1) United Nations Standard Minimum Rules for the Treatment of Prisoners
2) Seventh United Nations Congress of the Prevention of Crime and the Treatment of Offenders (Milan, Italy, 26 August to 6 September 1985 A/CONF. 121.22)
3) The European Prison Rules (Council of Europe, 5 June 1986)
4) Public Administration in Japan

Appendix IV-1

List of Participants in the 83rd International Training Course

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Appendix IV-2

List of Lecturers and Lecture Topics (83rd Course)

Visiting Experts

1) *Prof. Dr. Hans Joachim Schneider*
   a) Restitution instead of Punishment: Reorientation of Crime Prevention and Criminal Justice in the Context of Development
   Life in a Societal No-Man's-Land: Aboriginal Crime in Central Australia
   A Comparison of Crime and Its Control in Four German-speaking Countries: in the Federal Republic of Germany, the German Democratic Republic, Austria and Switzerland'
   Crime and Its Control in Japan and in the Federal Republic of Germany
   b) Victimology: Basic Theoretical Concepts and Practical Implications from Criminal Policy to Victim Policy
   New Tendencies in the Reform of Criminal Law Criminal Procedure and Corrections
2) *Dr. Satyanshu Kumar Mukherjee*
   Crime Victims Survey—Its Usefulness in Criminal Justice Policy
3) *Ms. Anglaia Tsitsoura*
   International Co-operation in Crime Prevention and Criminal Justice in European Countries
4) *Mr. H. Adi Andojo Soetjipto*
   Incorporation of Fair and Effective Crime Prevention Policies and Strategies into Overall National Development Plans
5) *Mr. Abdelaziz Abdalla Shiddo*
   Implementation of the United Nations Norms and Guidelines in Criminal Justice
6) *Dr. Ugljesa Zvekic*
   a) Development and Crime
   b) Development and Crime: Pilot Project in Yugoslavia—Results of the Preliminary Analysis
7) *Mr. Reynaldo J.D. Cuaderno*
   The National Strategy of the Philippines to Reduce Crime in the 1980's
8) *Mr. Jae In Yoo*
   The Legal Education and Judicial System in the Republic of Korea

Ad Hoc Lecturers

1) *Mr. Minoru Shikita*
   The Role of the United Nations in the Field of International Co-operation in Crime Prevention and Criminal Justice
2) *Mr. Atsushi Nagashima*
   Criminal Justice Administration in Japan in the Context of Her Tradition and Culture
3) *Mr. Shin-ichiro Tojo*
   Present Conditions and Some Problems in Criminal Justice Administration in Japan
4) *Mr. Kazuyoshi Imaoka*
   Present Conditions and Some Problems in Correctional Administration in Japan
5) *Mr. Kunpei Sato*
   Present Conditions and Some Problems in Rehabilitative Administration in Japan
6) *Prof. LeRoy L. Lamborn*
   The Role of the Victim in the American Criminal Justice Process
7) *Prof. Hans Heiner Kuhne*
   Victim's Rights in European Penal Procedure Laws
8) *Mr. Takashi Watanabe*
   Present Conditions and Some Problems in International Assistance in Criminal Justice Administration
9) *Mr. Masafumi Ueda*
   Present Conditions and Some Problems in Countermeasures against "Boryokudan"
10) *Dr. Helmut Gonsa*
    Some Common Basic Ideas of the Prison Administrations of the Member States of the Council of Europe

Faculty Lecturers

1) *Professor Hiroyasu Sugihara* (Director)
   Recent Activities of UNAFEI
2) *Professor Kunihiro Horiuchi* (Deputy Director)
   Current Trends of Criminal Activities in Japan
3) *Professor Itsuo Nishimura*
   The Criminal Justice System in Japan (1): the Investigation
4) *Professor Norio Nishmura*
   The Criminal Justice System in Japan (2): the Court
5) *Professor Akio Yamaguchi*
   The Criminal Justice System in Japan (3): the Correction
6) *Professor Shigemi Sato*
   The Criminal Justice System in Japan (4): the Probation
7) *Professor Masakazu Nishikawa*
   Countermeasures against Narcotic Drug Problems in Asia
8) *Professor Fumio Saito*
   Juvenile Delinquency and Its Control: Japanese Experience and Asian Perspective

Appendix IV-3

List of Reference Materials Distributed (83rd Course)

1. Lecturers' Papers

1) *Prof. Dr. Hans Joachim Schneider*
   a) Restitution instead of Punishment: Reorientation of Crime Prevention and Criminal Justice in the Context of Development
   Life in a Societal No-Man's-Land: Aboriginal Crime in Central Australia
   A Comparison of Crime and Its Control in Four German-speaking Countries: in the Federal Republic of Germany, the German Democratic Republic, Austria and Switzerland
   Crime and Its Control in Japan and in

the Federal Republic of Germany
b) Victimology: Basic Theoretical Concepts and Practical Implications from Criminal Policy to Victim Policy
New Tendencies in the Reform of Criminal Law Criminal Procedure and Corrections

2) *Dr. Satyanshu Kumar Mukherjee*
Crime Victims Survey—Its Usefulness in Criminal Justice Policy

3) *Ms. Anglaia Tsitsoura*
International Co-operation in Crime Prevention and Criminal Justice in European Countries

4) *Mr. H. Adi Andojo Soetjipto*
Incorporation of Fair and Effective Crime Prevention Policies and Strategies into Overall National Development Plans

5) *Mr. Abdelaziz Abdalla Shiddo*
Implementation of the United Nations Norms and Guidelines in Criminal Justice

6) *Dr. Ugljesa Zvekic*
a) Development and Crime
b) Development and Crime: Pilot Project in Yugoslavia—Results of the Preliminary Analysis

7) *Mr. Reynaldo J.D. Cuaderno*
The National Strategy of the Philippines to Reduce Crime in the 1980's

8) *Mr. Jae In Yoo*
The Legal Education and Judicial System in the Republic of Korea

9) *Mr. Minoru Shikita*
United Nations Activities in Criminal Justice Field

10) *Mr. Atsushi Nagashima*
Criminal Justice Administration in Japan in the Context of Her Tradition and Culture

11) *Mr. Shin-ichiro Tojo*
Present Situation and Issues of the Criminal Justice in Japan

12) *Mr. Kazuyoshi Imaoka*
Correctional Treatment in Japan

13) *Mr. Kunpei Sato*
Rehabilitation Services in Japan—Present Situation and Problems—

14) *Prof. LeRoy L. Lamborn*
The Role of the Victim in the American Criminal Justice Process

15) *Prof. Hans Heiner Kuhne*
Victim's Rights in European Penal Procedure Laws

16) *Mr. Takashi Watanabe*
Present Status and Task of International Cooperation in the Field of Criminal Justice

17) *Mr. Masafumi Ueda*
Present Situation of "Boryokudan"

18) *Dr. Helmut Gonsa*
Some Common Basic Ideas of the Prison Administrations of the Member States of the Council of Europe

19) *Professor Hiroyasu Sugihara* (Director)
The Recent Activities of UNAFEI
Crime Prevention and Criminal Justice in the Context of Development (Realities and Perspectives of International Cooperation)

20) *Professor Kunihiro Horiuchi* (Deputy Director)
Current Trends of Criminal Activities

21) *Professor Norio Nishimura*
The Criminal Justice System in Japan (2): the Court
Towards an Effective Administration of Criminal Justice: the Role of the Courts—Fair and Speedy Trial

22) *Professor Akio Yamaguchi*
The Criminal Justice System in Japan (3)
A Brief Note about the Development of Imprisonment in Japan

23) *Professor Shigemi Sato*
The Criminal Justice System in Japan (4)

24) *Professor Masakazu Nishikawa*
Countermeasures against Narcotic Drug Problems in Asia

25) *Professor Fumio Saito*
Reference Paper for "Juvenile Delinquency and Its Control: Japanese Experience and Asian Perspective"

2. Statutes of Japan
1) The Constitution of Japan
2) Criminal Statutes I and II

3) Laws for Correction and Rehabilitation of Offenders
4) Court Organization Law and Public Prosecutors Office Law
5) Laws Concerning Extradition and International Assistance in Criminal Matters

3. Explanation of Some Aspects of Japanese Criminal Justice System
1) Criminal Justice in Japan
2) Guide to the Family Court of Japan
3) Correctional Institutions in Japan
4) Community-Based Treatment of Offenders in Japan
5) Summary of the White Paper on Crime, 1988
6) 1987 White Paper on Police —Summary—
7) National Statement of Japan for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders
8) Bulletin of the Criminological Research Department, 1988

4. UNAFEI Publications
1) Resource Material Series Nos. 31, 32, 33
2) UNAFEI Newsletter Nos. 68, 69
3) Criminal Justice in Asia—The Quest for an Integrated Approach—
4) Recent Activities of United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders
5) Delineation of Crucial Issues of Criminal Justice in Asia

5. Others
1) Seventh United Nations Congress of the Prevention of Crime and the Treatment of Offenders (Milan, Italy, 26 August to 6 September 1985 A/CONF. 121.22)
2) Discussion Guide for the Interregional and Regional Preparatory Meetings for the Eighth United Nations Congress of the Prevention of Crime and the Treatment of Offenders
3) Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress of Prevention of Crime and the Treatment of Offenders of Topic I: "Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation"
4) Drug Control in Asia
5) Public Administration in Japan

Appendix V

List of Participants in the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region

A. Experts

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Mr. Hira Singh (Resource Person)
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Bangkok
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Social Development Division

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Social Development Division

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Mr. Kunihiro Horiuchi
Deputy Director

Mr. Norio Nishimura
Professor

Mr. Akio Yamaguchi
Professor

Mr. Shigemi Satoh
Professor

Mr. Itsuo Nishimura
Professor

Mr. Yutaka Nagashima
Professor

Mr. Masakazu Nishikawa
Professor

Mr. Fumio Saito
Professor

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Appendix VI

List of Participants in the International Workshops on Victimology and Victim's Rights

Members of the World Society of Victimology (WSV)

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Norio Nishimura
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Shigemi Satoh
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Itsuo Nishimura
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Fumio Saito
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Masakazu Nishikawa
Professor

Yutaka Nagashima
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Participants of the 83rd International Training Course

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United Nations Latin America Institute for Crime Prevention and Treatment of Offenders
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Appendix VII

Distribution of Participants by Professional Backgrounds and Countries

(1st Training Course–83rd Training Course, 2 U.N. Human Rights Courses and 1 Special Course)

(1962–Nov. 1989)

Region / Country	Judicial and Other Administration	Judges	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation, Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training and Research Officers	Others	Total
Asia (26)													(995)
Afghanistan	7	8	5	3									23
Bangladesh	12	7		9	4		4			5		1	42
Brunei	3												3
Cambodia		2	1	2	1								6
China	6		3	4							2		15
Hong Kong	11			2	19	3	9		1	3			48
India	12	10		26	6	1	1			2	6	1	65
Indonesia	13	17	7	19	9		3			4		1	73
Iran	5	11	8	8	6						2	1	41
Iraq	5	3	3	5	5	5					2		28
Jordan				1									1
Korea	10	3	35	5	11	4					3		71
Laos	3	4	3	9									19
Malaysia	12		2	25	22	7	3		1	5	3		80
Myammar	3			1									4
Nepal	16	12	3	22								2	55
Pakistan	11	6	2	9	6	1	2				2		39
Philippines	14	5	16	23	8	3	5	3	1	3		5	86
Saudi Arabia	2			4	2						1	1	10
Singapore	10	15	3	9	8	3	8			3	1		60
Sri Lanka	20	11	5	8	15	1	10		1	2		1	74
Taiwan	12	4	2	2	1								21
Thailand	18	21	17	8	13	7	8	1		7	4	1	105
Turkey	1	1	1										3
United Arab Emirates	1												1
Viet Nam	10	5	2	1						4			22
Africa (14)													(57)
Egypt											1		1
Ethiopia	2			1									3
Ghana				2									2
Guinea			1	1									2
Kenya	4			1	2		2				2		11
Lesotho				1			1						2
Liberia											1		1
Mauritius		1											1
Morocco				4									4
Mozambique					1								1
Nigeria	1				3								4
Sudan	2		1	11	1						1		16
Tanzania	3	2	1		1								7
Zambia		1		1									2
The Pacific (9)													(65)
Australia			1				1			1			3
Fiji	4		4	9	8								25
Marshall Islands				2									2
New Zealand	1			1									2
Papua New Guinea	5		1	5	4					1		1	17
Ponape (Micronesia)							1						1
Solomon Islands	1												1
Tonga	2	1		4	2						1		10
Western Samoa	1			1			1					1	4
North & South America (16)													(61)
Argentine		2											2
Barbados				1									1
Brazil	2		2	4					1				9
Chile	1				1								2
Colombia	1	1	1						1			1	5
Costa Rica	2	2	2								1	2	9
Ecuador				3		1							4
Guatemala					1								1
Honduras				1									1
Uamaica	3				1								4
Panama				1								1	2
Paraguay				3									3
Peru	4	7									1	2	14
Saint Lucia	1				1								2
Venezuela											1		1
U.S.A. (Hawaii)								1					1
Japan	85	86	147	66	52	47	119	48	37	2	36	23	748
Total	342	248	279	328	214	83	178	53	43	42	71	45	1,926

RESOURCE MATERIAL SERIES

No. 37

UNAFEI

Introductory Note

The editor is pleased to present No. 37 in the Resource Material Series containing materials produced during the 83rd International Training Course on "Arime Prevention and Criminal Justice in the Context of Development" which was held from September 4 to November 24, 1989 at this institute.

Part I is made up of three sections. Section 1 consists of papers contributed by eight visiting experts of the course.

Dr. Hans Joachim Schneider, Director and Professor, Department of Criminology, University of Westfalia, Federal Republic of Germany, in his paper entitled "The Impact of Economic and Societal Development on Crime Causation and Control," describes theories on the relationship between development and crime causation and control, and then analyzes, by utilizing these theories, the situations regarding development and crime in seven countries.

Ms. Aglaia Tsitsoura, Head of the Division of Crime Problems, Directorate of Legal Affairs, Council of Europe, in her paper entitled "International Co-operation in Crime Prevention and Criminal Justice in European Countries," introduces various ways of international co-operation in the field of crime prevention, criminal policy, and criminal justice administration presently undertaken in European countries.

Mr. H. Adi Andojo Soetjipto, Deputy Chief Justice of the Supreme Court, Republic of Indonesia, in his paper entitled "Incorporation of Fair and Effective Crime Prevention Policies and Strategies into Overall National Development Plans," discusses the crime prevention policies and strategies which should be incorporated in and harmonized with the overall national development plans.

Mr. Abdelaziz Abdella Shiddo, Member of the United Nations Committee on Crime Prevention and Control, Republic of the Sudan, in his paper entitled "Implementation of the United Nations Norms and Guidelines in Criminal Justice," explains the United Nations norms and guidelines in the field of crime prevention and criminal justice, and discusses effective and proper means to ensure the implementation of these norms and guidelines in respective countries.

Dr. Ugljesa Zvekic, the First Research Officer of the United Nations Interregional Crime and Justice Research Institute, in his paper entitled "Development and Crime: Pilot Project in Yugoslavia—Results of the Preliminary Analysis," describes and analyzes trends and characteristics of the interrelation between development and crime in Yugoslavia.

Mr. Reynaldo J.D. Cuaderno, Executive Deputy Commissioner of the National Police Commission, the Philippines, in his paper entitled "The National Strategy of the Philippines to Reduce Crime in the 1980's," examines the recent national strategies designed and practiced to control and reduce crime in the Philippines.

Mr. Yoo Jae-In, Director of the First Inspection Division, Supreme Public Prosecutor's Office, Republic of Korea, in his paper entitled "The Legal Education and Judicial System in the Republic of Korea," introduces the current legal education and judicial system in the Republic of Korea.

Section 2 contains papers submitted by four of the participants of the course.

Section 3 contains the Report of the Course.

Part II presents materials produced during other UNAFEI activities which contain the papers of the panelists of the International Workshops on Victimology and Victim's Rights. The Workshops were jointly organized by UNAFEI and the World Society of Victimology on October 16 and 17, 1989. Many eminient scholars and practitioners from various countries as well as all the participants of the 83rd International Training Course of UNAFEI participated in the International Workshops. In the workshops, three distinguished scholars, viz., Dr. LeRoy L. Lamborn, Professor of Law, Wayne State University (USA); Dr. Hans Joachim Schneider, Director and Professor, Department of Criminology, University of Westfalia (FRG); Dr. Hans Heiner Kühne, Professor, Faculty of Law, University of Trier (FRG), made a series of presentations, as panelists, on victimology and victim's roles and rights in the American and European criminal justice process.

Many participants submitted papers of quality and substance during the 83rd International Training Course and it is deeply regretted that limitations of space precluded the publication of all papers received. The editor would like to add that, owing to lack of time, necessary editorial changes had to be made without refering the manuscripts back to their authors. The editor requests the indulgence and understanding of this necessity which was required to meet editorial deadlines.

In concluding the introductory note, the editor would like to pay tribute to the contribution of the Japan International Cooperation Agency (JICA) for providing indispensable and unwavering support for the UNAFEI courses and seminars from which these materials were produced. The editor also would like to express his gratitude and appreciation to those who so willingly contributed to the publication of this volume by attending to the typing, printing and proofreading, and by assisting in various other ways.

The editor would also take this opportunity to express his deepest appreciation to the continued financial and other support rendered by the Asia Crime Prevention Foundation (ACPF) for various UNAFEI projects including the publication of the Resource Material Series.

April 1990

H. Sugihara

Hiroyasu Sugihara
The Editor
Director of UNAFEI

PART I

Materials Produced during the 83rd International Training Course, "Crime Prevention and Criminal Justice in the Context of Development"

SECTION 1: EXPERTS' PAPERS

The Impact of Economic and Societal Development on Crime Causation and Control

*by Hans Joachim Schneider**

I. Theory and Methodology of Comparative Criminology

Until very recently criminology was offender-oriented[1]. The prime cause of criminality was seen in the abnormal personality of the offender, and it was believed that criminality could be extinguished by treating the convict with educational and therapeutic measures within the correctional institution. This criminal etiological and criminal political concept is still being supported today[2]. While there can be neither a criminology nor a criminal policy without the offender, he is but one element in the causation and the control of criminality. The two other elements which deserve consideration are the victim of crime[3] and society. They contribute—to an individually differing degree—to the development of crime. Thus, they have to participate in the control of criminality. Crime develops in societal and individual learning processes. It also has to be unlearned in such processes.

The static method of personal characterization of criminal offenders according to physical, psychological and social characteristics after the multiple factor approach for the purpose of discrimination between "normal" men and criminals does not promise any new revelations after *Sheldon* and *Eleanor Glueck*[4] exhausted this research approach comprehensively, employing ample personal and financial resources. In the future, empirical research into offender and victim careers will have to be performed to a larger extent[5]. After all, offender and victim acquire their social roles and their self-images within society. It is especially the empirical research into the processes of symbolic interaction between offender and victim in the causation of crime that deserves more attention. Although societal and individual learning processes interact in the causation of criminality they have to be investigated separately at first in the interest of a clearer distinction. The analysis of societal processes of crime causation is the task of Comparative Criminology. Its goal and its methods, however, were outlined differently at first: Comparative Criminology was understood to be a method of repetitive empirical group comparison between criminals and non-criminals, employing the same definitions and research techniques, but in different societies with the aim of demarcating factors of crime causation which are not socially determined[6]. Soon, however, the enormous dependence of crime causation on society was discovered, and the method was reversed: Criminality was regarded as only one element in a social system, and it was compared with regard to the different societies[7].

There are essentially two methods of investigating societal processes of crime causation:

—On the one hand, the extent, the patterns, the development and the distribution of criminality (objective state of security) and

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I dedicate this contribution to my friend William Clifford, the late Director of the Australian Institute of Criminology in Canberra.

the attitude of the population toward criminality (subjective state of security) can be compared in different historical periods of the same society (historical criminology)[8].

—On the other hand, the extent, the patterns, the development and the distribution of criminality (objective state of security and the attitude of the population towards criminality (subjective state of security) can be compared in two or more different present-day societies[9].

Both methods are of equal value and they are equally difficult. they both demand that the objective as well as the subjective states of security be regarded as only one element within the general development of the social system or systems. Consequently, one cannot simply review crime statistics. The respective economic and social structures, behavioral styles, ideals, and value systems of the population and the integration of criminal justice in society have to be investigated as well. In order to compare criminality and its control in two contrasting present-day societies, one must have lived in both societies for some time and one must equally have performed empirical research in both societies. The researcher must acquire a feeling for the different social nature of the two societies in his daily contact with representatives of these two different societies.

II. Theories on the Relationship between Development and Crime Causation and Control

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan in 1985, adopted the Milan Plan of Action. In this Plan of Action it says: "... Development is not criminogenic per se, [...], however, unbalanced or inadequately planned development contributes to an increase in criminality."[10] The question that remains is what is meant by "unbalanced and inadequately planned development." There are six theories concerning the impact of economic and societal development on crime causation and control:

—The *criminal-statistical approach* regards the increase of crime during development not as a real but as a fictitious one[11]. In connection with development people become more and more sensitive toward the commission of crimes. They tend to be less willing to accept everyday interpersonal violence. Petty offenses such as shoplifting, bicycle theft and fare evasion are now more likely to be reported. In economically higher developed areas the type of social control is different. The informal social control of the community becomes more and more ineffective; the importance of the criminal justice system increases. As the population is more sensitive to the commission of crimes, they report criminality more often to the police. The criminal justice system becomes more effective; it seizes and registers more crime officially. The society becomes more and more aware of its crime problem, it increasingly realizes its crime problem. According to this approach the increase in crime during development is attributable to a reduction of the dark field, the hidden, undetected, unrecorded crime. The importance of the formal control, the criminal justice system, grows in correlation with the economic and societal development. However, it is essential to maintain informal control through social groups, such as the family, the neighborhood, professional and recreational groups, and to adapt it to the new lifestyle. Citizens must not adopt the attitude that from now on the criminal justice system alone is to be responsible for crime control. The citizens' individual responsibility in matters of informal criminal control can best be reinforced if they are themselves given a share in the criminal justice system in an appropriate way. However, economic and societal development does

not only cause an increase in officially recorded crime, it also causes an increase of the actual offenses which are committed in reality.

—The *economic theory* was developed on the basis of empirical research work in Indonesia, Korea, Thailand and the Philippines[12]. In societal development a sizeable segment of the population in society does not fully participate in the economic progress. The social changes come so suddenly that the social infrastructure has not had enough time to react with an adequate growth in educational, medical and social welfare, in family planning, housing construction and other necessary services. The big cities cannot cope with the rapid and uncontrolled population growth in the rural areas. Due to the lack of infrastructure, overpopulated slum areas with deplorable living conditions emerge in big cities. At the same time manpower is badly needed in the agricultural sector so that disintegrated districts are also created in the country[13]. The following objection is raised against this theory: Crime is not only a problem of the socially deprived classes and areas. Crime, especially property, economic and environmental crime, is being committed by all classes of the population.

—The *opportunity theory* was proposed during the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Vienna in February 1988[14]. It takes the following view: A high standard of living is connected with an increase in the number of opportunities for committing certain types of crime. The sharp rise in the number of property offenses following development is attributable to an increased accessibility to material goods and to the increased difficulty of enforcing controls. The anonymous urban lifestyle on the one hand simplifies the perpetration of crime by the offender and on the other hand it complicates his seizure and his conviction. The easy access to material goods changes their appreciation in the population. Potential victims are not watchful enough of their property. However, this theory does not account for affluent countries with low crime rates such as Japan and Switzerland. Despite the increase in opportunities there is in fact a low crime rate in these countries.

—The *demographic theory* is related with the theory of youth subculture[15]. During economic and societal development many children are born. The juvenile population is disproportionately high in developing countries. As juveniles, adolescents and young adults are comparatively often involved in the perpetration of offenses, the growth of crime can be explained by this shift in the age structure. In connection with the economic and societal development the developing countries are subject to the increase in youth subcultures with their own lifestyles, value systems and idols. Whereas in the agricultural societies childhood and adulthood are rather directly interlinked, the industrial, communication and service society unfolds a distinct phase of adolescence which is entirely dedicated to the scholastic and professional education and to preparation for the life of adults. This phase of life, during which the youngster and the adolescent on the one hand depend socially and psychologically on the adults and on the other hand are physically regarded as adults, gives rise to adolescent insecurity with regard to their status. Youngsters and adolescents do not know whether they are still children or already adults. They alienate themselves from the adult society; they have difficulties in becoming adults because they can hardly identify with adults and because they follow adolescent idols in sports and in popular music for their behavior models. The fact that adults cannot supervise their adolescents appropriately, and that youngsters and

adolescents evade adult control causes an eminent amount of juvenile delinquency[16] because socially appropriate behavior must be learned from adults during adolescence. The demographic and subcultural arguments focus too much on juvenile delinquency, which is responsible only for a part of the crime expansion in the context of development, even though this part is an important one.

—The *deprivation theory*[17] explains the increase in criminality and in juvenile delinquency in the context of economic and societal development with the "revolution of rising expectations." Large-scale socioeconomic change is usually accompanied by changes in the people's values, by institutional dislocations that affect people at the top as much as people on their way up, and even by temporary deterioration of some social institutions. Rapid social change is thus likely to add to the discontent of many groups at the same time as it improves the conditions of others. It may contribute to the partial disintegration of normative control systems, to the collapse of old institutions through which some of the groups were once able to satisfy their expectations, and to the foundation of new organizations of the discontented[18]. In connection with the economic improvement the population's expectations concerning their living standards rise to such heights that they cannot always be fulfilled. This theory of relative deprivation does not focus on the fact of being objectively underprivileged[19] but on people's subjective feelings of frustration.

—The *anomie-synnomie theory*[20] explains both the increase in criminality and juvenile delinquency in the course of societal change as well as the increase in criminality attributable to a clash of two societies with different developmental status. The resulting conflicts concerning lifestyle and value systems must not destroy the social groups; they must not by means of socialization be internalized in the personalities. They must rather be bridged and settled peacefully. As economic and social conditions change, so do the extent and patterns of crime. Industrialization, urbanization and motorization bring about changes in the population's lifestyle and its value and behavior systems. Industrialization, urbanization and motorization can lead to anomie, that is, to the disintegration of values, social disorganization, the deterioration of the community and to the emergence of youth subcultures. The presence of both traditional and progressive value norms and behavior patterns in a changing society can provoke conflicts which must not be suppressed nor resolved violently. The conflicting values must be socially integrated and coordinated. Such a peaceful process leading to renewed social cohesion, to value consensus and to the sharing of mutual norms (synnomie)[21] requires creative energy within a society, and can be summoned with the aid of legally implemented conciliatory proceedings.

All these six theories grant insights into the relationship between development and crime causation. The anomie-synnomie theory combined with the criminal-statistical approach, however, provides the best explanation for the impact of economic and societal development on crime causation.

III. A Society Heavily Burdened with Crime: The Aboriginals in Central Australia

1. Aboriginal Settlements in Central Australia

The Aboriginals (from Latin "ab origine" = from the beginning), the original inhabitants of Australia, came to that continent from Asia on rafts and boats between 100,000 and 10,000 years ago[22]. They developed a peaceful, well organized and stable society and a finely balanced ecological system, adjusting themselves to Australia's

harsh landscape and climate. When—following the rediscovery of the Australian continent by *James Cook* in 1770—a penal colony for deported English prisoners was established in 1788, the total aboriginal population was estimated to be no less than 300,000. Cook was taken by the Aboriginal's peaceful nature, and the anthropologist *Matthew Flinders*[23] described them as being shy, but not timid. When they encountered the European intruders, their reaction was one of shame. By 1933 the European settlers had reduced the Aboriginal population to a mere 67,000. The whites had introduced diseases against which the Aboriginals had no natural immunity, had violently attacked them and neglected them, had destroyed their behavior patterns and value systems, and had taken away their living space. The population has increased again since 1933 and is today estimated at around 150,000.

Central Australia, the "red center," is situated in the south of the Northern Territories and is known in Australia as "the Outback." Its regional administrative center is Alice Springs, a small city with some 20,000 inhabitants. The 30,000 Aboriginals living in the Northern Territories constitute about 25% of the total population and have been pushed back into the infertile hinterland of Central Australia. the landscape of Central Australia is characterized by its red sand and white-barked ghost gums. The color of the sand is due to a fine coating of iron oxide covering the grains. Sandy plains, with a vegetative cover of manna and burdock grass, give way to scrub and bushland with expansive, dry salt lakes. This bushland is also divided by rocky mountain chains, which are fissured and cut by ravines and river gorges. Winding through these sandy plains and areas of bushland are wide, intermittently flowing creeks in which trees and bushes grow. The Aboriginal settlements Yuendumu, Mutijulu and Papunya, situated between 100 km and 200 km apart in scrub and bushland between 150 km and 500 km from Alice Springs, have populations ranging from 300 to 1,500 inhabitants. These settlements are separated by nearly impassable bushland without roads or tracks. Almost all the inhabitants of the settlements are unemployed and fully reliant on social security. The men hardly ever go hunting any more and the women and children seldom go out collecting food. Any motivation to work has been destroyed by their weekly social security check, which they use to buy groceries at the local supermarket. They have given up their traditional activities without being given a chance to develop new ones. so they just sit around in a state of boredom and hopelessness. They have become totally reliant on social security and have lost all pride and self-respect.

2. Reasons for the High Crime Rate of the Aboriginals

The Aboriginal crime rate is high across the whole Australian continent, especially in the settlements of Central Australia. While in 1984 the imprisonment rate for Aboriginals in Australia was 640, that of non-Aboriginals was only 40[24]. While constituting roughly 1% of the Australian population, they make up almost 30% of the total prison population. In West Australia 1,300 Aboriginals per 100,000 inhabitants were in prison in 1979/80, compared with a figure of 81 per 100,000 for non-Aboriginals[25]. The number of homicides and assaults occasioning bodily harm on the reserves is 10 and five times above the national average, respectively[26]. While the assaults committed by Aboriginals on the reserves are primarily against other Aboriginals, white institutions are usually the targets of their burglaries, vandalism and arson. Juvenile delinquency is often associated with petrol-sniffing.

There are three main causes for the high crime rate of the Aboriginals:

—The community cohesion of the Aboriginals is being increasingly destroyed by the white man's domination[27]. They have abandoned to a great extent their tradi-

tional tribal lifestyle (for example, hunting) without adopting a new lifestyle following the white man's models. They spend hours sitting on the red earth in the shade of a tree, "contemplating" the day. Their communal creativity derives its strength from this silent contemplation in the close proximity of others. Decision-making is always a group affair. The individual is at one with nature and is part of his group and has no desire to dominate either of these. Although Aboriginal social life is by no means without conflict, their interaction is basically marked by tolerance, as their behavioral patterns are based on this feeling of belonging to a group. Decisions are only reached by the group after a drawn-out, time consuming process of interaction. The European settlers who came to Australia considered Protestant values such as socio-economic development, work, ambition and discipline to be important. In contrast to the Aboriginals, who just let things take their own course, the Australians of European origin constantly want to change things, to control their environment and to dominate their fellow beings. They are bent on perpetual self-assurance and diligence. They overran the Aboriginals in Central Australia and subjugated them[28].

—In the settlements subcultures have developed which see their own juvenile delinquency and criminality as a white man's artifact, for which they cannot be held responsible. They continue to socialize their children in the traditional manner, that is, they seldom scold them and rarely discipline them. "Appropriate behavior," such as white children learn at home and at school, remains alien to them[29]. For this reason their children are encouraged neither to achieve nor to compete. As children are treated with tolerance and leniency when they commit delinquent acts, they learn delinquent behavior, especially alcohol consumption, at an early age within the subculture of the reserve.

—The white man's criminal justice system is too formal and too abstract for the Aboriginals, who see an individual's misdeed as the signal of the collapse of their kinship relationships. A breach of the law is more a group problem than an individual one. There is a problem between the relatives of the victim and those of the perpetrator. Kin relationships have suffered and must be restored by re-establishing the previous status quo. When this has been achieved, both offender and victim are automatically reinstated in the community. The main aim of the traditional Aboriginal tribal jurisdiction is to promote peace between the feuding kin and to restore social harmony. Individual culpability is a white man's concept which has no credence for them at all. The white man's system of criminal justice, developed under completely different conditions of social change in Europe, has simply been forced onto the Aboriginals with their dissimilar social structure. Such an undertaking is inevitably doomed to failure.

3. Proposals for Aboriginal Crime Prevention and Control

The question must be raised what can be done to lower the high rate of criminality of the Aboriginals and to prevent their criminality and juvenile delinquency in an appropriate way. Four measures can be taken:

—A considerable improvement of their socio-economic conditions, inadequate housing, poor health and deficient education and the reduction of their high unemployment rates are crucial for the social integration of the Aboriginals. However, it is not enough simply to improve their socio-economic opportunities.

—Both cultures, the Aboriginal and the white Australian cultures, have to make efforts to merge. This is only possible if elements from both cultures are adopted mutually on a basis of equality. The white Australian civilization could very well benefit

from adopting some Aboriginal behavioral norms and value notions.

—The Aboriginals' informal social controls must be reinforced. This is only possible if they adopt the European concepts of "delinquency" and "criminality" and if they assume responsibility for their enforcement. For this to succeed both races must have equal rights on the reserves. The white Australians must attempt to develop a relationship with the Aboriginals based on equal rights.

—The Aboriginals should try and settle their criminal conflicts by means of reconciliation and mediation with the help of Justices of the Peace and tribal courts, which would assume direct responsibility. Only where this proves unsuccessful, should formal legal proceedings be instituted. Even here the police officers, judges, probation officers and prison staff should be Aboriginals.

IV. Development and Crime in a Socialist Developing Country: The People's Republic of China

1. The Development of Crime in China

In 1988 criminal offenses throughout the People's Republic of China have increased considerably. 827,000 cases were registered (in an overall population of 1.1 billion). It is true that the reported, recognized offenses have increased enormously (by 45%) as compared to the preceding year. However, the extent of criminality as compared to the Federal Republic of Germany (about 4.4 million offenses in a population of 61 million) must be seen as rather humble. It is true that the dark field of criminality which is not reported and thus remains veiled is with high probability significantly wider in the economically and socially underdeveloped provinces than it is in the Federal Republic of Germany. The reason for this is that the majority of crimes—in contrast to the Federal Republic—is controlled by the village community or in urban social units ("Gemeinschaften") which include 10 or more people. These social units form around the residence or the place of employment. They care for the individual from the cradle to the grave. Every Chinese lives in one or several of these social units, which he feels socially responsible for and which care for their members. All petty crime and the greater share of moderately serious crime in China—as opposed to the Federal Republic—are resolved informally with the help of People's conciliation and mediation committees[30], with the effect that they are not counted officially as criminal cases. Finally, due to poor staff and material equipment of the criminal justice system and due to inadequate criminological training the intensity of criminal prosecution and the precision of criminal statistics are not as well developed as in the Federal Republic of Germany. Nonetheless, as China is underdeveloped economically and socially, the number of criminal offenses is lower.

2. Reasons for the Increase of Crime in Connection with Societal Changes

In 1988 the economic growth of the People's Republic of China was 11%. However, this was bought with a high inflation rate (average of 18.7%) in the same year. The crime rate rises particularly in the economically privileged areas, as was also observed in numerous developing countries in Africa. The reasons for the rise in crime rates can be seen in the following circumstances:

—In connection with the economic development both the economic and social structure are modified. Industrialization and urbanization lead to mobilization, to an increased mobility within society. The place of employment and the residence must be changed more frequently. Communities and reliable social bonds which succeed in controlling crime informally dissolve because of their rigid character.

—In the case of China the increase in conflicts attributable to the transformation of

an agricultural society into an urbanized industrial society is accompanied by a tremendous potential for conflict which is caused by the coexistence of socialist and western-liberal patterns of behavior and value systems. An economy planned by the state and elements of a free market economy are incorporated in a mixed system. The currency, which is divided into currency for natives and for foreigners favors the abuse of currency and the self-deflation of domestic capital. The coexistence of two prices, state-planned and freely negotiated prices, leads to a situation of economic and social instability which is further augmented by the lack of industrial potential, by inadequate productivity, by the state deficit and by the shadow economy.

—In 1988 the cases of burglary have increased by nearly 64% as compared to the preceding year alone. Due to economic growth, burglars always find more rewarding targets in shops and in homes. To a growing extent people work and spend their free time outside their homes. Women increasingly work outside their homes. The flats remain unattended and unwatched. Stealing objects which belong to foreigners or to anonymous organizations is significantly easier for the offender than stealing objects which are owned by people he knows. The trade of stolen goods in the big cities is easier and less hazardous.

—65% of economic crime consists of embezzlement, misappropriation and corruption within the administration and business enterprises. As in most other developing countries, the social process has not yet succeeded in promoting the differentiation between public and private interest[31]. The notion of service to the public is inadequately developed in the society.

—In Chinese big cities the social structures which had grown over decades are at the present destroyed when whole urban districts are demolished in order to clear the ground for the construction of high-rise apartment towers. This appears to be the simplest and cheapest way to provide the highest number of people with lodging in the shortest possible time. Apart from the fact that this destroys the historical particularities of the big cities, the modern high-rise apartment towers do not inspire any territorial feeling, any sense of belonging nor any corporate responsibility for delimited and circumscribed areas, because the high-density residential agglomerations are not broken down into territorial, subdivided, and identifiable subunits and thus do not provide the framework for establishing resident communities. The monotony and likeness fo the flats and the blocks of flats favor a feeling of anonymity and of social isolation concerning housing and living conditions. The immense residential areas are often the setting for crimes because the residents do not perceive their area as a communal one; they do not use it communally and are not concerned about what happens in their communal areas. Modern criminology has found out[32] that immense residential areas with apartment blocks must be subdivided in a way that encourages contact among the residents and that strengthens informal social control through the neighborhood.

V. Comparison of Crime and Its Development in Four German-Speaking Countries

1. Crime and its Development in the Federal Republic of Germany

A qualitative comparison between the criminality, its development and its control in the four German-speaking countries is requisite as on the one hand these countries, due to their geographic neighborhood, have many things in common in their history, particularly their social and cultural history, and in their modern industrial, economic and social structure and because on the other hand

they show significant differences in their economic and societal development and in the extent, the structure and the control of their criminality and their juvenile delinquency. With its population of 61 million, the Federal Republic of Germany is by far the largest of the four countries. It has a fundamentally capitalist economic structure ("Social Market Economy") and its citizens feel bound to Western democratic ideals. The crime rate, i.e., the number of offenses per 100,000 inhabitants, was 7,114 in 1988 and 45.9% of all crimes reported were cleared[33]. A comparison with other similar industrial nations of the same size shows that the extent and severity of its crime is roughly comparable with that of France and of Great Britain[34]. There are, however, industrial nations with more extensive and severe crime, e.g. the USA, and others with much less and also less severe crime, e.g. Japan. In the period from 1950 to 1988 the crime rate rose by about 150%[35]. A comparison of the trends for crimes reported in various industrial nations shows that although there are countries with a considerably higher rate of increase, such as the United States, there are also some with a significantly lower rate of increase, such as Japan[36]. Traffic offenses currently constitute 37% of all crime convictions[37] in the Federal Republic of Germany. Burglary is the most weighty of the property crimes, not only because it is the commonest of traditional crimes but also because it increased tenfold during the last 35 years, while its clearance rate sank drastically[38]. The major problem in the area of juvenile delinquency is larceny, especially the theft of automobiles, car accessories, motorbikes, bicycles and of objects in or attached to these vehicles, and shoplifting[39]. Violent crimes and sexual offenses hold a comparatively subordinate role in the criminal structure with 2.3% and 0.7% respectively of the traditional criminality[40]. Organized, economic and environmental crimes constitute serious problems in the Federal Republic of Germany[41].

2. Crime and Its Development in Austria

The Republic of Austria has a population of 7.5 million. Unlike the Federal Republic of Germany, the Austrian police crime statistics include crimes against the state and traffic offenses. In 1988 the crime rate was 5,288.2 per 100,000 inhabitants and the clearance rate amounted to 49.6%[42]. The comparable figures for the Federal Republic of Germany were 7,114 and 45.9%[43]. With a clearance rate which is 4 percent higher, Austria has roughly 25% less crime than the FRG. As the crime rates in Austria in 1988 for homicide were 1.7, for rape 4.4 and for robbery 17.2[44] (comparative figures for the FRG 4.1, 8.6 and 47.3[45]), the assumption is justified that in West Germany more violent crime of a severe nature is committed. Approximately two-thirds of all criminal acts recorded in Austria are property offenses. As in other Western industrial nations, the level of recorded crime in Austria has seen a definite increase with the economic and societal development since World War II. Whereas in 1953 194,916 offenses were recorded (2,801 per 100,000 inhabitants), by 1988 this figure was 400,621 (5,288.2 per 100,000 inhabitants)[46]. This means that the Austrian crime rate has doubled during this period, whereas the rise in the crime rate of the Federal Republic was about 150% during the same period. The reasons why criminality in Austria has not developed as much as in the Federal Republic and why it has until today not reached the quantitative and qualitative extent of the Federal Republic can be traced back to the following circumstances: Economic and societal development has progressed more slowly and more constantly in Austria than in West Germany. It has as yet not reached the extent noticed in the Federal Republic. Social bonds and communities have, as a consequence of the slower and more constant development, not been harmed as much as in West Germany. There are not as many and as expansive industrial conurbations as in the FRG, i.e. areas in which the anonymity of lifestyle facilitates

the commitment of offenses and complicates their clearance. In Austria the societal and economic units are smaller and therefore easier to control. The informal control through social groups is less impaired and the formal control through the criminal justice system is more effective because the criminal justice system less often resorts to sanctions than that in the FRG. In 1986, 79,992 persons were convicted in Austria[47]. The conviction rate of 1,267 per 100,000 inhabitants does not differ considerably from the West German rate of 1,327.9[48], which must be attributed to the fact that in Austria more cases are cleared and more suspects are traced. This reason does not, however, satisfactorily explain the next to similar conviction rates. The strong tendency in West Germany to avoid sanctions (e.g. the withdrawal of prosecutions by the district attorneys) probably contributes to the relatively low West German conviction rate. In accordance with this tendency there is the relatively elevated number of prisoners in Austria (convicts per 100,000 inhabitants) at 96 in 1988 (as compared to 86.7 in the FRG)[49]. Particularly in the eastern part of Austria criminal courts pronounce far more sentences of imprisonment which are not suspended on probation than in the western part[50]. These differences in the criminal practice of the courts do not exclusively depend on the difference in frequency and in severity of criminality in the two parts of Austria. They also reflect different attitudes of the population toward crime: In Vienna and the eastern part of Austria the population regards the criminality as more serious and more dangerous. Due to criminal political influences from West Germany, sanctions are relatively milder in the western part of Austria.

3. Crime and Its Development in the German Democratic Republic

The German Democratic Republic has a population of 16.7 million. Since its foundation in 1949 it has been a socialist state, which has effectively separated its population from the FRG by means of a wall and frontier fortifications since 1961. Through relentless Stalinist and bureaucratic controls the personal initiative of the citizens was extremely limited if not suffocated. In comparison with the FRG, the GDR is at the present delayed in its economic, societal, scientific and technological development by decades. The building substance is widely derelict. Traffic and communication infrastructures are totally underdeveloped. In a European comparison, the GDR shows the most serious environmental pollution. Leading politicians in the once dominating Stalinist-bureaucratic system who were subject to hardly any control have increased their personal property through political offenses. These offenses were part of the criminality of the dark field, the criminality which remained veiled and was not registered. In the course of the liberalization of East European socialist societies, the exodus of citizens from the GDR reached such heights that the political leadership was compelled to decide the opening of the frontiers and internal political reforms. A peaceful revolution of the citizens enforced a change in the political leadership. At the present, the two German states are in the process of mutually approaching each other. The doctrine of criminologists in the GDR which says that the causes for criminality in their country can be traced back to relics of the capitalistic society[51] can no longer be maintained because it was used ideologically to isolate the society of the GDR and prevent its development.

The number of offenses for 1988 is noted as 715 per 100,000 inhabitants[52] (as compared to 7,114 in the FRG). If one takes this crime rate as a basis, the FRG would have had almost 10 times as much criminality in 1988. This, however, would be totally unrealistic. Today, leading criminologists in the GDR do not exclude the possibility that the criminal statistics of the GDR were "embellished," i.e. the figures which were published officially were lower than would correspond

to reality[53]. However, the extent of criminality in the FRG must be assumed to be three or four times as eminent. The crime rates per 100,000 inhabitants for 1988 in the GDR are noted as 1 for homicide (as compared to 4.1 in the FRG), 3 for rape (as compared to 8.6 in the FRG), as 6 for robbery (as compared to 47.3 in the FRG), as 121 for theft of socialist property and 196 for theft of personal property (as compared to 4,335.5 for theft and 2,632.9 for burglary in the FRG). Despite the lower traffic density, road traffic offenses play a major role in the GDR. Theft is by far the most common property offense. Due to the overall lack of goods in the GDR the forms of theft differ somewhat from those in the FRG, with the theft of spare parts and tools from industrial material depots and in transit, and the theft of building materials from building sites and newly completed blocks being more widespread. The most prominent violent offenses are those involving hooliganism resulting in bodily harm—often committed under the influence of alcohol. In the GDR, economic and organized crimes can also be observed. Employees in companies' accounting sections enrich themselves by fraudulently invoicing for services not provided, while those in socialist enterprises receive bribes from contracting partners in the form of "presents," declared as "bonuses" or "expense compensation." Works of art and valuable cultural objects are stolen from museums, galleries and art exhibitions. Criminal organizations smuggle these stolen works of art abroad; they also smuggle foreign currency and precious metals. The German Democratic Republic has had less criminality than the FRG for the following four main reasons:

—The major part of political and economic criminality (e.g. corruption) committed by the politically and economically powerful has so far not been acknowledged by society. A considerable part of criminality (environmental offenses) was not dealt with by the criminal justice system.

—The GDR is, compared to the FRG, socially and economically underdeveloped. Material goods are not as accessible and socially visible as in the Federal Republic; they are more effectively controlled informally through social groups such as the family and the neighborhood. The working and lodging mobility is not as prominent as in the FRG. The population did not enjoy freedom of travel (tourism within the country and abroad). The lower level of motorization alone results in the reduction of many offenses: road traffic offenses and vehicle thefts are not as widespread. Burglary and robbery, e.g. the transportation of booty in stolen automobiles, are facilitated by a high level of motorization. As there has not been a persistent saturation of the market with material goods as has been the case in the FRG, consumer goods are regarded and appreciated more highly. At the same time immaterial values, such as mutual solidarity and helpfulness, are valued to a greater extent.

—The society of the GDR has not had the same attraction to foreigners as the Federal Republic; consequently the proportion of foreigners is lower and the society of the GDR is more homogenous. The social value system and norms have so far largely been influenced and unified by the communist ideology. In a pluralistic society—as in the FRG—interpersonal conflicts are preprogrammed to a higher extent. In the GDR the development of a youth subculture is not as advanced as in the Federal Republic because the youngsters were more heavily burdened and more integrated into the adult society.

—The communist youth and party organization have so far supported the criminal justice system in its social control function. The population has been given a larger share in the criminal justice system than in the Federal Republic. The deterrent effect of the criminal justice system is higher in the GDR because it is not as lenient as the criminal justice system in

the Federal Republic. Approximately 79% of all criminal suspects are prosecuted in the GDR compared to 33% in the FRG[54].

The German Democratic Republic is an example of a society in which an authoritarian social control has kept criminality, juvenile delinquency and social deviance at a low level. However, this social control which suffocated all personal initiative led to a situation in which the society could not develop appropriately and in which the controlling agents themselves committed criminal offenses at the operating levels of power, because they lacked democratic feedback control.

4. Crime and its Development in Switzerland

Switzerland, a neutral democratic federal state does not publish any police criminal statistics on a federal level. The police criminal statistics, which are carried out on the level of the cantons (states) are incompatible because of different criteria. The only statistics currently available for the whole of Switzerland are the statistics of convictions and of persons convicted[55]. Switzerland has a population of about 6.4 million. Although it is at least as affluent as the FRG and although it has a similar political, economic and social structure, it enjoys less traditional criminality[56]. However, alcohol abuse, suicide and economic crime are widespread[57].

In spite of Switzerland's favorable economic and societal development there is a low rate of traditional crime for the following six reasons:

—The political and economic units of organization are smaller and easier to survey in Switzerland as opposed to the Federal Republic. The Swiss are proud of their country and rather too sober to overdramatize the criminality in their country. The Swiss define Switzerland as a society with little crime; the Swiss mass media hardly ever treats crime[58].

—Thanks to the availability of water reserves for energy purposes almost everywhere in Switzerland, industrial settlements are dispersed over the whole country. Highly developed industrial conurbations with socially disorganized areas have not developed.

The individual responsibility of the citizens and the community sense of the Swiss have remained unviolated despite industrialization and urbanization. A strong voluntary informal control is exercised by social groups.

—The Swiss population is more sedentary than the population in the Federal Republic. Most Swiss spend their whole life in the canton in which they were born.

—In Switzerland hardly any youth subcultures have developed. Popularity within the peer group is not important for Swiss youngsters; they prefer to participate in groups of heterogeneous age. The communications across generations is remarkably satisfactory.

—As the reaction of the criminal justice system to the relatively low level of crime consists of suspended sentences (probation) or in short-term correctional sentences, there is only a very low level of recidivism and professional crime—areas which are largely responsible for crime causation. An ideology of offender treatment of a dependence of the citizen on the state as in Scandinavian countries has not developed in Switzerland. During extended stays in penal institutions the convicts assume a criminal self-concept; they only play a reactive role and lose their personal initiative; they learn criminal techniques and attitudes and consequently leave the penal institution as professional criminals who in turn commit the majority of criminal offenses.

VI. A Nation not Obsessed with Crime: Japan

A comparison of the frequency of total

criminality in Japan, the Federal Republic and the United States—as given by the police crime statistics—shows that the Federal Republic occupies a middle position. While it has less crime than the United States, it has more than Japan[59]. In 1987, the criminality in Japan was one-fifth of that in the Federal Republic[60]. The Japanese total figure for the clearing up of crimes amounted to 64.1% in 1987[61], while the respective figure for the FRG was 44.2%[62]. The Japanese police were obviously more successful in tracking down crime suspects. It is also in terms of the severity of crime that the Federal Republic occupies a middle position between the USA and Japan. This can be shown through the frequency distribution, i.e. the number of cases per 100,000 inhabitants, for homicide and robbery: In 1987, the crime rates for homicide were 8.6 in the USA, 4.5 in the FRG, and 1.4 in Japan. In the same year, the crime rates for robbery were 225.1 in the USA, 46.8 in the FRG, and 1.6 in Japan[63]. Dark field research investigating criminal victimization in Stuttgart[64] and Tokyo[65] has shown that the German population is more ready than the Japanese to report crimes to the police, for which reason a larger part of Japanese criminality remains in the dark field. Still, the considerable difference in severity and frequency of crime between the Federal Republic and Japan cannot be explained only in terms of a greater willingness to report crimes in the German population. As compared to the USA and Western European industrial nations, the Japanese development in criminality in the 1970s until 1987 shows a moderate rise on a considerably lower level. The structure of criminality in Japan is similar to that of the Federal Republic. Theft (64%) and negligent traffic offenses (26%) accounted for as much as 90% of the total traditional criminality in 1987. Japan and the Federal Republic are being burdened to varying degrees with three special criminological problems: organized crime, drug abuse, and economic and environmental crime[66].

Japanese, German, and North American criminologists have empirically determined the following causes for the low Japanese crime rates:

—Over the centuries and over many generations the Japanese society has developed a lifestyle which is marked by diligence and close cooperation in groups. Due to unfavorable weather conditions and limited arable land, the peasants were forced to cultivate their rice in groups and not to cause any difficulties for the group. This lifestyle, established over the centuries, has been transferred to the modern Japanese industrial society[67].

—The Japanese think and live as members of a group. They try as much as possible to adjust themselves to the demands of the group, e.g. their family or their professional group. Their prime goal is not individualistic self-fulfillment, an ideal in the USA or FRG, but their individuality exists exclusively within group relationships. The groups feel responsible for the behavior of their members (pressure of conformity). The individual achieves social status and respect only through the status of the group he is a member of. The individual receives his identity, his self-awareness only through social bonds. The individual feels obliged to his group. He does not want to bring disgrace to his friends, relatives, or colleagues.

—Unlike in the USA or the FRG, a Japanese who acquires wealth does not move into fashionable suburbs or residential areas for the rich, but redecorates and enlarges what flat or house he already owns. Therefore, practically no poverty-stricken ghettos or slums developed in the big cities of Japan. Teachers and police officers live in the community in which they serve, with which they identify and to which they feel personally attached. The Japanese do not have an individualistic notion of man[68].

—Japan possesses a "shame culture[69]". If a group member commits a reprehensible

offense, this affects the reputation of his whole group, e.g. his family, which is thus branded. Fathers of terrorists have been known to commit suicide for this reason. The stigmatization of a family causes problems in the search for partners for the children. Family members have difficulties finding employment. The mass media increases the pressure of conformity by publishing the names of adult offenders. Being a member of a respectable enterprise has a criminality-prevention effect insofar as a loss of job must be expected if an employee is convicted of a crime.

—Paternalism in Japan does not imply patronization or even patriarchy, but paternal care. There is no insisting on contractual legal status or class positions as is frequently the case in the USA or the FRG. There is more tolerance and feeling of mutual obligation. Human relationships develop between superordinates and subordinates. One identifies with the other. The affiliation with an enterprise is life-long. A feeling of solidarity spreads among employees and workers. The enterprise takes care of its employees and accompanies them from the cradle to the grave. The Japanese employer does not depersonalize his workers into faceless parts of the machinery whose working power is to be exploited recklessly. On the one hand he develops a feeling of guilt if he fails to provide for the men committed to his care. On the other hand, an employee feels guilty if he does not work hard enough for his enterprise. This relationship of mutual obligation is perceived as satisfactory by both super- and subordinates. The worker does not feel exploited, he does not develop any class consciousness. Nobody expects intractable attitudes from another. Authority figures are not denied respect. Thus, the modern industrial community replaces the traditional Japanese village community[70].

—Japanese society is structured hierarchically. This structure is expressed in the status-orientation of the Japanese language. Relationships of super- and subordination, e.g. between superior and inferior, between teacher and pupil, between older and younger generation are reflected in the choice of vocabulary, e.g. in the form of address. Thus, the human relationship between business partners and correspondents is distinctly and perpetually confirmed through the manner of conversing with each other and defining each other (external and internal definition). Hereby, a stable social structure develops. Nobody is allowed to try and pursue his individuality at all costs, otherwise he will meet with distinct informal sanctions. The goal is not self-assurance, but mutual dependence, patience and tolerance[71]. Thus, the Japanese can recognize the nature of social relationships between business partners and correspondents by the choice of the vocabulary in a conversation or correspondence[72].

—Crime prevention and control are community problems in Japan. The crime is defined, detected, accused, sentenced and sanctioned with the participation of the community[73]. Here, informal control is more effective than formal control. In everyday life, nobody can afford to disregard what the members of his family, his neighbors, his colleagues or his employer think and do. The community supports its police, the police seek contract with the community[74]. In contact and counseling offices, the police cooperate with schools and enterprises. Movie stars, writers, TV announcers, politicians and other persons of public life are organized in a police friendship society. They lend the police popularity and respect. The election of the best police officer of the year by the country's biggest newspapers is an important and noteworthy event in Japan. Police counseling offices can be contacted by anyone who has difficulties in handling problems with education, marriage, fami-

ly, rent and job. Every police officer must pat a visit to every flat and every enterprise of his precinct at least twice a year. It is part of every Japanese police officer's everyday routine to call upon the inhabitants of over 65 years of age, especially those living alone, in his precinct or at least to give them a phone call. Neighborhood associations carry out campaigns for the prevention of crime twice a year. Male and female plainclothes police officers counsel youth loitering in the streets. Honorary youth workers accompany these youth patrols of the police[75]. There are only 700 full-time and paid but over 50,000 honorary probation officers who attend to some 100,000 clients. It furthers the development of a stable, fruitful relationship between the probation officer and the probationer if his probation officer lives in the same community as the client and if he is a private person performing an honorary activity. Thus, the criminal and his family do not view him as a representative of public authority, but as one of their neighbors who tries to help them. Honorary prison visitors help to maintain contact between prisoners and society by visiting the prisoner within the correctional institution and trying to help them with the solution of their problems. Halfway houses for former juvenile and adult convicts run by honorary counselors dedicate themselves to the discharged prisoners' aid.

—It generally corresponds more to the legal consciousness of the average Japanese to settle criminal conflicts informally, e.g. through mediation procedures (extrajudicial control). There is a preference for "soft control," treatment in liberty, e.g. release on probation, as opposed to confinement in a correctional institution[76]. The reaction to minor offenses such as assault and battery consists of restitutionary agreements between offender and victim within a group, such as a family or neighborhood.

Japan is an example of a country which has on one hand undergone enormous economic and societal development after world War II but whose criminality on the other hand has remained low. Japan is the only Western industrial nation to have achieved this success, because it has effectively managed to synthesize and harmonize the modern lifestyle of industrial society with Japanese traditions.

VII. Integration of the Criminality Comparison Results into a Criminological Theory

Countries with little crime are essentially distinguished by three characteristics:

—In these countries informal control through the social groups, family, neighborhood, school, professional and recreational groups plays an important role. Crime prevention and control are not left exclusively to the criminal justice system, i.e. to formal control. On the contrary, people develop responsibilities of their own. The burden of crime control does not rest exclusively on the omnipotent state who keeps his citizens in dependence and reliance. On the contrary, democratic initiatives have developed.

—Community sense is of crucial importance in countries with little crime. Communities have remained intact or have reestablished themselves, e.g. the communities of trade and industrial enterprises in Japan. There are almost no socially disorganized ghetto areas in big cities or industrial conurbations. These disorganized areas of high delinquency and criminality are marked by a deterioration of communities, i.e. human relationships, a tolerance of their inhabitants toward criminality and especially juvenile delinquency, and the fact that children and adolescents learn delinquency from childhood in unsupervised play and youth groups. Youth subcultures with specific adolescent behavioral styles and specifically juvenile

idols and value notions have not developed in countries with little crime and delinquency. There is no alienation of youth and adults; the young are, on the contrary, well integrated into adult society[77].

—The criminal justice system enjoys a high reputation in countries with little crime. The police seek close contact with the community. The citizens support the police, the courts and the correctional institutions as honorary officers. There are no prison subcultures with their own criminal value systems because, whenever possible, criminals are supervised and treated within the community, because sparing use is made of imprisonment, and because those criminals who nevertheless have to serve an appropriate prison term are supervised and employed in small or medium-size correctional institutions by a sufficient number of well-trained staff. Therefore, a professional criminalism responsible for a large part of criminality, especially violent criminality, could not develop. After all, a long-term convict who is insufficiently supervised and employed in a large prison by too few and insufficiently trained staff will only learn additional criminal skills, criminal attitudes and value notions from his fellow convicts. Through long terms in correctional institutions, he develops a criminal self-image.

Every man is an individual person, but he is also a social being. Personal initiative and social reference must be put into a sensible mutual relationship. The German sociologist *Ferdinand Tönnies*[78] juxtaposed the concepts of "Gemeinschaft" (community) and "Gesellschaft" (society), which can be guiding concepts in this context. The community is marked by intimate emotional human bonds, while society is characterized by loose, rational, utilitarian relationships between its members. The community has little crime. Society originates many criminal offenses because more human conflicts arise, which are on one hand necessary for its development, but on the other hand may lead to its destruction if they drop out of social control[79]. The individual does not submerge in the community; on the contrary, he acquires his full personal development only in his social relations. Community and personal responsibility are by no means mutually exclusive; on the contrary, they presuppose each other. The destruction of social relations[80] and the isolation of the individual in an amorphous mass make him susceptible to criminality and victimization. Anomie[81], the collapse of values, the absence of norms, causes a rise in criminality. Synnomie[82], the coherence and correspondence of values, prevents the causation of criminality.

VIII. Some Recommendations for a Crime Prevention Policy in Relation to Development and Crime Causation

Most developing countries neglect a crime prevention policy in the widespread but erroneous belief that improvements in general socioeconomic conditions will almost automatically eliminate crime. This is the reason for four recommendations for a crime prevention policy in relation to development and crime causation:

—Developing countries should avoid overurbanization in one single "primate city" or in two or three such centers. They should counterbalance the uncontrolled migration from rural areas to such urban centers by promoting small-scale and cottage industries in the countryside, by constructing new, smaller cities and by distributing industrial, commercial, and governmental programs in rural areas.

—Developing countries should not make their citizens reliable on a state welfare bureaucracy. They should rather encourage personal initiative and personal responsibility and help them to help themselves.

—Developing countries should prevent the formation of youth subcultures. They should support educational programs with vocational training; they should emphasize mechanical and agricultural skills, so that youth in the countryside may participate in small-scale rural development. Educational programs should also include the teaching of peaceful conflict and problem settlement in the framework of regional, clannish, and tribal relationships. The social control should not one-sidedly rely on simply taking over the formalist criminal justice systems of the developed industrial nations. Traditional informal forms of social control (tribal jurisdiction, tribal courts) should rather be further cultivated. informal control through societal groups (family, neighborhood, school) and informal conflict settlement deserve particular support. Formal criminal procedure and imprisonment should only be applied as a last resort. In any case, citizen involvement in the criminal justice system should be encouraged.

Development can only evolve dynamically by way of a synthesis of thesis and antithesis. Criminological developmental policy must not exclusively promote the progressive lifestyles of a modern society. It must also take into consideration the traditional lifestyles and try to advance their further development.

Notes

1. For a history of criminology, cf. Hans Joachim Schneider 1987a, pp. 90-141.
2. Hans Göppinger 1980, 1983, 1985.
3. Hans Joachim Schneider 1975, 1982.
4. Sheldon and Eleanor Glueck 1950, 1974.
5. Alfred Blumstein, Jacqueline Cohen, Jeffrey A. Roth, Christy A. Visher 1986.
6. Sheldon Glueck 1964; Franco Ferracuti, Simon Dinitz, Esperanza Acosta de Brenes 1975.
7. Mils Christie 1970; Eduardo Vetere, Graeme Newman 1977; Brunon Holyst 1979; Franco Ferracuti 1980; William Clifford 1981; Denis Szabo 1981; first Gabriel Tarde 1886.
8. Approaches in Kai T. Erikson 1966, and Dirk Blasius 1976.
9. Lois B. DeFleur 1970; Marshall B. Clinard, Daniel J. Abbott 1973; Graeme Newman 1976; Louise I. Shelley 1981, 1986; Clayton A. Hartjen, S. Priyadarsini 1984.
10. United Nations 1986, 2, 3.
11. Yves Brillon 1980.
12. UNAFEI 1988.
13. Chris Brikbeck 1986.
14. United Nations 1988.
15. Clayton A. Hartjen, S. Priyadarsini 1984; Hartjen 1986; Paul C. Friday 1980; Theodore N. Ferdinand 1980.
16. Travis Hirschi 1969.
17. Louise I. Shelley 1981, 10; Jackson Toby 1967.
18. Hugh Davis Graham, Ted Robert Gurr 1969, 632.
19. Colin Sumner 1986.
20. Freda Adler 1983; Marshall B. Clinard 1978.
21. Adler 1983, 157.
22. R.M. Gibbs 1984, 9.
23. Matthew Flinders 1814, 58.
24. Department of Aboriginal Affairs 1986, 48.
25. William Clifford 1982, 8.
26. Clifford 1982, 9.
27. Clifford 1982, 7,8.
28. Kenneth Liberman 1985, 218.
29. Liberman 1985, 237.
30. Elmer H. Johnson 1983.
31. Manuel Lopez-Rey 1970, 194.
32. Hans Joachim Schneider 1987a, 327-358.
33. Bundeskriminalamt 1989, 11, 37.
34. Hans Joachim Schneider 1987a, 263.
35. Bundeskriminalamt 1989, 177.
36. Hans Joachim Schneider 1987a, 264.
37. Statistisches Bundesamt 1987, 14.
38. Bundeskriminalamt 1989, 209.
39. Landeskriminalamt 1989b, 28.
40. Landeskriminalamt 1989a, 14.
41. Hans Joachim Schneider 1987b.
42. Bundesministerium für Inneres 1989, 14.
43. Bundeskriminalamt 1989, 11, 37.
44. Bundesministerium für Inneres 1989, 12.
45. Bundeskriminalamt 1989, 97, 102, 110.
46. Bundesministerium für Inneres 1989, 57.
47. Österreichisches Statistisches Zentralmt 1988, 10.

48. Statistisches Bundesamt 1988, 11.
49. Council of Europe 1988, 20.
50. Manfred Burgstaller, Franz Szászár 1985.
51. John Lekschas, Harri Harrland, Richard Hartmann, Günter Lehmann 1983.
52. Documentation of the GDR criminal statistics 1988 in *Neue Justiz* 1989, 324.
53. e.g. Hans Hinderer (University of Halle/GDR) in a lecture held at the University of Westfalia in Münster on Dec. 6, 1989.
54. Joachim Hellmer 1981, 38.
55. Bundesamt für Statistik 1984.
56. Martin Killias 1989, 66; Walter T. Haesler 1981; Marshall B. Clinard 1978.
57. Clinard 1978, 2; Nikolaus Schmid 1980.
58. Flemming Balvig 1988.
59. Hans Joachim Schneider 1987a, p 263.
60. National Police Agency 1988, 16; Bundeskriminalamt 1988, 11.
61. National Police Agency 1988, 17.
62. Bundeskriminalamt 1988, 39.
63. National Police Agency 1988, 130.
64. Egon Stephan 1976.
65. Akira Ishii 1979.
66. Cf. Hans Joachim Schneider 1989a, 34.
67. Kunihiro Horiuchi 1989.
68. Hans Heiner Kühne, Koichi Miyazawa 1979.
69. Ruth Benedict 1946.
70. Hiroshi Wagatsuma, George A. DeVos 1984.
71. Kazuhiko Tokoro 1983.
72. Koichi Miyazawa 1981.
73. William Clifford 1976.
74. David H. Bayley 1976.
75. Walter L. Ames 1981.
76. Koichi Miyazawa 1985.
77. Clayton A. Hartjen, S. Priyadarsini 1984.
78. Ferdinand Tönnies (1887) 1979.
79. Georg Simmel (1908) 1983.
80. Travis Hirschi 1969.
81. Emile Durkheim 1897.
82. Freda Adler 1983.

References

Adler, Freda: Nations not Obsessed with Crime. Littleton/Colorado: Fred B. Rothman, 1983.

Altman, Jon C., Nieuwenhuysen, John: The Economic Status of Australian Aborigines. Cambridge University Press, Cambridge-London-New York-Melbourne, 1979.

Ames, Walter L.: Police and Community in Japan. University of California Press, Berkeley-Los Angeles-London, 1981.

Balvig, Flemming: The Snow-White Image—The Hidden Reality of Crime in Switzerland. London-New York-Toronto-Tokyo: Norwegian University Press 1988.

Bayley, David H.: Forces of Order: Police Behavior in Japan and the United States. Berkeley—Los Angeles: University of California Press 1976.

Benedict, Ruth: The Chrysanthemum and the Sword (1946). Rutland-Vermont-Tokyo: Charles E. Tuttle 1987.

Biles, David (Ed.): Crime in Papua New Guinea. Canberra: Australian Institute of Criminology 1976.

Birkbeck, Chris: Property-Crime and the Poor: Some Evidence from Cali, Colombia. Colin Sumner (Ed.): Crime, Justice and Underdevelopment. Aldershot/Hampshire: Gover 1982, 162-191.

Blasius, Dirk: Bürgerliche Gesellschaft und Kriminalität. Göttingen: Vandenhoeck and Ruprecht 1976.

Blumstein, Alfred/ Jacqueline Cohen/Jeffrey A. Roth/Christy A. Visher (Eds.): Criminal Careers and "Career Criminals'. Vols. I and II. Washington D.C.: National Academy Press 1986.

Brillon, Yves: Ethnocriminologie de l'Afrique Noire. Paris-Montréal: Librairie Philosophique, Les Presses de l'Université de Montréal 1980.

Brillon, Yves: Les Incidences du Developpement sur la Criminalité Africaine. Annales Internationales de Criminologie. 24 (1986), 23-38.

Bundesamt für Statistik: Die Strafurteile in der Schweiz 1982. Bern: Bundesamt für Statistik 1984.

Bundeskriminalamt (Ed.): Polizeiliche Kriminalstatistik 1987, 1988. Wiesbaden: Bundeskriminalamt 1988, 1989.

Bundesministerium für Inneres: Polizeileche Kriminalstatistik 1987, 1988. Wien: Österreichische Staatsdruckerei 1988, 1989.

Burgstaller, Manfred/Franz Csäszär: Zur regionalen Strafenpraxis in Österreich. Österreichische Juristen-Zeitung. 40 (1985), 1-47.

Burgstaller, Manfred/Franz Szászár: Ergánzungsuntersuchungen zur regionalen Strafenpraxis. Österreichische JuristenZeitung. 40 (1985), 417-427.

Christie, Nils: Comparative Criminology. Canadian Journal of Corrections. 12 (1970), 40-46.

Clifford, William: An Introduction to African Criminology. Nairobi-Dar es Salaam-Lusaka-Addis Ababa: Oxford University Press, 1974.

Clifford, William: Urban Crime in Papua New Guinea. David Biles (Ed.): Crime in Papua New Guinea. Canberra: Australian Institute of Criminology 1976, 1-37.

Clifford, William: Vergleichende Kriminologie: Afrika, Asien und Australien. Hans Joachim Schneider (Ed.): Die Psychologie des 20. Jahrhunderts. Vol. XIV: Auswirkungen auf die Kriminologie. Zürich: Kindler 1981, 1084-1102.

Clifford William: An Approach to Aboriginal Criminology. Australian and New Zealand Journal of Criminology. 15 (1982), 3-21.

Clinard, Marshall B.: The Problem of Crime and Its Control in Developing Countries. David Biles (Ed.): Crime in Papua New Guinea. Canberra: Australian Institute of Criminology 1976, 47-69.

Clinard, Marshall B.: Cities with Little Crime—The Case of Switzerland. Cambridge-London-New York-Melbourne: Cambridge University Press 1978.

Clinard, Marshall B.: Developing Countries, Crime in. Sanford H. Kadish (Ed.): Encyclopedia of Crime and Justice. Vol. II. New York- London: Free Press 1983, 597-601.

Clinard, Marshall B./Daniel Abbott: Crime in Developing Countries: A Comparative Perspective. New York-London-Sydney-Toronto: John Wiley 1973.

Council of Europe: Prison Information Bulletin. No. 11. Strasbourg 1988.

DeFleur, Lois B: Delinquency in Argentina. A Study of Córdoba's Youth. Seattle: Washington State University Press 1970.

Department of Aboriginal Affairs: Aboriginal Statistics 1985. Canberra: Australian Government Publishing Service 1986.

Durkheim, Emile: Le Suicide. Etude de Sociologie. Paris: Presses Universitaires de France 1897.

Erikson, Kai T.: Wayward Puritans. A Study in the Sociology of Deviance. New York-London-Sydney: John Wiley 1966.

Ferdinand, Theodore N.: Delinquency in Developing and Developed Societies. David Shichor/Delos H. Kelly (Eds.): Critical Issues in Juvenile Delinquency. Lexington-Toronto: Heath 1980, 279-296.

Ferracuti, Franco/Simon Dinitz Esperanza Acosta de Brenes: Delinquents and Nondelinquents in the Puerto Rican Slum Culture. Columbus/Ohio: Ohio State University Press, 1975.

Ferracuti, Franco: Possibilities and Limits of Comparative Research in Criminology. Hans-Heinrich Jescheck/Güunther Kaiser (Eds.): Comparison as a Method of Criminal Law and Criminology. Berlin: Duncker and Humblot 1980, 129-138.

Flinders, Matthew: A Voyage to Terra Australis. Two Volumes. London: Nicol. 1814.

Friday, Paul C.: Problems in Comparative Criminology: Comments on the Feasibility and Implications of Research. International Journal of Criminology and Penology. 1 (1973), 151-160.

Friday, Paul C.: International Review of Youth Crime and Delinquency. Graeme R. Newman (Ed.): Crime and Deviance. A Comparative Perspective. Beverly Hills-London: Sage 1980, 100-129.

Gibbs, R.M.: The Aborigines. Melbourne: Longman Cheshire 1974.

Glueck, Sheldon: Wanted: A Comparative Criminology. Sheldon and Eleanor Glueck (Eds.): Ventures in Criminology. London: Tavistock 1964, 304-322.

Glueck, Sheldon and Eleanor: Unraveling Juvenile Delinquency. London: Commonwealth Fund, Harvard University Press, 1950.

Glueck, Sheldon and Eleanor: Of Delinquency and Crime. A Panorama of Years of Search and Research. Springfield/Ill.: Charles C. Thomas 1974.

Göppinger, Hans: Kriminologie. 4. Edition, Munich: Beck 1980.

Göppinger, Hans: Der Täter in seinen sozialen Bezügen. Berlin-Heidelberg-New York—Tokyo: Springer 1985.

Göppinger, Hans: Angewandte Kriminologie. Berlin-Heidelberg-New York-Tokyo: Springer 1985.

Graham, Hugh Davis/Ted Robert Gurr: Violence in America: Historical and Comparative Perspectives. Two Volumes: Report to the

National Commission on the Causes and Prevention of Violence. Washington, D.C.: Superintendent of Documents 1969.

Graham, Hugh Davis/Ted Robert Gurr: Violence in America. Historical and Comparative Perspectives. Beverly Hills-London: Sage, 1979.

Guillemin, Jeanne: American Indian Resistance and Protest. Hugh Davis Graham/Ted Robert Gurr (Eds.): Violence in America. Beverly Hills-London: Sage 1979, 287-305.

Gurr, Ted Robert: Political Protest and Rebellion in the 1960s. High Davis Graham/Ted Robert Gurr (Eds.): Violence in America. Beverly Hills/London: Sage 1979, 49-76.

Gurr, Ted Robert: On the History of Violent Crime in Europe and America. Hugh Davis Graham/Ted Robert Gurr (Eds.): Violence in America. Beverly Hills/London. Sage 1979, 353-374.

Gurr, Ted Robert: Alternatives to Violence in a Democratic Society. Hugh Davis Graham/Ted Robert Gurr (Eds.): Violence in America. Beverly Hills-London: Sage 1979, 491-506.

Haesler, Walter T.: Kriminalität in der Schweiz. Hans Joachim Schneider (Ed.): Die Psychologie des 20. Jahrhunderts. Vol. XIV: Auswirkungen auf die Kriminologie. Zurich: Kindler 1981, 299-325.

Hartjen, Clayton A./S. Priyadarsini: Delinquency in India. New Brunswick/N.J.: Rutgers University Press 1984.

Hartjen, Clayton A.: Crime and Development: Some Observations on Women and Children in India. Annales Internationales de Criminologie. 24 (1986), 39-57.

Hellmer, Joachim: Zur Kriminalität in beiden Teilen Deutchlands. Joachim Hellmer (Ed.): Beiträge zur Kriminalgeographie. Berlin: Duncker und Humblot 1981, 24-40.

Hirschi, Travis: Causes of Delinquency. Berkeley-Los Angeles: University of California Press 1969.

Holyst, Brunon: Comparative Criminology. Lexington -Toronto: Heath 1979.

Horiuchi, Kunihiro: Current Trends of Criminal Activities. Fuchu, Tokyo: United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders 1989.

Ishii, Akira: Opferbefragung in Tokyo. Gerd Ferdinand Kirchhoff/Klaus Sessar (Eds.): Das Verbrechensopfer. Bochum: Brockmeyer 1979, 133-157.

Johnson, Elmer H.: Mediation in the People's Republic of China. Israel L. Barak-Glantz/ Elmer J. Johnson (Eds.): Comparative Criminology. Beverly Hills-London-New Delhi: Sage 1983, 59-67.

Kibuka, Eric Paul: Crime in African Countries. International Review of Criminal Policy. 35 (1979), 13-23.

Killias, Martin: Les Suisses Face au Crime. Grüsch: Rüegger 1989.

Kühne, Hans-Heiner/Koichi Miyazawa: Kriminalität und Kriminalitätsbekämpfung in Japan. Wiesbaden: Bundeskriminalamt 1979.

Landeskriminalamt (Ed.): Polizeiliche Kriminalstatistik 1988. Düsseldorf: Landeskriminalamt 1989a.

Landeskriminalamt (Ed.): Jugendkriminalität und Jugendgefährdung im Lande Nordrhein-Westfalen 1988. Düsseldorf: Landeskriminalamt 1989b.

Lekschas, John/Harri Harrland/Richard Hartmann/Günter Lehmann: Kriminoogie. Ost-Berlin: Staatsverlag 1983.

Liberman, Kenneth: Understanding Interaction in Central Australia. An Ethnomethodological Study of Australian Aboriginal People. Boston-London-Melbourne-Henley: Routledge and Kegan Paul 1985.

López-Rey, Manuel: Crime. An Analytical Appraisal. London: Routledge and Kegan Paul 1970.

Miyazawa, Koichi: Vergleichende Kriminologie: Japan. Hans Joachim Schneider (Ed.): Die Psychologie des 20. Jahrhunderts. Vol. XIV: Auswirkungen auf die Kriminologie. Zurich: Kindler 1981, 1063-1083.

Miyazawa, Koichi: Informelle Sozialkontrolle in Japan. Theo Vogler (Ed.): Festschrift für Hans-Heinrich Jescheck zum 70. Geburtstag. Berlin: Duncker und Humblot 1985, 1159-1174.

Montero Castro, Jorge A.: Crime Trends and Crime Prevention Strategies in Latin American Countries. International Review of Criminal Policy. 35 (1979), 38-43.

Mukherjee, Satyanshu K.: Economic Development and Crime: A Case of Burglary. Annales Internationales de Criminologie. 24

(1986), 237-254.
National Police Agency, Government of Japan: White Paper on Police 1988. Tokyo: Police Association 1989.
Newman, Graeme: Comparative Deviance. New York-Oxford-Amsterdam: Elsevier 1976.
Osterreichisches Statistisches Zentralamt (Ed.): Gerichtliche Kriminalstatistik für das Jahr 1986. Wien: Österreichische Staatsdruckerei 1988.
Paliwala, Abdul: Law and Order in the Village: Papua New Guinea's Village Courts. Colin Sumner (Ed.): Crime, Justice and Underdevelopment. Aldershot/Hampshire: Gover 1982, 192-229.
Rao, S. Venugopal: Contemporary Trends of Crime. S. Venugopal Rao (Ed.): Perspectives in Criminology. New Delhi: Vikas 1988, 41-62.
Research and Training Institute, Ministry of Justice: Summary of the White Paper on Crime 1988. Tokyo: Government of Japan 1989.
Rico, José M.: Crime et Justice Pénale en Amérique Latine. Montréal-Paris: Les Presses de l'Université de Montréal, Librairie Philosophique 1978.
Schmid, Nikolaus: Banken zwischen Legalität und Kriminalität. Heidelberg: Kriminalistik 1980.
Schneider, Hans Joachim: Viktimologie—Wissenschaft vom Verbrechensopfer. Tübingen: Mohr 1975.
Schneider, Hans Joachim (Ed.): Die Psychologie des 20. Jahrhunderts. Vol. XIV: Auswirkungen auf die Kriminologie. Zurich: Kindler 1981.
Schneider, Hans Joachim (Ed.): The Victim in International Perspective. Berlin-New York: de Gruyter 1982.
Schneider, Hans Joachim: Kriminologie. Berlin-New York: de Gruyter 1987a.
Schneider, Hans Joachim: Economic Crime and Economic Criminal Law in the Federal Republic of Germany. United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (Ed.): Report for 1986 and Resource Material Series No. 31. Tokyo 1987b: UNAFEI, 128-158.
Schneider, Hans Joachim: Leben im gesellschaftlichen Niemandsland: die Kriminalität der Aborigines in Zentralaustralien. Günther Kaiser/Helmut Kury/Hans Jörg Albrecht (Eds.): Kriminologische Forschung in den 80er Jahren. Projektberichte aus der Bundesrepublik Deutschland. Freiburg i.Br.: Eigenverlag 198, 1085-1103.
Schneider, Hans Joachim: Crime and Its Control in Japan and in the Federal Republic of Germany. Indian Journal of Criminology. 17 (1989a), 31-41.
Schneider, Hans Joachim: Kriminalität und ihre Kontrolle in einem sozialistischen Entwicklungsland. Universitas. 44 (1989b), 738-751.
Shelley, Louise I.; Crime and Modernization. Carbondale-Edwardsville: Southern Illinois University Press. 1981a.
Shelley, Louise I. (Ed.): Readings in Comparative Criminology. Carbonbdale-Edwardsville: Southern Illinois University Press. 1981b.
Shelley, Louise I.: Crime and Modernization Reexamined. Annales Internationales de Criminologie. 24 (1986), 7-21.
Simmel, Georg: Soziologie (1908). Berlin: Duncker und Humblot 1983.
Statistisches Bundesamt (Ed.): Ausgewählte Zahlen für die Rechtspflege 1985. Stuttgart-Mainz: Kohlhammer 1987.
Statistisches Bundesamt (Ed.): Strafverfolgung 1986, 1987. Stuttgart-Mainz: Kohlhammer 1988, 1989.
Stephan, Egon: Die Stuttgarter Opferbefragung. Wiesbaden: Bundeskriminalamt 1976.
Sumner, Colin (Ed.): Crime, Justice and Underdevelopment. Aldershot/Hampshire: Gover 1986.
Sumner, Colin: Preface. Colin Sumner (Ed.): Crime, Justice and Underdevelopment. Aldershot/Hampshire: Gover 1986, XI-XIII.
Szabo, Denis: Vergleichende Kriminologie: Grundlagen. Hans Joachim Schneider (Ed.): Die Psychologie des 20. Jahrhunderts. Vol. XIV: Auswirkungen auf die Kriminologie. Zurich: Kindler 1981, 959-981.
Tarde, Gabriel: La Criminalité Comparée. Paris: Presses Universitaires de France 1886.
Toby, Jackson: Affluence and Adolescent Crime. President's Commission on Law Enforcement and Administration of Justice (Ed.): Task Force Report: Juvenile Delinquency and Youth Crime. Washington, D.C.: Superintendent of Documents 1967, 132-144.
Tönnies, Ferdinand: Gemeinschaft und Gesell-

schaft (1887). Darmstadt: Wissenschaftliche Buchgesellschaft 1979.

Tokoro, Kazuhiko: Japan. Elmer H. Johnson (Ed.): International Handbook of Contemporary Developments in Criminology. Vol. II. Westport/Conn.-London: Greenwood Press 1983, 409-425.

United Nations: Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Report prepared by the Secretariat. New York: United Nations 1986.

United Nations: Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic I: "Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-Operation." Vienna: International Centre 1988.

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (Ed.): The Empirical Study on Development and Crime Prevention. Tokyo: UNAFEI 1988.

Vetere, Eduardo/Graeme Newman: International Crime Statistics: An Overview from a Comparative Perspective. Abstracts on Criminology and Penology. 17 (1977), 251-267.

Wagatsuma, Hiroshi/George A. DeVos: Heritage of Endurance. Family Patterns and Delinquency Formation in Urban Japan. Berkeley-Los Angeles-London: University of California Press 1984.

International Co-operation in Crime Prevention and Criminal Justice in European Countries

*by Aglaia Tsitsoura**

I. Introduction

Since 1956, very intensive co-operation in criminal matters has existed among the member states of the Council of Europe.

The Council of Europe is an intergovernmental organization which now has 23 member states, all democratic European states. Eastern (socialist) states are not members of the Council of Europe. However, recently co-operation with these states has begun to develop, taking the form of exchange of information and observers in various activities.

The Council of Europe has no organic links with the European Economic Communities (EEC). The communities do not deal with criminal matters apart from exceptional cases which will be mentioned.

In the framework of the Council of Europe the body responsible in crime problems is the European Committee on Crime Problems, composed of representatives of all member states. This body, meeting once a year, prepares the programmes of the Council of Europe in criminal law, criminological and penological matters. It creates select committees which examine specific problems, for example, economic crime, juvenile delinquency, etc.

Co-operation is achieved:

a. by recommendations to governments containing guidelines for legislation and practice. These recommendations are not binding but exercise an important influence on national legislations;
b. by preparing conventions on criminal law subjects;
c. by exchange of information and views in the framework of conferences, colloquia and seminars and the publication of bulletins.

We will examine co-operation in the field of:

—crime policy and criminological research,
—criminal law and procedure,
—penological matters.

II. Co-operation in the Field of Crime Policy and Criminological Research

A. Crime Policy

The most important crime policy subjects have been examined by the Council of Europe committees. Recommendations, conventions and reports reflect the results of these studies and achieve co-operation among the member states.

A Crime Policy Conference is convened every five years. It evaluates current crime policies in the member states and tries to make a forecast of crime and criminal justice problems in the near future.

1. Prevention of Crime

Prevention of crime is a priority objective of the Council of Europe member states. The increase of crime in most member states, the resulting overloading of the criminal justice systems, and the increased fear and anxiety of the populations, led governments to take more intensive measures toward the efforts of crime prevention.

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Such action was considered particularly desirable as research had shown that treatment of offenders or repressive measures had not produced the expected results.

Strategies for the organization of crime prevention have been examined by a committee of the Council of Europe which prepared Recommendation R (87) 19, giving guidelines to governments in the organization of crime prevention, and of an explanatory report.

The committee examined measures of:

—social prevention aimed at combating factors associated with criminal behaviour (for example, inappropriate family environment, unequal social opportunities, excessive urbanization, etc.);
—situational prevention, aimed at preventing opportunities to commit crime and increasing the risk of being detected, for example, safer locking of cars and houses, neighbourhood watch, marking of valuables to make their sale, if stolen, difficult.

Both approaches were considered important. However, the Council of Europe focused its attention, in particular, on situational prevention, which was easier to organize than long-term social measures, and easier to evaluate.

It was stressed that effective prevention needed a systematic organization. The Council of Europe recommended member states to create National or Regional Councils of Prevention or similar bodies. Such councils exist already in many European states: Belgium, Denmark, France, the Netherlands, Norway, Sweden and the United Kingdom. They are composed of representatives of various social groups and of the main authorities concerned with the fight against crime, for example, the Ministry of Justice, of the Interior, etc. Often, representatives of the mass media and of private enterprises, for example security companies, are also involved in the work of these councils.

These councils have, inter alia, the following tasks:

a. collecting information on crime and crime trends, on high-risk victimization groups and on prevention experiments and their results;
b. planning and implementing prevention programmes and evaluating them;
c. co-ordinating preventive activities by the police and other crime-prevention agencies;
d. securing the public's active participation in crime prevention by informing it of the need for, and means of, action;
e. seeking the support and co-operation of the mass media for crime-prevention activities;
f. initiating or encouraging research into the incidence of certain types of crime and other questions of importance for crime prevention;
g. co-operating with decision-makers in evolving a rational and effective crime policy;
h. implementing training programmes in the prevention field.

The success of national councils and similar bodies for prevention led to the idea of creating a European body in this field. This is the Forum of Local and Regional Authorities in Europe for Urban Security which was created in Paris on 25 September 1987. The aims of the forum are the exchange of information, the organization of studies, training programmes and pilot projects, and the promotion of a dialogue between European authorities, public bodies and associations concerned with prevention and the development and implementation of measures or concerted programmes.*

A European and North American Conference for the Security and Prevention of

* Council of Europe urban renaissance in Europe—local strategies for the reduction of urban security in Europe, Strasbourg, 1989, page 50.

Crime in Urban Environment is organized by the forum from 10 to 13 October 1989.

2. Juvenile Delinquency

Another topic which has been given great priority by the Council of Europe member states is the prevention of juvenile delinquency and social reactions to it.

The most recent activity in this field is Recommendation No. R (87) 20 and its explanatory report. These texts revised previous policies in this field and stressed the need:

—to reinforce preventive policies both at the social and the situational level; these policies should give equal opportunities to juveniles coming from different social backgrounds to adjust in society and to fully participate in social, professional and cultural activities;
—to encourage the development of motivation and diversion procedures so as to prevent the juveniles, who had committed offences, from entering into the criminal justice system and being stigmatized as criminals;
—to ensure that minors are not committed to adult courts, and are not remanded in custody unless necessary;
—to reinforce the legal position of minors throughout the proceedings;
—to ensure that interventions, in respect to juvenile delinquency, are sought in the minor's natural environment, increasing the recourse to measures alternative to custodial sentences;
—to provide for custodial sentences suited to the minor's condition only as a last resort;
—to promote research on questions relating to juvenile delinquency.

These guidelines stress the educative function of justice in minors but adopt a less paternalistic approach than had previously been assumed. The minor has more rights and is invited to collaborate on his own treatment.

3. Violence in the Family

Violence between spouses or against children continues to be an issue. Recommendation No. R (85) 4 contains guidelines for the prevention of this phenomenon. It invites governments, inter alia:

—to alert public opinion to the extent, seriousness and specific characteristics of violence in the family, with a view to obtaining its support for measures aimed at combating this phenomenon;
—to arrange for and encourage the establishment of agencies or associations whose aim is to help the victims;
—to set up administrative departments (like the confidential doctor in the Netherlands) to deal with cases of ill-treatment of children and other kinds of violence;
—to review the legislation on the power to punish children in order to limit corporal punishment in the family, etc.

4. Sexual Exploitation, Pornography, Prostitution of and Trafficking in Children and Young Adults

During recent years, public opinion has become alerted to the existence of a more or less organized child prostitution and pornography in various big cities in Europe. In addition, public opinion and governments have been informed of the activities of private agencies or persons promoting the traffic of children coming from Latin America or Asiatic countries (with a view to prostitution or illegal adoption). Moreover, some tourist agencies organize sex tours where the prostitutes are often very young persons. Often agencies organize marriages between girls from extra-European countries and European citizens. Many times these girls are led to prostitution or similar activities.

A select committee is now in the process of examining measures to counteract such activities:

—informing the public and, in particular, young persons of the danger of such ex-

ploitation;
—intensification of controls in areas where child prostitution occurs;
—severe punishment of adults involved in these activities.

These guidelines will be incorporated in a recommendation. The committee will also examine the advisability of drawing up a convention for international co-operation in combating these phenomena.

5. Penal and Criminological Aspects of Drugs

Problems of drug abuse and of drug-trafficking have been examined by the Council of Europe for many years.

Resolution (73) 6 contains guidelines for governments.

Concerning drug abuse, up to now the position of European states was as much as possible to avoid penalties and to concentrate on treatment. Resolution (73) 6 states, inter alia, that "unless alternative methods are inappropriate, drug abusers, in particular minors, first offenders and offenders who are not launched in a criminal career should not be imprisoned. If they are imprisoned they should be placed in an institution having access to resources for treatment and rehabilitation."

On the contrary, severe punishment is recommended for drug traffickers. Intensive international co-operation should be established in this field including:

—exchange of information;
—legal action facilitated by mutual aid;
—collaboration between enforcement agencies and international organizations.

A special body incorporated into the Council of Europe since 1980 (the Pompidou Group), deals with problems of prevention and treatment of pharmacodependence.

6. Criminological and Penal Aspects of Transmissible Diseases and in Particular of AIDS

Most European countries have legislation concerning traditional transmissible diseases (syphilis, etc.). However, the threat presented by AIDS during recent years induced many governments to take specific measures.

A Council of Europe committee is in the process of examining the following questions in particular:

a. the penal reactions to voluntary transmission of the disease by AIDS patients;
b. the penal reaction to negligent behaviour of doctors, dentists and other sanitary personnel resulting in the transmission of AIDS;
c. the problems of inmates in prisons suffering from AIDS.

During the first meeting of the committee on this question it was stressed that the problem of AIDS needs to face more thorough prevention rather than through penal measures.

However, in some cases such measures may be unavoidable. Equally, while avoiding overt discrimination of AIDS patients, special measures should be taken in order to avoid contamination in prison, where AIDS cases are not rare, especially among inmates who are drug abusers.

The committee has not yet drawn its conclusions.

7. Protection of the Victim

During recent decades the study of the victim, his needs and his rights has been given an important priority both by academic scholars and by decision-makers.

Although the first victimologists (Von Hentig, Mendelsohn) focused on interactions between the offender and his victim in the commission of the offence, very soon more attention was given to the assistance of the victim and the protection of his rights.

European co-operation in this field has been intense. Two recommendations and a convention adopted by the Council of Europe

form a complete framework for the improvement of the victim's fate.

a. Assistance to victims and prevention of victimization (Recommendation R (87) 21)

Victims need assistance during the commission of the offence and afterwards. Guidelines of the Council of Europe contained in Recommendation R (87) 21 and other texts tend to raise the consciousness of the public (including the victim's family) concerning the needs of the victim.

Moreover, governments are invited to create, develop and extend support towards services designed to provide assistance to victims generally or specific categories of victims.

Assistance should include:

—emergency help to meet immediate needs, including protection against retaliation by the offender;
—continuing medical, psychological, social and material help;
—advice to prevent further victimization;
—information on the victim's rights;
—assistance during the criminal process, with due respect to the defence;
—assistance in obtaining effective reparation for the damage by the offender, payments from insurance companies or any other agency and, when possible, compensation by the state. The recommendation also invites governments to:
—make every effort to prevent crime, and hence victimization, both through a policy of social development and through appropriate situational prevention measures;
—provide the public and the victims themselves with specific information and advice to prevent victimization or any further victimization, whilst refraining from unduly exacerbating feelings of fear and insecurity;
—develop special policies to ascertain particularly vulnerable groups and prevent their victimization;
—promote programmes of concerted action between neighbours for the prevention of victimization and encourage groups with specific victimization risks to take appropriate preventative measures in collaboration with local agencies and the police.

b. The position of the victim in the field of criminal law and procedure (Recommendation R (85) 11)

The position of the victim varies from state to state. In some European states the victim can be a party in a criminal process (partie civile). In others he is only a witness.

Council of Europe guidelines contained in Recommendation R (85) 11 tend to reinforce the victim's position. They invite governments to ensure:

—informing the victim of his rights and the progress of the investigation at all stages of the criminal proceedings (police, prosecution, trial);
—the right of the victim to ask for review by a competent authority of a decision not to prosecute or the right to institute private proceedings;
—questioning of the victim in a manner which gives consideration to his personal situation, his rights and his dignity.

According to the same recommendation it should be possible for a criminal court to order compensation by the offender to the victim. Such order may either be a penal sanction or a substitute for a penal sanction or be awarded in addition to a penal sanction. In determining the sentence to be given to the offender, the court should take into account any compensation made by the offender or any genuine effort to that end.

The recommendation also requires that the victim's privacy as well as his safety from any intimidation by the offender should be ensured.

c. European Convention on the Compensation of Victims of Violent Crime

Compensation to the victim by the

offender is not always possible because very often the offender is unknown or has no financial means.

During recent decades many European and extra-European states considered that in the name of social solidarity and equity, the victim should be compensated by public means when the offender is not able to do so.

In its desire to establish common policy in this field, in 1984, the Council of Europe prepared and offered for signature and ratification, a European Convention on the Compensation of Victims of Violent Crime.

The convention gives a model for compensation schemes in the member states.

1. Offences giving right to compensation

According to the convention:

"When compensation is not fully available from other sources the state shall contribute to compensate:

a. those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;
b. the dependants of persons who have died as a result of such crime."

Thus, compensation is restricted to victims of intentional offences of violence, which are the most serious ones. Unintentional offences (for example, road traffic offences) are often covered by insurance. On the other hand, property offences are so numerous that the state could not afford to paying compensation for all of them.

2. Nationality of the victims

Compensation shall be paid by the state on whose territory the crime was committed:

a. to nationals of the states party to the convention;
b. to nationals of all member states of the Council of Europe who are permanent residents in the state on whose territory the crime was committed.

The convention introduces an exception to the principle of reciprocity by admitting that nationals of member states of the Council of Europe will be compensated even if their country of origin is not party to the convention.

3. Conditions

According to the convention, compensation may be reduced or refused:

i. when the victim is of considerable financial means;
ii. on account of the victim's behaviour and in particular:
   —on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury or death;
   —on account of the victim's or the applicant's involvement in organized crime or his membership of an organization which engages in crimes of violence;
   —if an award or a full award would be contrary to a sense of justice or to public policy (ordre public).

Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalization expenses and funeral expenses, and, as regards dependants, loss of maintenance.

The convention establishes also an international co-operation in connection with the application of its provisions, including exchange of information on legislation and practice and mutual assistance in concrete cases.

Up to now, ten member states signed and four member states (Denmark, Luxembourg, the Netherlands and Sweden) ratified the convention.

B. Co-operation in the Field of Criminological Research

After the Second World War, criminological research developed extensively in Euro-

pean states. In the framework of the Council of Europe, co-operation in this field was considered essential as research results were necessary not only in enriching scientific knowledge but also for guiding crime policy in its option.

This co-operation is achieved in the following ways:

a. Organization of Criminological Research Conferences and of Criminological Colloquia

Conferences are organized every two years. They examine broad subjects interesting both science and crime policy (for example, deviance or violence).

Colloquia are organized in the intermediate years. They deal with more specific, often methodological questions (for example, crime statistics).

The conferences and colloquia:

—examine the results of criminological research on a specific topic and indicate the problems which need to be examined in particular by further research;
—draw conclusions for crime policy which are offered to the European states as a guide for their legislation and practice.

A very important role of the conferences is that they give the opportunity to both criminological research workers and decision-makers to meet and discuss various problems and to achieve better mutual understanding.

In this way the gap existing between these two groups having, usually, different training and objectives can be filled and integration of research results to crime policy obtained.

Among the most important topics dealt with by these criminological conferences and colloquia are the following:

i. Subjects of organization and methodology

—Organization of criminological research;
—Methods of evaluation and planning in the field of crime;
—Means of improving information on crime.

These means include crime statistics which have been examined many times by the Council of Europe with a view to their harmonization. However, considerable differences in the legislation of member states do not yet permit this result to be arrived at. Thus, methods of improving crime statistics at the national level or of completing such statistics by methods such as "victimization studies" were examined.

Comparative research in criminology; such research has been examined at the geographical level and historical level.

Conclusions for methodology of such research have been adopted by two colloquia held in 1982 and 1984.

ii. Broader criminological subjects

Criminality of migrant workers

After the Second World War, various European states received migrant workers who helped their economic development. These foreign populations provoked a feeling of fear among the autochthons who thought that criminality might increase. A criminological research conference held in 1967 examined this problem in the light of research results and found that migrants did not have higher rates of criminality than autochthons.

This problem has been examined again more recently in connection with young migrants of the second generation. It was found that although young people coming from migrant families have some problems of adaptation because of cultural conflicts, instituting policies giving them equal possibilities as nationals to participate in social life could eliminate such difficulties.

Sexual behaviour and attitudes and their implications for criminal law

This question has been examined by a conference in 1982. Reports were presented on

violence against women, homosexual behaviour, age of consent to sexual relations, etc. It was found that some of the offences concerning sexual behaviour (for example, adultery) have been decriminalized in some countries. On the contrary others, for example rape, required severe penal measures.

Public opinion on crime and criminal justice —the contribution of the public in crime policy

This question has been examined first by the 13th Criminological Research Conference (1978) and later by a select committee which prepared Recommendation (83) 7 on the contribution of the public in crime policy. The conclusions of the conference as well as the recommendation stress the need for ways to better educate the public on crime and criminal justice as well as the desirability of the public's contribution to the preparation and the implementation of crime policy.

Privatization of crime control

Trends to having recourse to private enterprises in order to reinforce security of houses and commercial or industrial places or in order to operate prisons were discussed by the 18th Criminological Research Conference. Experiences in the field of security exist in all European states. On the contrary, privatization of prison has mostly been applied in the United States.

European states find it difficult to accept giving control of prisons to private enterprises. However, the question is currently being studied in France and the United Kingdom. The conference recommended further study of the problem but suggested a cautious policy in this matter in order to avoid violations of human rights of the offenders.

b. Exchange of Information on Criminological Research

A bulletin on international exchange of information on current criminological research subjects in member states is issued once a year. Its aim is to inform research workers through research carried out in various countries so as to be able to correspond and, if desirable, to collaborate on common research projects.

c. Criminological Research Fellowships

Since 1963, research workers coming from member states can receive a fellowship, allowing them a short visit (one to three months) in another state in order to compare methodologies and research results with their colleagues.

III. Co-operation in the Field of Crime Law and Procedure

A. Harmonization of Legislations

Harmonization does not mean that a European Criminal Code is in preparation. Many differences exist between the legislations of Council of Europe member states and in particular the dichotomy between:

—legislations which have their origins in Roman law (France, Italy, Belgium, Federal Republic of Germany, etc.);
—legislations of common law (United Kingdom, Cyprus, Malta, etc.).

Some states have a legislation influenced by both systems, for example, the Scandinavian states.

However, if unification of European criminal law is still not possible, an intensive activity has been undertaken for many years by the Council of Europe to bring European legislations closer.

Specific criminal problems are examined and guidelines for legislation are prepared. When introducing new laws, European legislations are invited to take into account these guidelines. In this way, it is hoped that European legislation will be partially and gradually harmonized, a process which will prepare the ground for the preparation of a European Criminal Code in the future.

These efforts for partial harmonization are

more fruitful when new criminal phenomena appear for which legislation does not exist or is incomplete, for example, computer crime or protection of the environment.

We will briefly examine the main questions examined by the Council of Europe with a view to this harmonization.

1. Criminal Law

During recent years legislative activities in Council of Europe member states have gone in two opposite directions:

—there is an effort, inspired by criminological theory and research, to limit as much as possible, criminal law intervention, which is considered as stigmatizing and, often, inefficient or counterproductive;
—there is a parallel view towards criminalization in certain fields, where important interests must be protected by various means, including the intervention of criminal law.

a. Decriminalization

After many years of examination of the problem of decriminalization, the European Committee on Crime Problems decided not to draw up a recommendation giving instructions to governments concerning offences which should be decriminalized. It was considered that each country should decide on this matter according to its domestic social conditions and concepts.

The committee prepared an extensive report (published in 1980) which contains the theoretical basis of the process of decriminalization.

The report distinguishes three types of decriminalization:

a) de jure decriminalization aimed at a full legal and social recognition of decriminalized behaviour;
b) decriminalization of acts which are not legally and socially recognized but where it is considered that the state should not intervene;
c) decriminalization of acts which are not legally and socially recognized and where the state could intervene but where it is preferred to leave the persons concerned to cope with the situation.

In its conclusions, the report stresses that public attitudes and behaviour should be taken into consideration when deciding on decriminalization. However, these attitudes and behaviour should be assessed through research following rigorous methodology.

b. Criminalization

Criminalization occurs especially in those fields where economic or technological progress creates new problems. The Council of Europe examined in particular the following problems:

1) Economic crime

Development of economic relations on a national and international scale was accompanied by an increase in offences related to economic life.

Recommendation No. R (81) 12 contains Council of Europe guidelines on economic crimes. It invites governments, inter alia, to:

i. examine the possibility of entrusting an ombudsman with the task of protecting the public, particularly consumers, from abuses and malpractices in the business world;
ii. take steps to facilitate the detection of economic offences and the institution of criminal proceedings, in particular by:
—setting up police units specializing in economic crime control;
—setting up, under prosecuting authorities, sections specializing in economic cases;
—providing specialized training for police and other investigative bodies dealing with economic crime, such training being associated, where appropriate, with satisfactory career structures;
—giving victims of economic crime the

right to enforce their claims personally in the criminal proceedings or, if they already enjoy this right, by making their task easier;
—examining the possibility of allowing certain victims' associations to be parties to criminal proceedings;

iii. take all steps required to ensure swift and efficient criminal justice in the field of economic crime, in particular by:
—providing specialized training for judges dealing with economic cases;
—revising the rules of secrecy for certain professions (for example, banking);
—permitting or encouraging other public authorities to provide the criminal authorities with information needed for criminal proceedings;
—examining the possibility of adopting the concept of criminal liability of corporations or at least of introducing other arrangements serving the same purposes in respect to economic offences.

2) Offences against the environment

This question was examined in the 1970s: Resolution (77) 28 contains guidelines for legislation in this field. The resolution considers that protection of the environment should be sought primarily by civil and administrative measures, criminal law being a last resort, when other measures have not been efficient. However, in these cases—which are the more serious—very severe penalties should be provided. In addition, legislations should examine:

—the possible introduction in certain cases of the liability of corporate bodies, public and private;
—the advisability of criminalizing acts and omissions which culpably (intentionally or negligently) expose the life or health of human beings or property to potential danger;
—the creation of special branches of courts and offices of public prosecution to deal with environmental cases;
—means of giving persons or groups the right to become associated with criminal proceedings for the defence of the interests of the community, etc.

Although severe, these measures are perhaps not sufficient. After the adoption of the resolution, serious ecological incidents (for example Chernobyl) indicated that dangers are very important and that the role of criminal law may be intensified in this field.

This question will be examined next year by the Conference of European Ministers of Justice which is to be convened in Ankara (Turkey) in June 1990.

3) Computer crime

This phenomenon acquired a great importance during recent years. In order to help governments to draw up legislation on similar lines, the Council of Europe prepared guidelines which recommend criminalization of the following acts:

—computer fraud;
—computer forgery;
—damage to computer data or programmes;
—computer sabotage;
—unauthorized access;
—unauthorized interception;
—unauthorized reproduction of a protected computer programme;
—unauthorized reproduction of a topography;

and optionally:

—alteration of computer data or computer programmes;
—computer espionage;
—unauthorized use of a computer;
—unauthorized use of a protected computer programme.

Activities concerning computer crime also exist in the framework of the European Economic Community.

4) Road traffic offences

Common lines of policy for European states are contained in a Draft Code for Road which was adopted by the Council of Europe in 1979.

2. Criminal Procedure

In this field common policy recommended by the Council of Europe tends to achieve the following objectives:

—ensure that criminal procedure is in accordance with the principles of the European Convention on Human Rights which is a basic text for the Council of Europe;
—achieve a quick and efficient justice.

The main subjects examined are the following:

i. Remand in custody

European guidelines exist on this matter. They tend to limit the use of remand in custody as much as possible and to put strict rules as to its application. Recommendation (80) 11 stresses that "being presumed innocent until proven guilty," no person charged with an offence shall be placed in custody pending trial unless the circumstances make it strictly necessary. Custody pending trial shall therefore be regarded as an exceptional measure and it shall never be compulsory nor be used for punitive reasons.

ii. Simplification of criminal procedures—reducing delays in the criminal justice system

In all European countries, criminal justice is overburdened. Procedures are sometimes long and complicated even for petty offences. Thus, it is felt necessary to introduce improvements which may take various directions. Such improvements have been examined by a committee which prepared Recommendation (87) 18. A Criminological Colloquium which will be convened in November 1989 will also examine "delays in the criminal justice system." Reforms may take the following directions:

—*diversion*: sometimes, although the offence remains in the criminal code, a specific case may be dealt with by extrapenal means. Thus, after suspending or abandoning criminal proceedings the Public Prosecutor may oblige the offender to undergo a treatment (for example in drug abuse cases), to give reparations to the victim, etc.). Such procedures are very frequent in some European countries;
—*simplified procedures*: for example penal orders or out-of-court settlements may replace judicial action;
—finally, when the case is submitted to court various measures for example, imposing time-limits, rational organization of courts, etc., may reduce long procedures prejudicial both to justice and to the parties involved.

iii. Sentencing

During the last years many criminologists in Europe and in the United States examined procedures of sentencing and especially the phenomenon of disparities in sentencing between courts dealing with the same sort of cases. The causes of these disparities have been examined by a Criminological Colloquium of the Council of Europe which recognizes as causes of disparities in sentencing:

—the psychological, social or other factors relating to judges;
—the uncertainty in objectives in the criminal justice system etc.

Now a select committee is in the process of examining solutions to disparities, for example:

—drawing up guidelines for judges and prosecutors;
—better and more uniform training of judges.

However, uniformisation of sentencing should not abolish individualization of sen-

tences, which is a very important principle in European countries.

B. Mutual Aid in Criminal Matters—European Conventions

Guidelines on criminal matters contained in resolutions and recommendations can influence governments but are not binding. The need for closer co-operation in certain matters was felt in member states of the Council of Europe and resulted in the preparation and adoption of numerous conventions in the criminal law field.

The first conventions of the Council of Europe concern traditional mutual aid in cases having international elements, for example, the offender and the victim are in different states, the offence is committed in various states, etc. In these cases, it is necessary to ask foreign countries to collect proof and information about the offender, to ask for his criminal records, etc.

These conventions are the following:

—the European Convention on Extradition (1959);
—the European Convention on Mutual Assistance in Criminal Matters (1959).

However, the need for closer co-operation was evident.

It was felt necessary to establish a "European judicial space" where transmission of criminal proceedings from one country to the other and the execution of foreign criminal sentences could be possible.

Up to now, execution of civil sentences pronounced in a foreign country (for example, a sentence of divorce or adoption, was possible after a specific procedure. The innovation brought by the Council of Europe is that now sentences in criminal matters can also be implemented in a state other than the state of the judgment.

It is necessary to mention three more basic conventions in this field:

—the European Convention on the Transfer of Proceedings in Criminal Matters (1972);
—the European Convention on the International Validity of Criminal Judgments (1970);
—the European Convention of the Transfer of Sentenced Persons (1983).

By virtue of these conventions the following possibilities exist:

a. An offender who commits an offence in a foreign country, instead of being prosecuted in the country of the offence can be prosecuted in the country of his habitual residence. The file will be transmitted from the country of the offence to the country of residence, which will undertake the obligation to prosecute (unless specific reasons exclude prosecution, for example, the act is not an offence in the country of residence).
b. When the state of offence pronounces a criminal sentence against a foreign offender, it is possible to ask the state of the offender's habitual residence to execute the sentence, for example to incarcerate the offender, to collect a fine or to exercise supervision of an offender who has received a probation order.
c. When an offender is incarcerated in a foreign prison he can ask to be transferred to a prison in the country of his habitual residence in order to serve his penalty there.

It is obvious that this co-operation in criminal matters has very important advantages:

a. Implementation of the criminal sentence is always possible even if the offender crosses the border of the country of the offence and returns to the country of his residence. Thus, criminal justice can better reach its objectives.
b. Courts and national administrations have less to cope with when dealing with foreign offenders. It is well known that it is difficult to judge a foreigner or to imple-

ment a sentence regarding a foreigner who often does not speak the language of the country of the offence, is not familiar with the country's legislation, etc. Transfer of proceedings and implementation of the sentence in the offender's country of residence solves these problems.

c. The above-mentioned possibilities are also advantageous for the offender. He is not obliged to remain in the state of the offence but can return to be judged or to serve the sentence in the country of his residence which is familiar to him and where he has the assistance of his family and friends.

There is now current work aimed at consolidating all these conventions on mutual assistance in criminal matters in one single convention.

European co-operation is achieved also by other conventions on specific matters.

The most important are the following:

i. The European Convention on the Suppression of Terrorism (1977). This convention, which has been prepared to face the serious problems of terrorist acts occurring in some European countries during the last decades, defines that terrorists are not to be considered as political offenders. In consequence, their extradition (which is usually not admitted for political offenders) is permitted for terrorists. However, according to the same convention, if a state does not wish to extradite a terrorist, it must undertake to judge him according to its laws.

ii. The European Convention on the Acquisition and Possession of Firearms by Individuals (1978). This convention, taking into account the danger presented by the possession of firearms and by the circulation of firearms from country to country, imposes a close collaboration between countries in this field. Thus, for example, when firearms are sold and transferred from one Contracting Party to another, this transaction must be notified to the authorities of the country in which it takes place. This country will notify the country to which the firearms are transferred.

iii. The European Convention on Offences relating to Cultural Property (1985). The convention provides for the restitution of works of art which are stolen and transferred from one country to another. Illegal traffic in works of art is a very important problem in many European countries.

iv. Another important convention is the European Convention on the Compensation of Victims of Violent Crimes, which was mentioned in the framework of activities concerning victims.

A European Convention on Mutual Assistance for the Seizure and Confiscation of Proceeds of Crime is now in preparation. This convention will enable the states to confiscate property of the offender, when this property has been transferred to another country. Its objective is to annual profits of crime and in particular of drug-trafficking.

Although an important set of European conventions exists now, co-operation is not always as intensive as it should be. signature and ratification of conventions follow a rather slow rhythm. Various practical problems (for example, the financial implications of the implementation of a convention) are sometimes the reason of such slow progress. However, another reason is the reluctance of states to abandon a part of their sovereignty by assuming obligations prepared by a convention.

IV. The Penological Field

European co-operation in the penological field has been intensive. It concerns:

—alternatives to imprisonment;
—imprisonment;
—the death penalty.

These questions are examined by select committees. A European Conference of Directors of Prison Administrations takes place every two years.

1. Alternatives to Imprisonment

For more than a century, penologists and criminologists have stressed the drawbacks of custodial sentences:

—interruption of family and professional links;
—danger of pernicious influence exercised by inveterate offenders upon inmates less involved in crime;
—difficulty of applying a treatment;
—heavy expenses needed for the operation of prisons.

Thus, since the beginning of the century and especially after the Second World War, a trend towards limiting as much as possible prison sentences and extending alternatives to imprisonment has appeared in Europe and is encouraged by the Council of Europe. Many resolutions and reports deal with this subject and give guidelines for the introduction and implementation of these alternatives.

These measures cease to have a charitable character, that is to be a measure of clemency pronounced by the judge with regard to less corrupt offenders, implemented mostly by voluntary staff. Nowadays, in many states, alternatives are the rule: a prison sentence is pronounced only if special reasons (for example, dangerousness of the offender) preclude a non-custodial sentence. These measures are applied by a highly professional staff, according to a very strict methodology.

Resolutions of the Council of Europe contain guidelines concerning:

i. traditional alternatives such as conditional sentence, protection and pecuniary sentences;
ii. new measures such as:
—semi-liberty: a form of sentence permitting the offender to work outside the prison during the day;
—work for the community (unpaid work to the profit of various welfare activities).

A select committee is now in the process of preparing European minimum rules in the implementation of alternatives to imprisonment. Such rules have also been prepared by the United Nations (with the collaboration of UNAFEI) and will be examined by the 8th Congress of the United Nations for the Prevention of Crime and the Treatment of Offenders. The Council of Europe takes account of the United Nations rules but wishes to draw up a text of rules particularly adjusted to the situation and the conditions of its member states.

A European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, opened to signature and ratification in 1969 facilitates the implementation of alternative measures where the offender is a foreigner.

By virtue of this conference, the state which pronounced the conditional sentence may request the state in whose territory the offender establishes his ordinary residence:

a. to carry out supervision only;
b. to carry out supervision and, if necessary, to enforce the sentence;
c. to assume entire responsibility for applying the sentence.

2. Imprisonment

Although alternative measures are developed in many countries, prisons in Europe still contain a great number of inmates.

This phenomenon is due to an increase of criminality in many countries, to the hesitation or even reluctance of some judges to use alternatives to imprisonment or even to the reaction of public opinion which often favours imprisonment and asks for it.

This situation led the Council of Europe to examine problems relating to treatment in

prison and to adopt various resolutions containing guidelines.

The most fundamental text in this field is the revision of United Nations minimum rules for the treatment of inmates (1959). Rules of the Council of Europe, adapted to the specific conditions of European countries were adopted in 1973 (Resolution (73) 5).

Later on, a new revision of these rules has taken place. The new text, called "European Prison Rules," stressed always the need of treatment of offenders. However, it also gives very great importance to the respect of human rights in prison.

Various other questions concerning imprisonment have been studied by the Council of Europe, such as:

—long-term sentences (Resolution (76) 2);
—short-term sentences (Resolution (73) 17);
—prison leave (Recommendation (82) 16);
—treatment of dangerous offenders (Recommendation (82) 17), etc.

3. Death Penalty

This penalty was examined by the Council of Europe in 1962. At that time many countries had this penalty and a resolution concerning abolition was not possible.

Many years later, in 1983, the Council of Europe adopted Protocol No. 6 to the European Convention on Human Rights which requires abolition of the death penalty. Most member states signed and ratified this protocol.

For the moment, in Council of Europe member states the question has more theoretical than practical importance. In fact, of the 23 member states, only four still have the death penalty in their legislation: Belgium, Greece, Ireland and Turkey. However, Belgium has not executed for a hundred years and Greece and Ireland for about 20 years. Turkey is the only member state where this penalty is still execution.

Draft legislation is in the process of being prepared in the first three states to abolish the death penalty altogether. Turkey also intends to limit the number of offences justifying this penalty.

V. Conclusions

In conclusion, it is possible to confirm that intense co-operation in the criminal law, penological and criminological field exists between the member states of the Council of Europe.

This co-operation is facilitated by homogeneous social, economic and political conditions existing in the member states.

The principles of human rights and fundamental freedoms, defined in the European Convention on Human Rights are an important source of inspiration. Thus, a humanitarian approach to criminality characterizes all activities in the field of crime policy.

Although serious doubts as regards the possibilities of the treatment of offenders exist among certain scholars or decision-makers, the Council of Europe's approach is clearly oriented towards finding new methods and ways leading to the resocialization of the offender.

Incorporation of Fair and Effective Crime Prevention Policies and Strategies into Overall National Development Plans

*by H. Adi Andojo Soetjipto**

Introduction

Before discussing the policies and strategies to prevent crime as part of the National Development Plan, I would like to draw your attention to the objectives of National Development.

I think the goal of the objectives of National Development in all countries is the same, namely, creating social justice and welfare for the population in a safe, peaceful, ordered and dynamic situation, and maintaining a good relationship with other countries in the world based on freedom, friendship and peace.[1]

The description of the target of National Development which I have pointed out obviously emphasizes that the efforts to prevent crime must be a *conditio sine qua non* in striving for the success of development.

In developing policies and strategies to prevent crime and enable people to live safely and peacefully, we cannot ignore problems of economy, socio-cultural problems, and problems of politics, religious affairs, and defense and security. These problems deal with issues of development of industry, communication, trade, manpower, housing and residency, education, health, social welfare, population and so on.

We will not be able to set up policies and strategies to prevent crime if we ignore one of these issues because they have to do with one and another. On the other hand, we will not be able to set up the policies and strategies if the issues are corrupted.

As a matter of fact, for a country which is carrying out its National Development programs, setting up the policies and strategies to prevent crime as part of its National Development Plan is a big job involving not only officials who directly handle criminal affairs, but also those dealing with the issues which I have mentioned above, who are expected to work integrally.

The Study of Regeneration of Criminals

A question is now arising: is it possible that if the National Development programs have been carried out successfully, that crime will vanish from the earth? The answer is no, because crime is a normal phenomenon in any society and we can not avoid crime as a consequence of development. Even though development is not a criminogenic factor, it can not be denied that development provides opportunities for the emergence of crime. For example the progress in technology can result in new types of crimes such as computer crimes. Aside from that, the improvement of social welfare and the increase in the standard of life will not automatically cut down on crimes. Conversely they will create new situations from which crime may emerge.[2]

It seems that there is a kind of regeneration of criminals in this world, where old criminals who are not able to commit crimes any more are replaced by the young ones who are more skillful.

This is the problem that I bring forward here to be solved by all of us even though our knowledge on this matter is limited.

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There is hope that one day the issue can be explored and may become a branch of science which is based on a thorough study and research so that we can take the right preventive actions to stop the ongoing regeneration process.

For the time being I would like to discuss several problems concerning the regeneration of criminals to stimulate the development of a thorough study on it in the future. Firstly I will discuss whether or not the regeneration of criminals occurs through a process like the process of regeneration in other fields (such as regeneration of government officials or in political party) which takes place following a preparation. The second part of my discussion concerns factors which drive the process of the regeneration of criminals. The third part is about how to obstruct or entirely stop the process of regeneration of criminals. And later I will discuss how to develop a system to stop the process of the regeneration of criminals in the policies and strategies to prevent crime and incorporate them in the National Development Plan.

Again I would like to say that what I will discuss is by all means a new issue. There is no thorough knowledge and reading materials on it which we can use as a reference to analyze the matter. In any case, I am sure that it is a very important issue which is interesting to discuss.

Does the Regeneration of Criminals Occurs through a Process?

Unlike the process of regeneration in the government of a Nation in which a certain group of people of certain ages have the authority to administer the country in a period of time, the process of regeneration of criminals occurs without any plan and any preparation. The process of regeneration of criminals occurs naturally. Old criminals are replaced by the young ones, but it is not necessary that they knew each other before and there need not be any continuation like the succession in the leadership of an organization. There is an exception in the groups of criminals which are well-organized and which exist for a long period of time. The regeneration of criminals in well-organized groups are planned and prepared before hand.

The process of regeneration of criminals occurs naturally because the criminals from the older generation have stopped their operations. They do not operate any more because of three possibilities:

(a) because they are dead.
(b) because they are so old that they do not have enough courage, strength and skill to commit crimes.
(c) because they have repented their sins.

In points (a) and (b) criminals stop committing crimes because they are forced to do so, not because they do so willingly. But whatever the reasons in points (a), (b) and (c), are, the end of the criminals' operations does not depend upon certain ages because there is no age limit for criminals who want to retire. There is no age limit either for criminals of the younger generation who want to start operating.

Criminals might stop committing crimes because of death, because they are murdered following a court decision, shot by police in hot pursuit, killed by a member of his gang, attacked by an angry mob or commit suicide. Some others may die as a result of illness.

Criminals who live until they are very old usually stop operating because they feel that they are not skillful enough to commit crimes.

Criminals in this category usually have been jailed several times. They find it difficult to live peacefully and have a permanent job, because society knows who they are. For the rest of their lives they will lead a hard life and survive because of the support of other people, usually their families.

The last category of criminals who stop operating are those who repented their sins.

They are of a special category because they withdraw themselves form the criminal world willingly, not by force. They repent their sins possibly because they are touched by the treatment in the correctional institution or because they have learned their lessons. You may have read Victor Hugo's book entitled *Les Miserables* which he wrote in 1862. It is a story about Jean Valjean who was jailed for five years for stealing a loaf of bread. The sentence term was increased to fifteen years because he tried to escape several times. At last he managed to break out of jail and later he met a man who was able to convince him to recant his errors. He worked hard and years later he became rich and was respected by society. Even though it is only a fiction based on the author's love for freedom and justice and his sympathy for people's sufferings, it is not impossible that such a thing might happen in daily life.

Does asking for clemency from the King or Head of State which is ruled in the law in some countries mean that a criminal atones for his sins? I don't think so. At least that does not happen in Indonesia. In my country criminals ask for clemency so as to create a new situation to avoid serving a sentence. This is the typical character of cunning criminals who like playing tricks.

It is necessary to further explain why a convict can avoid the obligation to serve the sentence while his appeal for clemency is still under process. Article 3, paragraph (1) of Law no. 3, 1950 on the appeal for clemency, stipulates that the sentence should not be served if the convict asks for a delay in the carrying out of the court decision, if he has stated he will ask for it not later than fourteen days after he is informed about the court decision. This mean that if a convict asks for clemency or states that he will ask for it within the period of time, he may ask for a delay in serving the sentence until the Head of State reaches a decision on whether or not to grant his request. Therefore he will not serve the sentence until the decision on his request for clemency is made.

The stipulation is actually good, but the good stipulation is abused by convicts who often play tricks. I say that the stipulation is good because if there is no possibility to delay the carrying out of a court decision, and if the Head of State grants the convict's request for a clemency, the convict might have finished serving the sentence at the time the Head of State reaches the decision to grant the request, and the clemency will be useless. Such a thing might happen because it usually takes a long time for the Head of State to make the decision.

The possibility to ask for the delay in serving a sentence as stipulated in the law gives convicts a chance to buy time or to search for opportunities to escape and avoid the sentence. In July 1989 there was a hot issue concerning the report of Commission III of the House of Representatives on court decisions concerning 80 criminal cases which could not be executed because, after the Head of State made the decisions on their requests for clemency, the convicts' whereabouts were not known.[3] In Indonesia it is not easy to find the addresses of people who move from one place to another place due to the weak administration on population.

From my above description it can be concluded that the request for clemency from a convict—at least in Indonesia—does not necessarily mean that he is repentant.

To know exactly whether a regeneration of criminals occurs through a process we should make a list of the convicts' name and their identities in detail including their addresses, their jobs, their activities outside the jobs and, if they have stopped committing crimes the reasons why they leave the criminal world (See Appendix 1).

The list should be based on a continuous monitoring on criminals. If a criminal has learned his lesson or repented his sins, we can write down in the column "miscellaneous" when and how he does so, what has moved him to do so, etc.

It is obviously not easy to carry out this work because, among other things, a crimi-

nal must not have a permanent address in a certain area, he must move from one placed to another place and it is difficult to trace his whereabouts. But with an accurate and orderly system, for instance by involving the chief of the local community who, with the help of all local residents, will register the comings and goings of any one in the area, the work can possibly be achieved. I am not sure whether it can work but it is a challenge for all of us who deal with the prevention of crime to carry out a study on this case.

I suggest that the list be made by the social agency in cooperation with the police, the justice ministry and the home affairs ministry.

Now that we have discussed the old criminals who have stopped operating, let us talk about young criminals who, whether they are aware or not, follow the criminal actions of those whom they replace. They are people who have never committed any crime before or those who have committed actions which are not categorized as criminal deeds but they are not dealt with well so that they later commit crimes. Often, they commit acts such as playing truant, disobeying their teachers or parents and being drunk in public places, which are included in status offences.

I think all of us agree to the idea that people are born innocent, not to be enemies of the society. It is the situation or condition, of their lives which makes them so. The situation or condition may be physical or mental handicaps, social and economic problems, weak social control and so on.[4]

So the opinion that a criminal is born to be one is not true. Based on experiences, we see that moral values always change in accordance with the time and place.

Take as an example, the killing of new born babies which often occurred in primitive society. This happened because of the difficult situation in the parents' lives which forced them to do so. If they took other steps, the whole community could suffer. It was not that they were born to be murderers who were cruel and did not love their children. After the situation changed, for example because they were able to lead a better life not by hunting but by cultivating land and had a permanent source of income, the number of murders against new born babies decreased and it was seen that they greatly loved their children. Another example happened in a community which liked to move from one place to another long ago. Old people in this community were killed or were allowed to commit suicide. This practice did not continue after the nomads began to lead a sedentary life and became farmers who cultivate land and had more time to raise their children and to take of care old people.[5]

I think it is not true either that criminals have anthropologic typical identities like small brains, and different physiques like wide jaws, and askew faces.[6]

Therefore let us take the hypothesis that no one is born as a criminal. He becomes a criminal because the situation makes him one. People who become criminals due to their situation then replace those who have left the criminal world. This is what I term as the regeneration of criminals. Concerning the question of whether or not the regeneration of criminals occurs through a process, I have the opinion that it does even though it is not a continuous process which is clear. I think the process is an abstract one. Anyway, it is a process. I base my opinion upon the fact that any succession must have a beginning and an end. The beginning is the juveniles who start committing crimes and the end is the old men who stop doing so.

What Factors Drive the Process of Regeneration of Criminals?

There are so many factors which trigger the occurrence of the process of the regeneration of criminals that it is difficult to mention them one by one. But our focus of attention is on the juveniles because the process of regeneration starts from them. As I have mentioned above, young people formerly commit what are called status offences.

In this stage of pre-delinquency their actions are not recognized as violating the law, which means that the government does not interfere in this case because their parents are still considered as those who should be held responsible for the actions (even though there are now nations which agree to the stance of early intervention of the government at the pre-delinquency stage).[7] Gradually, due to the fact that the problems are not handled seriously, the juvenile misconduct will develop into juvenile delinquency which violates the law.

What I mean by unserious handling of the problems is for example the allowing of social process which creates the condition which leads to consumerism and the increasing demands of seeming needs. Such a way of life with all of its aspects become the excuse of youths—including those who fail to gain social prestige through the right ways—to violate the law. At first they make experiments in committing petty crimes before they build their career as professional criminals. What I mean by petty crimes are, among others, petty extortion or petty larceny.

I have discussed briefly the situations which drive youths to commit crimes. In addition, I would like to give some examples like the socio-cultural condition, the condition of the interactions among groups, the situational pressure and the social reaction.[8] *The socio-cultural condition* which can finalize the development of sub-cultural values into the rationalization of criminal actions is a factor which triggers the occurrence of the regeneration of criminals. For example the frustration of young migrants who move from rural areas to urban areas. An increasing number of young migrants result in unemployment and inadequate education. Such a socio-cultural situation is usually followed by a weakening social control from the society which was traditionally strong. They are now forced to lead a hard life which is far from the warmness of families, and what they do is motivated by material needs alone. Another example of the socio-cultural situation which triggers the occurrence of the regeneration of criminals is the failure of many countries to protect and preserve the cultural integrity of the indigenous group who are usually the minority in the society, which lead to the acceleration of the destruction of traditional family relationships. The destruction may have come about because of economic pressures, or through the availability of alcohol or in many other ways. The abuse of alcohol by juveniles is now becoming a social symptoms which sits side by side with their drug addiction. Even though not all juveniles who drink are criminals, it is obvious that they drink to avoid social responsibilities. Therefore, there are juveniles from this group who are continuously involved in criminal actions. It is the government's obligation to find ways of re-empowering the traditional leaders of indigenous groups in their dealings with their own people.[9] *The condition of the interactions among groups* which usually happens in urban areas deals frequently with juvenile offenders who, because of the weakening social control, form groups of criminals, increasing the seriousness of their criminal actions. What's more is the fact that there is no public figure in their families (or in their surroundings) which can stand as a model, driving them to seek a model among criminals whom they learn about from the mass media which reports criminal activities every day. *The situational pressure* against juveniles who fail to play the role expected by society or who become emotional rebels because they can not be someone is another factor which motivates the regeneration of criminals. The other factor is *the social reactions* against juveniles who commit crime. Society as well as law enforcers often have a negative view of young criminals due to the stigmatization which make it difficult for them to bring the juveniles back into society as well as the tendency to isolate them from social life.

There are apparently many more factors of situations which increase the occurrence

of the regeneration of criminals. Another example is the spare times during school holidays which is not filled with positive activities so that there is an increase in the number of crimes such as vandalism, car theft, and so on. All examples of the situations as factors which motivate the occurrence of the regeneration of criminals which I discussed above are only several of many others which I can not mention here one by one. But I hope the examples can support my opinion that the factors which drive the process of the regeneration of criminals are found outside the people, or more exactly the juveniles, themselves.

The question that may arise is now about those who start committing crime after they reach fifty years old or more. What situations motivate them and how can it happen?

A Jakarta-based newspaper reported a story from Athena, about a 56-year-old man named Christos Papadopolous who was condemned to death eight times by the local court for murdering eight old men with a hope that he could inherit their wealth. Papadopolous, a former mayor of a suburb in Athena, was a socialist lawyer. He later became the leader of 25 murderers and he even aired his idea that "human life does not cost much." He forced old people to sign blank papers which were later changed into falsified wills. During the trials Papadopolous called himself a modern Robin Hood who robbed a few rich people to help many poor people. His group strangled to death seven victims. But Efrosyni Frangoulaki, 67, was hit on the head by using a hammer and was buried alive. The other victims were a blind lottery seller and a ship owner who were rich and lived on their own without any kin. The 25 cruel criminals are now serving a sentence term of 500 years.[10]

The same newspaper reported a story from Geneva. It was about an English man who in his 80s, who was detained in Switzerland as he was caught with 4.9 kilograms of cocaine in his baggage. He was arrested in the Geneva-Cointrin airport after he arrived from Buenos Aires. The old suspect said a man asked him to bring the drug to Geneva and hand it to another man for 2,000 dollars. He considered it reasonable because he did not receive enough allowance from the English government to finance a leisure time in Marbella, Spain, a favourite town of retired English men.[10]

Whether or not the reports are true, we can not set aside the fact that there are people who became criminals suddenly when they were old, in discussing the regeneration of criminals. However, such cases, I think, are an exception because it is rare that a man who is more than fifty years old suddenly commits a crime and changes into a cruel criminal. Even though he becomes a criminal without any process it is obvious, through my examples above, that the factors which drive old people to commit crimes is the situation.

How Can We Obstruct or Entirely Stop the Process of the Regeneration of Criminals?

I have earlier said in the first part of this paper that even though the National Development succeeds and all fields have developed at the maximum point, crimes will not vanish from the earth because crime is a normal phenomenon in every society. Aside from that, we can not avoid crime as a consequence of the development itself. Therefore the answer for the above question is: there is no way to entirely stop the process of the regeneration of criminals. What we can possibly do is to seek ways only to obstruct the occurrence of the process. I have also discussed in the first part of this lecture that we will not be able to set out the policies and strategies to prevent crime if we ignore any of the issues of economics, social and cultural issues, issues of politics, religious affairs and the defense and security, which must be established first. Now I will try to answer the question on how to obstruct the process of the regeneration of criminals

by analyzing it from the economic point of view which I will relate with my idea that the factors which drive the process of the regeneration of criminals are found outside the human, namely, the situation.

Suppose a poor economic situation occurs and poverty it found everywhere in the country. There is a hypothesis that in the society where the poor are pushed into hopelessness, crime will be their source of income. They will be wicked and there will be no penalty which can prevent them from committing crimes.[11] It can be estimated that the process of the regeneration of criminals in such a society will occur quickly.

To support my hypothesis I will quote the opinion of several criminologists in the nineteenth century which, even though they were written a long time ago, can still be used as a consideration because they are still up to date.

The first opinion was by a statistic expert and criminologist named, *Ed. Ducpetiaux*, of Belgium nationality who lived from 1804 to 1868. He said in his book entitled *Le pauperisme dans les Flanders*, which was published in 1850, that a terrible crisis (crisis of industry and the failure of potato harvests) happening from 1845 to 1848 increased the number of crimes from 8,984 in 1845 to 16,782 in 1847, or by 87 percent.[12]

Author *A. von Oettingen* who lived from 1827 to 1905 and was very religious pointed out in his book *Die Moralstatistik in ihrer Bedeutung fur eine Sozialethik*, which was published during the economic crisis in 1868 that the number of thefts and such crimes—especially those committed by women and children—increased, and that the number of felonies in which the use of force took place increased after the economic crisis had passed.[12]

The most important idea was from a German statistic expert, *G. von Mayr* who lived from 1841 to 1925. He said in his book entitled *Statistik der gerichtlichen Polizei im Konigreiche Bayern und in einigen andern Landern*, which was published in 1867, that during a period of time, thefts as well as other crimes and the price of wheat, ran parallel. Every 25 cent rise in wheat price which happened between 1835 and 1861 resulted in the increase of theft by one per 100,000 people. Von Mayr said that the increase was the result of what he termed as "objektive Nahrungserschwerung," namely the expensive staples which could not be afforded by people.[12]

Due to the complex economic development in the twentieth century, von Mayr's theory of parallelism is not very accurate any more, yet, it can still be used because there are situations which have not changed like the development of property crimes and the need of staples which run parallel.

From the economic point of view I believe that to obstruct the process of the regeneration of criminals we must obviously improve the economic situation of the country. Concerning the efforts to improve the economic life, I will take an example from the situation of economics in Indonesia, where the greatest sector in the economic structure is agriculture. The improvement of this sector must be carried out through continuous and efficient effort to develop the system of agriculture and its all elements such as providing soft loans and marketing the products, in order to support the improvement of the whole economic life, to increase people's income and to create more work fields in villages.

Data collected by the Indonesian Central of Statistics lead to the conclusion that the National Development in Indonesia has increased the people's standard of life. People lead a better life compared to the previous years. In 1976 the number of Indonesian people living below the poverty line was 40.08 percent of the total population or 54.2 million. Since then, the absolute number has declined steadily, most notably in rural areas, and in 1984, stood at just under 35 million, or almost 22 percent of the population. In 1987 the number decreased to 17.42 percent or 30 million.[13]

It is necessary to clarify the conditions of the Indonesian people who were living below the poverty line. According to the Indonesian Central Bureau of Statistics, the definition of the number of Indonesians in poverty is based on the money value of a diet providing 2,100 calories per person per day (the Indonesian minimum standard) plus an amount representing the value of non-food necessities such as housing, clothing, school and medical expenses. In 1984 the estimated cost came to Rp. 13,731 (about US$7,66) per capita per month for urban areas, and Rp. 7,746 (about US$4,32) for rural areas.[13] (The conversion rate of Bank Indonesia on September 11, 1989: US$1 is equal to Rp. 1,792)

Let us now relate the success of the National Development in Indonesia to improve the standard of living of the people (so that they can lead a better life) to the number of crimes in 1977, especially those committed by young people and children.

The rate of crimes committed by children was 2.1 per 100,000 people in 1967. In 1977 the rate increased to 2.4 and it decreased to 0.79 in 1982. The rate of crimes committed by children in the period of between 1980 and 1987 was less than 1 per 100,000 people. A similar fact is seen on a smaller scale, in Jakarta, where data during a five-year period (1983-1987) shows that there was a decrease in the number of crimes committed by juveniles. In 1983: 131, in 1984: 56, in 1985: 48, in 1986: 27, and in 1987: 12. In the last 15 years, most of the crimes committed by children and young people were motivated by a desire to acquire property, namely, thefts and aggravated thefts.[14]

How about the connection between the success in carrying out the National Development in Indonesia and the number of crimes in 1988 and those occurring in 1977 in general?

From the data which I received from the Indonesian Police Headquarters, we see that the crime trend continued to increase until the year of 1981. From 1982 the crime trend decreased until the minimum point in 1985. But in 1986, 1987 and 1988 the crime rates showed irregularities in the increase and decrease of the number.

According to the analysis by the Indonesian Police Headquarters, the crime rates were in accordance with the development of the population growth and the social cultural development as a result of the changes in the course of population. Therefore, the opinion that the improvement of economic life in a country is always followed by a decrease in the number of crimes, is not entirely true. This happens also because of other factors, for example the development of life in society which has become more complex. We can draw a conclusion from the data of trends in criminal development that criminality tends to increase because there is a close relationship between criminality and all correlative criminogenic factors. Therefore, the changes of life in society through development must have a negative impact which may result in crime, however small the impacts are. See the diagram of crime trend total data in the period of between 1977 and 1988. (Appendix 2)

However, there is one thing that is the factor that drives the occurrence of the process of the regeneration of criminals. There must be a factor which is fundamental, which moves someone to commit crimes, because crime is an integral part of the phenomenal society. Apart from that, social mechanism hypothesis showed that graphic crime rate as a social symptom in the beginning will be greatly influenced by the development of fundamental and correlative factors, like the social cultural development due to the changes in the course of population.[15]

From the data of crime trends from 1977 to 1988, based on the analyses of the Indonesian Police, it can be said that the crime rate is still under control.

How to Include the System to Stop the Process of the Regeneration of Criminals in the Policies and Strategies to Prevent Crime and Incorporate Them in the National Development Plans

We are now at the last part of my lecture. The system to stop (or at least to obstruct) the process of the regeneration of criminals—and at the same time set out the policies and strategies to prevent crime—which I suggest is one with an integrative approach, must involve not only officers who directly deal with law enforcement, but also all social organizations, agencies of health, education, social welfare, religious affairs, city planning bureaus, city development agencies, and all private sectors as well as juveniles themselves. Juveniles must be involved through a consultative mechanism in an informal way because what is important for juveniles is not what they can do for themselves, but why and how this is done, especially because they are expected to play an active role. This is based on the consideration that juveniles usually regard the process more important than the end-product.[16]

The topic that I choose for my lecture is appropriate to the theme of this course, namely, Crime Prevention in the Context of Development. National Development can lead to the improvement of social welfare but that does not necessarily mean that a better social welfare will decrease the number of crimes if the carrying out of National Development program is not supported by integrated actions to prevent crime.

As a matter of fact, Japan can stand as a model of the success in the integration because it has been able to carry the development through industrialization and urbanization without sharply increasing the number of crimes. The carrying out of development in Japan is concurrently done with the implementation of a regular social defense system. In the beginning of its development, Japan formed a social defense team which consisted of national planners and researchers. They analyzed the trend in crime as a result of the social changes and development, and then the team suggested that the social defense programs be put into an integral part of the National Development Plan and that the programs be carried out by involving local people. The system of criminal trials was also improved so that every case was handled as soon as possible, resulting in a good impact on society.[17]

How about the situation in Indonesia? In fact, the National Development in the country was not serious, and well-planned out until the New Order Government reigned in 1966. It can not be denied, however, that the carrying out of the development was followed by the development of criminality. Groups of people who wanted to make money easily emerged. They made use of the weakness in the law and in the administration of criminal justice.

This year Indonesia enters the first year of the Fifth Five-Year Development Plan. In the legal field, the basic policies are to stabilized and to secure the carrying out of the National Development and its results so that everyone in the society can enjoy the atmosphere which provides legal certainty and a sense of justice and creates social responsibilities among the people.

Reformation of the law is also to be improved, for example by codifying and unifying certain legal issues and the drafting of new legislation. To enforce the law, the positions and the roles of law agencies are continuously stabilized in accordance with their authorities. The skill as well as the characters and attitude of the officers must be improved so that they may become models of law enforcement who are clean, prestigious, fair, and pose as protectors of the public.

In order to improve people's consciousness of law, it is necessary to hold law campaigns so that everyone is aware of his rights and his obligation as a citizen for the sake of the enforcement of law and justice and the pro-

tection of human dignity, the consciousness of law and order, the security and legal certainty, so that all Indonesian people obey the law. In order to provide social justice and legal protection for all, it is necessary to improve the trial process so that the carrying out of trials can be simple, quick, accurate and cheap. It is also necessary to provide more hardware and software of the law and improve their efficiencies.[18]

Among the results of the efforts in legal fields which I have mentioned above are the issuance of several laws, such as the Law on Supreme Court (Law no. 14, 1985) and the Law on General Judiciary (Law no. 2, 1986).

We have also finished drafting the bill on Indonesian prosecutors which will replace the current law which does not clearly stipulate the position, roles, functions and authority of prosecutors. Prosecutors have been able to be continuously efficient in performing their duties. They handle 99 percent of the cases sent to them annually.

To support the efforts in the legal field, the government has constructed 13 more District Court Buildings, renovated 26 High Court and 281 District Court Buildings and built a new Supreme Court Building which was inaugurated on August 10, 1989. To provide ease for justice seekers, the government has constructed 38 buildings in remote areas in addition to the buildings of district courts which have wide judicial areas and do not have adequate communications system. Circuit judges hold trials in these buildings. District courts finished handling 97.9 percent of civil and criminal cases which they dealt in 1984 and 1985, and 99.9 percent in 1987 and 1988. The high courts finished handling 71 percent of cases which they dealt in 1984 and 1985 and 79.8 percent of cases in 1987 and 1988. The Supreme Court finished handling between 33 percent and 47.3 percent of the cases annually. The Supreme Court has improved the judicial technical skill of judges of the general judiciary by sending them to the Netherlands. The Supreme Court has also used computers.

The efforts to treat prisoners in a correctional system include religious teachings, general education, vocational trainings, social guidance, health care and service, and recreation or sports without ignoring the law, order and security in surrounding areas. The efforts aim at creating a reintegration atmosphere for convicts in the society so that after they finish serving their jail terms they will return to the society, become productive and obey the existing laws and norms.[18]

I believe it is clear that the Indonesian government has determined to create a society which is peaceful, fair, and prosperous, and has deliberately incorporate the policies and strategies to prevent crime in the National Development Plans. Besides, it is also clear that the approach has an integral character through the cultivating of social responsibility among the people as one of the objectives of the basic policies of the legal development.

Conclusion

All countries throughout the world agree to prevent crime. The fact is seen in the serious attention given in dealing with it. All countries throughout the world regard criminal problems important either in a national or international dimension, especially because the impacts affect areas outside the borders of the countries.

We are aware that there are new dimensions in crime, and preventing them is a challenge. We are also aware that the world has greatly changed, affecting the process and the perspectives in criminal justice. There are people who become victims of criminal actions. All of these facts have forced experts to think hard, discussing problems of crime and setting out policies and strategies to prevent them. Governments of many countries have agreed to have bilateral or multilateral cooperation based on integrated programs and activities. We also agree to carry out more research to collect data on the possible connection between

crimes and special aspects of development.

Those issues are enunciated in the Milan Plan of Action as a conclusion drawn in the 7th Congress of the United Nations on the Prevention of Crime and the Treatment of Offenders held in Milan, Italy, from August 26 to September 6, 1985.

References

1. The Fifth Five Year Development Plan of the Republic of Indonesia 1989/1990—1993/1994.
2. Report of the 7th United Nations Congress on Prevention of Crime and Treatment of Offenders (1985).
3. Almuden Situmorang "Penyalahgunaan Grasi," an article in the "Kompas" daily newspaper, July 21, 1989.
4. Brissot de Warville "Theorie des lois criminelles" in Mr. W.A. Bonger "Inleiding tot de criminologie" herzien door Dr. G.TH. Kempe (1954).
5. Steinmetz "Das Verhaltnis zwischen Eltern und Kindern bei den Naturvolken," ibidem.
6. Cesare Lombroso "L'uomo delinquente" (1876), ibidem.
7. Report of the International Seminar on the Prevention and Treatment Juvenile Delinquency through Community Participation, Beijing, 1988.
8. Mulyana W. Kusumah "Kejahatan oleh kelompok berusia muda," an article in the "Kompas" daily newspaper, June 15, 1989.
9. Report of the International Seminar on the Prevention and Treatment of Juvenile Delinquency through Community Participation, Beijing, 1988.
10. "Kompas" daily newspaper, August 5, 1989.
11. d'Holbach "Systeme social" in Mr. W.A. Bonger "Inleiding tot de criminologie" herzien door Dr. G.TH. Kempe (1954).
12. Mr. W.A. Bonger, ibidem.
13. Situation Analysis of Children and Women in Indonesia, Government of Indonesia—UNICEF, 1988.
14. Mulyana W. Kusumah "Kejahatan oleh kelompok berusia muda."
15. dr. H. Hadiman "Trend kriminalitas di Indonesia dan upaya penanggulangannya" (1982).
16. Report of the International Seminar on the Prevention and Treatment of Juvenile Delinquency through Community Participation, Beijing, 1988.
17. Centre for Research and Law Development, National Law Development Agency, Department of Justice of the Republic of Indonesia "Survey and Research as a Basis of Rational Administration of Criminal Justice."
18. The Fifth Five Year Development Plan of the Republic of Indonesia 1989/1990-1993/1994.

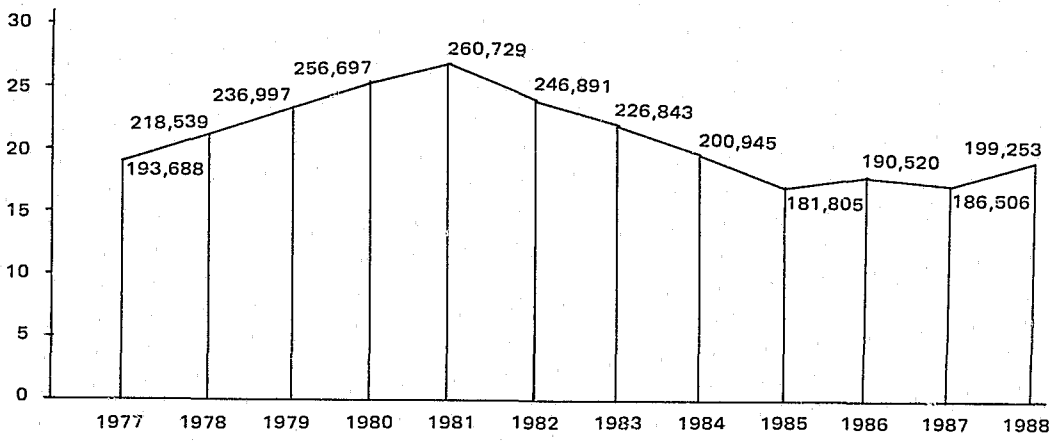
Appendix 1

List of Convicts Who Stopped Committing Crimes

No.	Name	Address	Occupation	Reasons why they leave the criminal world			Miscellaneous
				Death	Too old	Repented	

Appendix 2

Headquarters of the Indonesian State Police
Data: Trend Crime Total
Period: 1977-1988



Implementation of the United Nations Norms and Guidelines in Criminal Justice

*by Abdelaziz Abdalla Shiddo**

Article 1, paragraph 3 of the Charter of the United Nations pertaining to the purpose of the organizations reads "to achieve international cooperation in solving international problems of an economic, social, cultural and humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

The United Nations established a unit which was known as the Social Defense Section to work in the area of the treatment of offenders which was carried out by the International Penal and Penitentiary Commission. In 1950 the General Assembly in Resolution 415 (V) (1950) recalled the Secretary General to become a member an *ad hoc* advisory committee of experts to advise the Secretary General and the Social Commission in devising and formulating programmes to study on an international basis and develop policies for international action in the field of the Prevention of Crime and Treatment of Offenders. The *Ad Hoc* Committee was consisted, on the onset, of seven members and was increased to ten members in 1965.

In 1971 ECOSOC made the committee a subsidiary agent of the council, increased its membership to fifteen people, renamed it "The Committee on Crime Prevention and Control," provided that its members would be elected to a four-year term with half of the membership elected every two years. Nomination, for elections were to be made by states, solidifying the principle of geographical representation.

In 1979, the membership of the committee was increased to 27 members: with seven seats given to African States, six to Asian States, three to Central Europe, five to Latin America and six to Western Europe and other states—and today this stands as the formation of the committee.

Initially, one would ask, "what are the functions of this committee?"

To answer this we should refer to the ECOSOC Res: 1979/30 which summarized the main functions as:

(a) Preparation of the United Nations Congresses on the Prevention of Crime and Treatment of Offenders with a view to considering and facilitating the introduction of more effective methods and ways of preventing crimes and improving treatment of offenders.
(b) Preparation and submission to the competent United Nations bodies and to those Congresses for their approval, of programmes of international cooperation in the field of Crime Prevention on the basis of principles of sovereign equality of states and non interference in internal affairs and other proposals related to the prevention of offenses;
(c) Provision of assistance to the Economic and Social Council in the coordination of the activities of the United Nations bodies in matters concerning crime control and the treatment of offenders, and preparation and submission of findings and recommendations to the Secretary General and the appropriate United Nations bodies.
(d) Promotion of exchanges of experience

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gained by states in the field of crime prevention and the treatment of offenders.

(e) Discussion of major issues of professional interest, as the basis for international cooperation in this field, particularly those related to the prevention and reduction of crimes.

I started this article by introducing the committee, its formation and functions because, I think if we intend to discuss United Nations' activities in the field of crime prevention, it is necessary to understand how the system works. This would clearly assist in the analysis of the norms, standards and principles which came out of these bodies.

The committee to keep is mandate to foster the exchange of information necessary to facilitate networki g among criminal justice professionals and this would be visible through the holding of quenquinial congresses i.e. congresses held every five years, the first of which was held in Geneva in 1955 and the eighth is expected in 1990—most likely in Havana.

The committee prepares the agenda for these congresses and shapes the measures that would come before them, reflecting on the United Nations Criminal Policy. Apparently, the committee is governed by its mandate and has to abide by Resolution 1979/9 of 9 May 1979 adhering to the principles of sovereign equality of states and non-interference in internal affairs.

This committee should be considered very seriously because congresses are attended by sovereign states with state delegations which are not committed to the preparatory work of the committee. These states have different cultures and different values and would therefore reject anything which may conflict with these cultures and values.

Accordingly, the committee should, when considering the establishing of certain standards, be very careful with the acceptability of these standards by states of cultural values that do not agree with the proposed standards. To illustrate what I mean by this, let me provide the example of capital punishment. As you know and we all know, there is a call in Western cultures for the abolition of the death penalty. Irrespective of whether the death penalty is evil or not, irrespective of the reasons given favorably for its abolition, yet in certain states the death penalty is applied as a religious command and in some as a cultural heritage. When I say as a religious command, I specially refer to those states applying for example Islamic laws which provide for the death penalty in certain case such as "Qusas," murder, robbery or brigandage and adultery. How could the United Nations or any body or organization command such state to consider the abolition of the sentence declared by God rather than human legislation?

In areas as muddy as this, it is advisable to be very careful and perhaps this explains why in all previous congresses there was no success for unanimous acceptance of even considering the abolition of the death penalty and that's why in recent discussions within the committee, the trend has been to implement safeguards guaranteeing protection of the rights of those facing the death penalty rather than a call for the abolition of the death penalty.

To illustrate this more clearly, I shall try to analyze Draft Resolution IX recommended by the Committee in its 10th session in Vienna (22-31 April) on the implementation of those safeguards. In discussing this draft resolution, there was a conflict among members representing developed nations which insist upon the abolition of the death penalty or even wishful language to that effect and some members who refuse to reconcile on this issue. Therefore, when we came to discuss the paragraph reading: "convinced that future progress should be achieved towards more effective implementation of the safeguards at a national level," there was a proposition made that it should be accompanied by a call for states to accomplish abolition of the death penalty as soon as possible.

There was resistance to this proposition and thus it was compromised by accepting, "on the understanding that they shall not be invoked to delay or prevent the abolition of capital punishment." This was accepted on the understanding that in as much as we do not accept the abolition of the death penalty, we do not mean to implement safeguards which deny the rights of other states to abolish the death penalty—if they so wish.

As a cultural value, we retain the death penalty in the Sudan in murder cases, especially those cases that involve a tribal conflict. In cases of this nature, unless you sentence those involved in the murder, you will perhaps fuel a full scale war between the tribes. To avoid this you have to sacrifice those involved by inflicting the death penalty.

This clears to a certain extent what I meant by the necessity to take into consideration, different cultures and values in drafting standards and principles of an international nature if these measures are intended to be implemented.

Before we discuss implementation of United Nations norms and guidelines in criminal justice, we have first to understand what is meant by "implementation."

In Black's Law Dictionary, "implements" are defined as "such things as used or employed for a trade, a furniture of a house. Whatever may supply wants; particularly applied to tools, utensils, vessels, instruments of labor, as the implements of trade or of husbandry."

Thus the meaning of implementation could be taken as the paving of the way to put into operation these standards or values in a given society by providing the necessary environment for their acceptance.

"Adopt" is quite different from "implementation" and is explained in Black's Law Dictionary as: "to accept, appropriate, choose or select."

To accept, consent to and put into effective operation as in the case of constitution, constitutional amendment, ordinance or by-law.

In this sense, "implementation" precedes adoption and for a standard, or norm or guideline to be adopted. Implementation of that standard or norm should be effected, let me give an example to explain my own understanding of implementation. Let us for example take procedures of the effective implementation of the Basic Principles on the independence of the judiciary. The main objectives of the principles on the independence of the judiciary is the desire to promote the independence and impartiality of the judiciary, the appointment of judges, their training, their salaries and personal security, etc.

These procedures are recommended as stated in Procedure 1—to be adopted and implemented by all states. The act of adopting the procedures is perhaps an executive and legislative act, but is not enough by itself to make the procedures apply in the state which has adopted them. This act of adopting the procedures must be followed or accompanied or preceded by certain measures taken by the responsive system for their proper application this should include:

1. The existence of a judicial system capable of incorporating procedures.
2. A system of appointing judges away from purposes.
3. Guarantees for judges to adhere to the spirit of the procedures.
4. Resources for the budget of the judiciary that would enable necessary safeguards for those judges.
5. Resources are necessary for trainings and seminars.
6. Acceptance by the public of the responsive states of those procedures.

Unless this is made available it would be futile and meaningless to advocate the adoption of these procedures. These are what I meant by the Tools of Implementation, unless the recipient states can afford to provide the necessary climate for the application of

the standards, then their adoption of such standards would be meaningless.

What should follow is crucial from the point of view of developing countries and those countries who have not "the necessary capacity or resources for the implementation of these standards and norms." This issue is most essential for our consideration if we are really serious in our efforts to create a better world. In accordance with Article 11 of the United Nations Charter which states.

Preamble

We PEOPLES OF THE UNITED NATIONS DETERMINE to promote social progress and better standards in life in larger freedom.

Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principles of equal rights and self determination of peoples, the United Nations shall promote:

(a) Unique standards of living, full employment, and conditions of economic and social progress and development.
(b) Solutions of international economic, social, health and related problems; and international culture, and educational cooperation; and
(c) Universal respect for, and observance of human rights and fundamental freedom for all without distinction to race, sex, language or religion.

In 1948, the Universal Declaration of Human Rights stated:

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family in the foundation of freedom, justice and peace in the world.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in the fundamental human rights, in the dignity and the worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

In 1966, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights stated:

Preamble

Recognizing that, in accordance with the universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights (International Covenant on Economic, Social and Cultural Rights).

Recognizing that, in accordance with the universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights (International Covenant on Civil and Political Rights).

In 1984, the United Nations Secretary General Javier Perez de Cuellor at the annual conference of the Department of Public Information of the U.N. for non-governmental organizations, "New Approaches to Development: Building a Just World" stated:

"New Approaches to Development need to reflect a full awareness both of the fast-changing shape of the world economy and of the persistence, despite of the change, of the problem of poverty in major segments of the lunar community. We all know that we live on a world going through rapid structural and technological innovations. Some call it the second industrial renovation. The phenomenal developments in communica-

tions, computer science and micro-biology, among other things are bound to have far reaching implications for structure of production and international trade. They are also bound to add a new dimension to the concept of global economy.

In considering new strategies of development, it is important to be fully cognizant of the implications of these innovations. However, complex though, they are, they should by no means make us oblivious of existing realities and the consequent priorities. The harshest reality is the plight of the vast masses of the poor in the Third World. The prime urgency is that of initiating a coherent set of actions which would put developing countries in the path of long-term economic growth and advancement.

If economic growth is to meet the challenges of development, it ought to integrate the needs and aspirations of all social strata, particularly the rural poor and the urban unemployed. Experience has taught us that pursuing aggregate growth as a social objective may not automatically result in the diffusion of the benefits of growth towards the poorest strata. We also know that if failure to raise the socio-economic condition of the masses, commensurate with their rising expectations, can curtail the progress of growth and imperil social stability and indeed world peace.

In developing countries, experience gathered over the years in community development and popular participation is beginning to bear results. More recent developments in primary health care are especially useful and pertinent. Non-governmental organizations should continue their invaluable role of introducing innovative and experimental activities at the grass-roots level, thus demonstrating more cost-effective approaches to the provisions of essential services to low-income groups.

As for the state of human rights, thirty-six years after the proclamation of the Universal Declaration, it is a lamentable fact that the most elementary rights continue to be violated in many parts of the world, sometimes on a massive scale. While it is true that, without development, there cannot be full realization of human rights, it is equally true that, without assurance of these rights, development would be hollow."

This reflects perhaps the pursuit of the United Nations to formulate the guiding principles on crime prevention and criminal justice in the context of development and the New International Economic Order which was submitted to the Seventh U.N. Congress on Crime Prevention and Treatment of Offenders. The Guiding Principles were prepared by an *Ad hoc* committee of experts convened by the Crime Prevention and Criminal Justice Branch which met at the International Institute of Higher Studies in Criminal Science in Siracusa, Italy on January 1983. They were thereafter scrutinized at the level of a regional and inter-regional meeting held in 1983 and brought to the Eighth Secession of The Committee on Crime Prevention and Control of March 1984, and after being refined by a working group, the committee adopted those Guiding Principles and forwarded the approved text to the Economic and Social Council, which in turn adopted it, and was then forwarded to the Seventh Congress.

These Guiding Principles are aimed at states whose social, economic and criminological problems are different as are their legal systems. They are also aimed at countries who are in the process of development as well as those deemed soon to be developed and are intended as guidelines and recommendations directed at the senior economic and social policy planners and senior officials whose functions include policies, control, supervision and operation of criminal justice systems.

The Guiding Principles are intended to implement the recommendation of the General Assembly (Resolution 35/171 of 15th December 1980) endorsing the Caracas Declaration Sixth U.N. Congress on Crime

Prevention and the Treatment of Offenders, Caracas, Venezuela, 1980, related to the "new perspectives for international cooperation in crime prevention in the context of development."

Development could then be taken to mean, "constant progress of change which has as its ultimate goal the improvement of the well being of the entire population on the basis of full participation in the process of development and a fair distribution of benefits which would thus be extended to all United Nations member states."

Indeed the growth and seriousness of crime in many parts of the world, including both conventional and non-conventional criminality have a negative impact on the quality of life and would thus need universal cooperation to combat it. In this respect, the Guiding Principles provided a general framework for strengthened international cooperation.

In this connection, the role of the United Nations as a leading organization in enhancing responsiveness to crime problems at all levels, and in promoting regional and international collaboration deserves special consideration. Effective coordination among concerned agencies must be ensured if an integrated approach is to be achieved though participation of all sections involved. In considering crime prevention in the context of development, we need the formulation of crime prevention policies within the framework of economic and social planning, in which urbanization, population movement, social welfare programmes, education and employment opportunities are taken into account.

This necessitates a certain amount of physical planning for crime prevention by way of improved town planning, development of appropriate living spaces, and provision of social infrastructures. Crime prevention planners must be fully aware of the changing realities of the social environment so as to be in a position to anticipate factors likely to generate crime thus reducing opportunities to commit crime through the creation of conditions unfavorable to crime.

The existing realities of crime, particularly those with international dimensions should go hand in hand with international response. Criminality in its transnational dimension could not be dealt with as merely a local problem, but rather, as a universal one, its control and prevention require deep commitment and cooperation at the national, regional and international levels. Although there are a number of existing global instruments dealing with particular issues related to international cooperation, much more is needed in order to bridge the widening gap between these instruments and today's realities of crime and criminal justice. There exists now a large body of conventions, international principles and norms and guidelines which could not only guide states in collaborative ties but also serve as a basis for the future development of international measures.

What is required in the context of existing economic and political realities is action likely to yield fruitful returns from these instruments. This can only be achieved through cooperation among all states. Article 36 of the Guiding Principles provides that: "all states and entities should cooperate through the United Nations or otherwise on prevention and control of crime, as an indispensable element for contributing to the promotion of peace and security of mankind. While enhancing the effectiveness, stability and fairness of criminal justice." Such cooperation depends not only on the commitment of states and their willingness to make progress in this regard but also on the availability of infrastructure mechanisms to monitor the implementation of existing covenants and guidelines. There is a need for a responsive criminal justice system to ensure that these standards be effectively carried out. It is a fact, although a sad fact, that in many countries there is a crisis in criminal justice system management, mainly due to lack of adequate training of criminal

justice personnel, in policy formulation and a lack of effective coordination among criminal justice agencies which makes the system incapable of contributing to the objectiveness of these standards and norms of maintaining peace and order for equitable social and economic development, redressing inequalities and protecting human rights. The criminal justice system should play an essential role aimed at containing crime and creating a climate of stability and peace, thus ensuring the protection of the rights of the individual against any violation and should serve as a guardian of society values through the protection of rights and liberties. It should also contribute to the translation of those values and rights into social and political realities ensuring a just balance between the enjoyment of such rights and the enforcement of the law and the challenge for criminal justice administrators in order to provide such a balance. Thus to implement U.N. standards and norms, there is a need to create a responsive criminal justice system or to strengthen and improve existing systems. This would involve stimulating changes, which would range from the reform of substantive criminal law and procedures to the reform of functioning of the various sectors of the criminal justice system, with the objective of updating them in the light of current scientific knowledge and technological innovations, keeping in view the social, economic, political and cultural circumstances of countries concerned. The system should be able to go beyond local requirements and should be equipped to deal with transnational crime so as to contribute to efforts aiming at ensuring internal and external security and stability.

Some countries can afford to have such a criminal justice system, but many other countries, especially in our part of the world, cannot afford to have such a system, either for lack of personnel or for lack of funds or both. Thus it is legitimate to ask: how could such a responsive system be created?

There is a close linkage between crime prevention and the development and cooperation and coordination in the field of crime prevention and criminal justice should be further strengthened with ensuing effective participation by the United Nations in this field. Member states, inter-governmental and non-governmental organizations and international and private funding agencies should assist the United Nations in establishing a global crime prevention and criminal justice information network as called for by the Economic and Social Council and the General Assembly. Member states are not only urged to contribute financially in this endeavor, but are also encouraged to provide data and other relevant information in relation to crime prevention and criminal justice.

Governments, as well as other funding agencies should contribute financially to the United Nations Trust Fund for Social Defense so as to enable the organization to implement adequately and effectively programmes of technical cooperation in this field. United Nations Inter-regional Advisory services in the field of crime prevention and criminal justice need to be strengthened. Member states and other private and international funding agencies should assist in the implementation of technical assistance programmes.

Activities of United Nations regional and inter-regional institutes for crime prevention and criminal justice should also be supported. Effective international cooperation presupposes the existence of adequate institutional capacities in all national criminal justice systems. It is therefore incumbent upon the international community to organize technical and scientific cooperation aimed at promoting such capacities in countries which need assistance for that purpose. This will create conditions for even more developed international cooperation.

The United Nations, since it's foundation, drawing on its charter and the International Bill of Human Rights, has played a crucial role in the formulation of several international instruments in the field of crime preven-

tion and criminal justice. The U.N. Congresses on the Prevention of Crime and The Treatment of Offenders have greatly contributed to this process of standard setting, starting from the first congress in 1955 which adopted the Standard Minimum Rules for the treatment of prisoners. Other important measures since then have been adopted, such as the Declaration on the Protection of all persons from being subjected to torture and other cruel or degrading treatment or punishment, The Code of Conduct for Law Enforcement Officials, the Convention Against Torture and Other Cruel Unhuman or Degrading Treatment or Punishment, the safeguards guaranteeing protection of the rights of those facing the death penalty and the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of prisoners.

Additional standards have extended the task of the United Nations in this field namely, The Guiding Principles for Crime Prevention and Criminal Justice within the context of development and a new international economic order and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice commonly known as the Beijing Rules. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Basic Principles on the Independence of the Judiciary and The Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners.

How many of these principles and guidelines have been applied or adhered to by individual countries and what if any is their impact on different criminal justice systems?

Successful implementation naturally requires international action, but, above all it depends on the efforts made by the government of individual countries within their domestic jurisdiction. It is true that United Nations guidelines and standards in crime prevention and criminal justice have a base of broad international support and express universal principles to which the international community has committed itself to, yet there are still difficulties in their effective application in many parts of the world. There are many obstacles to their successful implementation which may be summarized as follows:

1. There is a lack of coordinated action.
2. Shortage of funds both at national and international levels.
3. Inadequate human and professional resources.
4. Lack of political will and public apathy.

Perhaps most important of these factors is the lack of political will to implement those standards and norms in systems which may find the standards and norms not fitting with its political aspirations or the traditions of its people. In some countries the death penalty is a religious command and not a legislative punishment; if the political system calls for its abolition it is possible that it may face a rebellion of its citizens branding the authorities of being sacrilegious or acting against the commands of God. This could apply to countries applying Islamic laws currently known as "sharia laws." Equally in those countries flogging and whipping is a religious punishment in certain cases of drunkenness or in the case of adultery. Without doubt some countries may describe whipping and flogging as cruel and unusual punishment. This description if mentioned in such countries may amount to infamy.

Some countries, especially in our part of the under-developed world, described courteously as the developing world are governed by military dictatorships which exist on the protection of summary executions to those who oppose it. The nature of those governments necessitate the rejection of all forms of human rights. How then could the international community guarantee adoption or implementation of those norms on the face of these obstacles?

Most of those countries attend United Nations Congresses. Most of those countries are

members of the United Nations Family. Most of them accept the norms and standards in the General Assembly and the ECOSOC, but when it comes time to apply them, they ignore the most basic rights given to their citizens.

It would therefore be very useful to consider measures for the effective implementation and follow up on policies which have already been internationally agreed to. I would prefer in this area to consider action with respect to the interested government in the implementation of guidelines and standards and thus interested to translate them into reality. Those measures should include:

1. Incorporating the United Nations measures in national legislations.
2. Using educational and promotional processes in schools, colleges and academies of criminal justice as well as law faculties, exploring the role of the mass media and eliciting its support.
3. Increase of community involvement to create an atmosphere conducive to the observance of the principles embodied in the instruments.
4. Exploring ways and means of overcoming resistance towards the principles such as national committees to promote and enhance evaluative research.

This would imply the provision of financial support together with human resources both by the interested governments and the United Nations. Some government may be interested but not capable and some governments may not only be interested in the application of those standards in their country, but possibly might be interested in applying them in a different part of the world. They may be capable of implementing and of giving assistance to other governments in order to implement the standards. Those governments should contribute to the United Nations Trust Fund for social defense as well as the other international funding agencies such as UNDP to assist developing countries interested in including certain standards in their country programmes.

The role and scope of the United Nations activities in promoting more effective application of guidelines and standards at the regional and inter-regional levels should also be re-assessed and adequate support should be provided to regional and inter-regional United Nations institutes for crime prevention and criminal justice together with the reinforcement of advisory services in this area, not necessarily from the United Nations, but also from capable governments in order to meet requests for technical cooperation from countries in need of assistance.

The ideas and initiatives contained in most United Nations norms and standards are, in themselves, positive but need more examination by the various states. It is not enough for a state to send its delegation to United Nations congresses or to participate in the process of adopting recommendations of those congresses in the General Assembly or other United Nations body to make the recommendations binding on that state for implementation. Something further must be done, perhaps the transformation of basic standards into conventions inviting different countries to carefully examine and sign them. In some countries, in accordance with Constitutional Provisions, once a convention was ratified, it automatically became an integral part of the domestic legislation and public opinion—the world might then feel increased pressure in favor of compliance with such conventions. This would necessitate the revision and improvement of existing standards and guidelines by identifying and closing loopholes in those instruments to make them acceptable to different states in order to achieve universally acceptable results. Extensive work is required in order to achieve these results and this work is worth all possible efforts, because these norms and guidelines form a set of policy rules whose moral importance reflect the crucial role of the United Nations in this field.

Accordingly, the inter-regional preparato-

ry meeting of the Eighth United Nations Congress on Topic 1: "Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Cooperation in the Field of Crime Prevention and Criminal Justice" has formulated the following recommendations on the promotion of international cooperation in crime prevention and criminal justice:

International cooperation on crime prevention and criminal justice, it emphasized, has to be developed in these major areas:

1. The creation and implementation of international legal instruments, standards and norms.
2. Technical and scientific cooperation, and
3. The development of the role of the United Nations.

Four general directions should be pursued in order to increase the effectiveness of international cooperation in penal matters in the form of international measures, standards and norms:

a. Efforts towards the ratification and implementation of existing international instruments, standards and norms.
b. The development of a comprehensive international convention on cooperation in penal matters, incorporating among different topics existing agreements on extradition, mutual assistance, the transfer of prisoners, the transfer of proceedings, and the transfer of supervision of conditionally sentenced or released offenders.
c. The development of model instruments, standards and norms for use at the national, bilateral, regional and inter-regional levels.

In terms of international cooperation in crime prevention and criminal justice, the need for international cooperation has so far been recognized in the following specific instruments:

—The convention on the prevention and punishment of the crime of genocide.
—The convention for the suppression of the traffic in persons and of the exploitations of the prostitution of others.
—The international convention on the suppression and punishment of the crime of Apartheid.
—The convention on the prevention and punishment of crimes against internationally protected persons including diplomatic agents.
—The international convention against the taking of hostages.
—The declaration on the protection of all persons being subjected to torture and other cruel, inhuman or degrading treatment or punishment.
—The code of conduct for law enforcement officials.
—The Tokyo convention on offences and certain other acts committed on board aircrafts of 14 September 1963.
—The Hague convention for the suppression of the unlawful seizure of aircraft of 16 December 1970.
—The Montreal convention for the suppression of unlawful acts against the safety of civil aviation of 23 September 1971.
—The single convention on narcotics drugs of 1961 as amended by the 1972 Protocol amending the single convention on narcotics drugs of 1961.
—The convention on Psychotropic Substances of 1971.

On the other hand, standards and norms currently in the process of being formulated include the following:

—Drafting basic principles on the role of lawyers.
—Drafting basic principles on the use of force and firearms by law enforcement officials.
—Drafting standards for the prevention of juvenile delinquency.
—Drafting standard minimum rules for the

treatment of juveniles deprived of their liberty.
—Drafting basic principles on the prevention and investigation of extra legal, arbitrary and summary executions.
—Modeling agreements on the transfer of criminal proceedings.
—Modeling an agreement on the transfer of the supervision of conditionally sentenced or conditionally released offenders.
—Modeling an agreement on extradition and mutual assistance in criminal matters.
—Drafting standard minimum rules on the non-institutional treatment of offenders.

From a first look at these measures, one would notice that recognition of cooperation covers those standards and norms which are of international concern rather than local concern. This suggests that the most suitable forms of standards and norms to be implemented are those standards which concern the international community as a whole and future trends should be directed towards such standards to strengthen international cooperation and to invite participation of the international society.

It is therefore pertinent at this stage to put the following questions for discussion:

1. What action is needed to influence national legislations related to crime prevention and criminal justice to accept United Nations norms and guidelines in their respective systems?
2. In what way could concrete changes at the national level be achieved and how could obstacles be overcome? What specific measures could be taken to this effect?
3. By what means could the United Nations assist countries in implementing norms and guidelines in crime prevention and criminal justice? What are the obstacles to providing such assistance?
4. How could the level of support to programmes of technical cooperation and advisory services in crime prevention and criminal justice be increased to permit more effective implementation of United Nations norms and guidelines? What effort could be made to involve international funding agencies more actively in these tasks?
5. In what way could continuous and closer regional cooperation in implementing United Nations norms and guidelines be promoted? What measures could be taken to strengthen the regional United Nations institutes in crime prevention and criminal justice in this regard?
6. How could the need for further research on more effective ways and means of implementing United Nations norms and guidelines in crime prevention and criminal justice be met at the national, regional, and international levels? What would the role of the United Nations Social Defense Research Institute be in this respect?
7. What are the priority areas in which particular attention should be given to the formulation of new norms and guidelines?
8. What is the role of the United Nations, in particular the Committee on Crime Prevention and Control, in promoting the implementation of existing standards and the setting of priorities for the formulation of new standards?
9. How could existing mechanisms be strengthened?

These questions should be the subject of our future seminars and I invite each of you to carefully study them and the outcome of these seminars would be a land mark in suggesting ways and means to assist the United Nations, specifically the Committee on Crime Prevention and Control, in its future work. Until we meet in a seminar or more than one seminar, thank you very much for listening to me and I wish you a successful outcome from the seminars to come.

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Development and Crime: Pilot Project in Yugoslavia —Results of the Preliminary Analysis—

*by Ugljesa Zvekic**

Introduction

Today it is almost a truism to state that there is a relationship between development and crime. In other words, that large scale social transformations are, in some determined way, connected with changes in the levels and forms of crime and/or reactions to crime: that the criminal question is interlinked with issues of development. Yet such a statement specifies neither the nature nor the type or direction of such a relationship. Lack of precision is also characteristic of studies carried out on the subject matter over the last century and a half regarding the existence of connections but were rather inconclusive, and even contradictory, as to their nature, type and direction.

Still, both the researcher and the layperson are faced with an increasing concern with crime-generating and crime-preventing/controlling industries. In some places, and with striking effects, the belief in "inevitable progress" as society develops seems to be seriously challenged by growth in crime and its human, material and institutional costs. The cost aspect is of particular concern to policy makers and administrators in the criminal justice field. To many, development and crime are so interrelated that there is nothing more logical than to look at them in a causative or at least highly associative manner.

This line of thought also prevailed within the United Nations context. It has in the past paid considerable attention to the crime and development question, and the Organization's engagement in this area is growing. Indeed, it has by now acquired a very high referential significance for the whole range of activities and in particular at the quinquennial United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. This was highlighted in the Milan Plan of Action, the preeminent document adopted by the most recent congress, namely the Seventh, held in Milan, Italy in 1985. The same concern is being frequently reflected in the preparatory activities now underway for the forthcoming Eighth Congress to be held in Havana, Cuba in 1990.

The United Nations Interregional Crime and Justice Research Institute—UNICRI (formerly UNSDRI) also reflected these concerns in its programmes and activities. The above-mentioned concerns lead to the launching of this action-oriented pilot project in Yugoslavia.

For reasons of technical feasibility, the project in Yugoslavia focused on a limited period of time (1966-1986) and on a selected aspect of the subject matter. Limits are also set by the type and form of information used in the analysis, namely statistical secondary data, available from official recording systems.

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—training of personnel in the field of developmental and criminal justice statistics;
—training of the researchers in the use of developmental and criminal justice data-base;
—training of researchers in models and methods of dimensional and comparative data analysis.

Progress and Problems

The project started in 1987. The Project Document was prepared in the first half of 1988 identifying the main directions of research and its structures, and outlining the methodological design. The next phase consisted of the collection of data and the creation of data base. Then, the analysis of the test year (1980) was carried out which identified major problems with data, their interpretation and further analysis needed to supplement the adopted methodological model. The preliminary analysis based on 1973, 1980 and 1986 was carried out. This paper will present major findings of the preliminary analysis. The results of the preliminary analysis served as a basis for the elaboration of further data analysis and the adoption of the structure of the final report. It is expected that the final report will be completed and ready for publication by the end of 1990.

A number of problems were encountered in each of the phases of the project. These problems may be classified into three distinct but related categories.

The first category of problems concerns conceptualization and interpretation. Development is a case in point. Despite numerous attempts to define it, there is no consensus regarding the concept of development. For a long time, both in science and commonsensically, development carried positive connotations. It underlined affirmative aspects of social change, mostly of economic growth. In science, it was also connected with the notion of progress, linearity, accumulation and continuity, although there were attempts to move away from the exclusively positive loadings. UNESCO's definition is an attempt to depart from the "affirmative backlog": "Development, in short, is an integral and integrating process, both requiring and precipitating far-reaching social, political and economic changes. It is by no means a unilinear process that moves steadily and smoothly towards some predetermined set of models and values . . . it is typically turbulent, often a downright disorderly and painful process."

Apart from the complexity of the definition of development, another complication lies in the internal conceptual structure of development. Is it a singular, undifferentiated process or does it consist of a number of such processes? Thus some speak of global development and types of development, for example: economic, industrial, political, educational and social. For some, global development is the result of its composite processes; for others, it is totality *per se*. The unitary concept of development suggests a singular indicator or singular index of development; the differentiated concept suggests multiple indicators, themselves in different degrees of mutual association and of different direction of relationships.

The substitution of development with social change does not present an adequate solution either. Although social change seems to be of a more neutral connotation, it does not reduce the ambiguity of the concept. It is of great importance to use coherently the concept of development and to define it as precisely as possible, since the conceptualization of development has definite consequences for the adoption of the theoretical interpretative framework.

The situation with the crime component—in the crime and development phase—is also complicated but somewhat to a lesser degree since the research is of national character. Yet, some complications regard the theoretical concept of crime; is it an ontological concept or a social construction? If so, in what sense and how is one to talk about crime? What is the relationship between the crimi-

nal justice system and criminal behaviours? What are the indicators of crime and in what way should they be socio-culturally and politically interpreted?

The theoretically conceived position of crime vis-a-vis development determines its position in the analytical process (dependent or independent variable). For those who regard crime as a dependent variable, time sequence is of crucial importance and therefore appropriate methods for analysis must be selected. On the other hand, some authors regard crime as a social activity with its own internal logic and historical developments, thus, essentially, as an independent variable. Others claim that crime is an integral part of social processes and talk not only about modernization of society but also about modernization of crime. The concepts of societal and crime modernization is not quite clear although it points out the adaptive capacities of social patterns of interaction and their interpretation within the framework of a determined set of goals and means. But these concepts cannot easily confront themselves with the reality of development, which is far from being unidirectional.

This research project adopted the concept of development as an integral process which allows the existence of different development profiles. Each developmental profile describes a discrete configuration. Therefore, the project's concept of development is basically an empirical concept, established within the limits set by the nature and type of available developmental parametres.

The most serious problem concerned the collection of data and the creation of data base. It stems from the fact that the project covers a twenty-year period, that the basic unit for data collection was the municipality (on an average 500 municipalities for each year) and that data base contains 67 developmental variables and 20 criminal justice variables (10 for adults and 10 for juveniles) for each municipality and for each year. The main difficulty emerged from the fact that data were recorded following different methodologies, in different forms, in different media; furthermore, they had to be searched for in different sources.

The next problem is related to the fact that not all the data was available for each basic unit. Therefore, some data was missing for some municipalities which created a problem of data systematization and in particular their sequential ordering.

Data analysis was carried out according to the methodological model containing several techniques:

—descriptive statistical parametres on a level of discrete variable;
—linear correlation within and between the sets of variables;
—multiple regression analysis for (i) each singular developmental and criminal justice variable, (ii) latent developmental variables (factors of development) and each singular criminal justice variable, (iii) singular and latent developmental variables and the first major component of the criminal justice variable set;
—factorial analysis of developmental and criminal justice variables by the methods of major components and their rotation in the ortoblique position;
—canonical and quasi-canonical analyses on the level of singular developmental and criminal justice variables and within the factorial solutions;
—taxonomic analysis;
—methods for the analysis of rhythm and disproportions in development and its relation to crime.

Bearing in mind the volume of data and complexity of analyses, a number of technical problems arose for which relatively satisfactory solutions were found. Two such problems, however, need to be pointed out. The first refers to the already mentioned lack of certain data. In some small-sized municipalities certain forms of crime were not registered at all. This was particularly the case with certain forms of serious offences and

juvenile offenders. This situation led to an attempt to group singular criminal justice variables into larger categories. Such a solution resulted in criminal justice categories identical to the categorization adopted by the Yugoslav Criminal Code. However, a certain amount and quality of significant information for criminal policy analysis was lost.

The second problem refers to the analysis of rhythm and disproportions in development and their relationship with crime. The problem is not technical but rather of an interpretative nature. One of the main hypothesis contained in the Project Document was that faster rhythm of development and marked disproportions in development lead to a marked increase in crime rates, and that the relationship between development and crime varies according to the above-mentioned characteristics of developmental process. preliminary analysis showed that this is not so, that is to say, the coefficients of determination between certain developmental factors and certain forms of crime are at approximately equal levels throughout the twenty-year period and that these coefficients do not reflect a developmental curve. This seems to be an interesting finding from the theoretical point of view but it needs further testing with different models of analysis in order to increase its reliability (or to dispel it).

Development and Crime: Trends and Characteristics

A Short Note on Yugoslavia's Economic and Legal History

Yugoslavia was created in 1918 after the First World War and, following the Second World War (national liberation struggle against fascism and the socialist revolution), was constituted a Federal Socialist State. It is a multi-ethnic, multi-lingual and multi-religion federation made up of six republics and two autonomous provinces. Its basic political principles are self-management, monoparty system and non-alignment in foreign policy.

Post-war development in Yugoslavia followed quite closely the Soviet economic model up to 1948 after which it initiated a number of economic and political reforms. Yet, in the fifties it still relied on the model of a centrally-planned economy.

The economic situation over the twenty-year period under consideration (1966-1986) can be characterized as follows:

1965-1972: This period was initiated by the economic reform of 1965, a reform with an emphasized market orientation. This period ends with constitutional amendments inserted in the Constitution of 1974. The major idea of the reform consisted in giving enterprises a more independent role which should, in turn, lead to a more efficient allocation of resources and higher productivity. Social tensions, strife between the republics and provinces in the process of decentralization, etc., caused a shift away from a distinct market orientation towards the end of the period. The major economic indicators show still high growth rates of industrial production, a doubling of the rate of inflation, higher unemployment, a high growth of productivity and a stable increase in real wages. Export growth lagged behind import growth, but the migration of labor to the West and resulting workers' remittances eased the pressure on the balance of payments and unemployment levels.

In a broader sense, this period can be regarded as a turning point, not only in terms of the economic system, but also from the point of view of a deeper social reorientation in terms of social values. This was caused not only by a pronounced market orientation, but also by an opening-up to the rest of the world (migration abroad, freedom of travel abroad, development of tourism, etc.).

1972-1980: This period was characterized by the establishment of a system of "social agreements" as a regulating mechanism within the economy and an import substitution strategy with high foreign lending in or-

der to cover the gap in domestic savings. Borrowing on the financial world market was pronounced after 1976, resulting in a huge foreign debt and the undertaking of huge investment projects. The growth of industrial production in this period is still impressive, but the rate of inflation was doubled. As a result of a sharp fall in the standard of living, the growth of productivity and the average growth rate of real incomes were dampened over the last two years of this subperiod. The rate of unemployment was doubled while growth rates of export and import were reduced to half.

1980-1986: This period is characterized more by macroeconomic tendencies that took a turn for the worse as compared to the preceding period, than by any type of institutional reform. The growth rate of industrial production fell to only 2.8% on the average. There were marked declines in the absolute standard of living, a galloping inflation, a further increase in unemployment, negative rates of productivity growth in industry, while a drop in the growth of exports was accompanied by import restrictions. While there was a lack of institutional reform, this period was marked by a broad debate on the nature of and remedies for what has been openly called a "major crisis" in Yugoslav society.

The whole period under consideration is furthermore characterized by rapid urbanization and related rural/urban migration. Yet, nowadays, more than 50% of the population in Yugoslavia (out of approximately 22 million) still lives in rural areas, which means that the level of urbanization is low, as compared to other European countries. Nevertheless, only 20% of the active population works in the agricultural sector. Of course there are marked differences between regions in this respect. In fact, disagrarization is quite marked despite the fact that the majority of the people still live in the country; this can be explained by the high daily migration to industrialized centres (commuters), and slower urbanization—in terms of spatial concentration and sectorial occupational allocation—than disagrarization.

The development of the Yugoslav penal system can also be divided into three distinct periods:

1945-1951: This period is characterized by the passing of a number of individual penal acts in order to regulate and protect the economic and political bases of the new socialist system. The Constitution of the Federal People's Republic of Yugoslavia was passed in 1946 as well as the General Part of the Criminal Code (1947) and the Code of Penal Procedure (1948). These two were the first systematic penal legislative acts. It should be noted that the Criminal Code was, to a great extent, inspired by the theory and experience of the Soviet Union. At the same time a number of individual legislative acts were passed, thereby expanding the penal legislation's special sections and creating solid basis for the formulation of a unified and comprehensive criminal legislation.

1951-1977: The new criminal code was passed in 1951 and it is considered the most important instance in the development of a democratic penal system. Progressive principles contained in the penal systems of some European countries were adopted, with emphasis on the principle of legality and negation of the principle of analogy. The Criminal Code underwent several revisions during this period. The 1959 reform introduced a number of important changes in the juvenile justice system inspired by the social defence movement. In the early sixties, types of punishment were reduced to five and security measures and judicial reprimand were also introduced. The new Constitution was passed in 1963. Further reforms took place in 1965, 1967 and 1969, while the reform of 1973 already paved the way to a new phase in the development of the penal system.

1977 to date: The new Constitution of the Socialist Federal Republic of Yugoslavia was passed in 1974 and as a result of adjust-

ments, the unified Criminal Code ceased to exist on 1 July 1977. In fact, the Federal Criminal Code was passed on 28 September 1976 while the Criminal Codes of the Republics and Autonomous Provinces were adopted on 1 July 1977. This meant that federal jurisdiction included the general part of the Criminal Code and a limited number of federal crimes. All other criminal offences are contained in the criminal codes of each constitutive unit of the Federation. Still, the unified Code of Penal Procedure is retained.

Main Characteristics of Socio-economic Development: 1973-1986

Socio-economic and cultural development are represented by the sets of variables. Their values are given for three points in time: 1973, 1980 and 1986. At a descriptive level the following characteristics are noted:

Demographic change: It is represented by a number of indicators all of which point out a relatively slow demographic growth on average, however, with drastic variations between regions; a slight trend towards decrease in fertility rate, infant mortality rate and number of registered marriages, and an increase in mortality rate.

Income and investments: The index of active basic assets at purchase value per inhabitant grew in the period 1973-1980 approximately three times faster than in the 1980-1986 period. A more drastic fall is registered in a latter period regarding the coefficients of growth in values. National income per inhabitant also registered drastic growth in the 1973-1980 period (2.82 times) and then a slight tendency towards decrease. The same tendencies are found in industry, mining and agriculture although the increase in agriculture was significantly lower. In the individual (private) sector of agriculture there was an increase in income per inhabitant, but two times lower than in the public sector of agriculture in the same period (1973-1980), followed by the downward trend in both sectors in the subsequent period. Investments in economy showed a high rate of increase in the first period (3.5 times) and then rapid fall in the 1980-1986 period, so that the value of investments in the basic assets of the public sector in 1986 dropped to only 71% of their real value in 1980. In addition, it is noted that both the yield of wheat and maze showed slight but constant increase in the whole period under consideration (an average of 2% yearly) although there were no substantial changes in terms of the areas of arable land.

Traffic and communication: The number of railway stations, the value of transport of goods by railway and the number of passengers showed a slight decrease in the 1973-1980 period and then an opposite trend in the period that followed. The number of post offices increased slightly over the fifteen-year period (10%). Only the number of passenger cars registered constant and drastic growth from 42.67 per 1,000 inhabitants in 1973 to 112.92 in 1986.

Supply of goods: This activity was measured on the basis of the number of stores and turnover. In the 1973-1980 period, the turnover increased much faster (about three times) than the number of stores; in the following period, the turnover decreased on an average of 0.5% real value per year.

Tourism: The number of beds used by domestic and foreign tourists grew constantly at an yearly average rate of approximately 3% with, nevertheless, differences between regions.

Housing construction: In the 1973-1980 period there was significant growth in public and total housing construction, while both investments in housing and number of houses decreased significantly in the 1980-1986 period.

Medical care: All parametres of medical care registered increases in the period under consideration, although it should be noted that the number of physicians grew much faster (6% annually) with respect to the number of hospital beds (1% annually).

Education: There were no substantial

changes in all parametres of education in the period under observation, except for the significant increase in the number of pupils in the secondary schools in the 1973-1980 period.

Culture: Developments in the sphere of culture were measured by a number of variables indicating cinema attendance and radio and TV subscribers. While there was constant, although slight decrease in the number of cinemas and in the attendance, the number of TV and radio subscribers rapidly increased in the 1973-1980 period following which the achieved level was maintained over the 1980-1986 period.

This summary presentation of the selected developmental variables highlights the existence of two clear trends. In the 1973-1980 period, growth continued in almost all developmental parametres with respect to the preceding period. For some of them, the rate of increased was highly marked. On the other hand, over the 1980-1986 period, the effects of economic crisis is clearly demonstrated by the downward trend in almost all developmental parametres except private transport.

Trends in Crime: 1973-1986

In the period under consideration, the number of final sentences passed in criminal proceedings in Yugoslavia more or less stagnated, showing a decrease in the rate of persons convicted, as compared with the 1960-1974 period. After a considerable fall in the number of final sentences recorded in the period 1978-1981, the number of persons convicted began to rise in 1982, primarily as a result of an increase in some forms of property, economic and traffic offences. In addition, there were some changes in substantive and procedural penal legislation that may have to some extent influenced the general crime picture. Thus, as of 1 July 1977, six Republican and two Provincial criminal codes have been enforced together with the Federal Criminal Code, all of which have introduced some new forms of economic offences and criminal violations of self-managing rights; there were also some changes regarding private penal action and obligatory conciliation proceedings.

The dynamics of adult crime in terms of the total number of adult persons convicted of criminal offences decreased up to 1979, followed by minor fluctuations until 1981, and a considerable increase after 1981, especially in 1984 (Table I in Annex).

The participation of women in the total number of persons convicted declined steadily throughout the entire period considered. However, in the last three years of the period, the number of women convicted increased but, in relative terms, was less than the number of men.

The structure of crime by kind of offence change (Table II in Annex). Thus, in 1975, the largest number of adults were convicted of offences against property (about 22% of the total number), followed by offences against life and limb (about 19%) and public transport safety (about 17%). Also in 1985, the largest number of convicted persons were found guilty of offences against property (about 30% of the total figure), followed by offences against public transport safety (about 18%), while the proportion of those convicted of offences against life and limb decreased (to approximately 14% of the total number).

The rise in the overall number of persons convicted over the last few years of the period under consideration as due to an increase in the number of offences against property; there was also an increase in the number of persons convicted of offences against the national economy. The number of persons convicted of offences against official duty and the general security of people and property also increased. On the other hand, there was a marked decrease in the number of persons convicted for offences against honour and reputation. This was, it is presumed, to a large extent due to obligatory conciliation procedure before concilia-

tion councils for perpetrators of offences on the basis of private action.

The period under survey also saw a decrease in the number of persons convicted for offences against civil liberties and human rights, and in the number of offences against public order and legal transactions.

In the total number of persons sentenced, the proportion of those convicted for political offences was small and, in addition, continued to decline, thus continuing the downward trend for this kind of criminality that began in the mid-seventies. Persons convicted for such offences accounted for approximately 0.5% of the total number of persons sentenced in 1975, and for approximately 0.2% of those sentenced in 1985. From 1977 to 1979 the number of persons convicted declined considerably. However, this figure increased suddenly in 1982, especially the number of those convicted for counter-revolutionary activities against the social order, hostile propaganda and association for purposes of hostile activity, as a result of unrest in the province of Kosovo.

The proportion of persons convicted of violent crimes from among the total number of persons sentenced, declined steadily. In 1975 it amounted to about 20% and ten years later to about 15% of the total figure. This decline was the result of a decrease in the number of persons convicted for light bodily injuries (approximately 32%), which otherwise accounted for the bulk (approximately 70%) of the total number of persons sentenced for offences against life and limb.

In addition, the number of persons convicted for the most serious offences falling within this group—such as: murder, voluntary manslaughter and grievous bodily injury—also decreased but to a lesser extent.

The number of persons convicted for economic offences increased in the period under survey both in absolute (44% in 1985 as compared to 1975) and relative terms (from 1/5 in 1975 to 1/3 of the total figure for 1985). Until 1978 this number declined steadily, but it increased considerably after that year. There was, in fact, an increase in the number of adults convicted for offences against social property and national economy, while the number of sentences for offences against official duty varied negligibly. Among criminal offences against the national economy, "issuing and passing of a bad cheque" and "forest theft" predominated (65%). The incidence of criminal offences against social property increased steadily. After a decrease in 1977 and 1978, the number of persons convicted for theft of social property rose steadily, topping, in 1985, by 83% the figure for 1975. The number of persons convicted for offences against official duty, which are also considered to be a form of economic criminality was, in contrast with the two former groups, rather stable until 1982, following which it increased in 1983, 1984 and 1985. There was, in fact, an increase in the number of persons convicted for abuse of official position, while the number of adult persons convicted for embezzlement in offices remained the same.

The marked increase in the number of various types of vehicles resulted in a considerable rise in the incidence of traffic offences. In 1953, for example, there were approximately 50,000 automobiles, buses and other motor vehicles on the Yugoslav roads as compared to over 3.4 million vehicles thirty years later. In addition, it should be borne in mind that Yugoslavia is an open-frontier country and transit territory for the Middle East countries and vice versa. All this has contributed to a rise in the number of traffic offences. The proportion of persons convicted for traffic offences, from among the total number of adult perpetrators, increased steadily until 1980 and then slightly declined. However, the consequences of such offences were considerable. Thus in 1954 a total of 429 persons were killed in traffic accidents, as compared to 4,105 in 1984. On the other hand, in 1984, approximately 500 persons died a violent death.

Penal policy is best illustrated by data on convicted persons by type of final sentence

(Table III and IV in Annex).

In the Yugoslav criminal law, death penalty is, according to the Constitution, applicable only for very serious forms of some of the most grievous crimes. In the period under consideration, altogether 39 death penalties were imposed, and the largest number of murders were committed out of greed or blood vengeance, followed by murders committed in a cruel and perfidious manner, and multiple homicide.

Throughout the entire period under consideration, 1/5 of the total number of persons convicted were sentenced to immediate prison terms. Most frequent were the lowest sentences—up to 12 months imprisonment (73% in 1977 to 81% in 1984; the largest number were sentenced to three/six months imprisonment).

There were negligeable changes in penal policy concerning the imposition of fines. Thus, in 1975, fines accounted for about 29% and in 1985 for approximately 37%. The proportion of reduced punishments amounted to ¼ and about 50% of this was accounted for by traffic offenders.

Suspended sentences accounted for almost 40% of the total number of sentences imposed, and suspended fines for 15% thereof.

The use of judicial admonition declined steadily while the number of educational measures (imposed upon young adults), although increasing, was quite small.

The proportion of security measures was rather small and ranged from about 4% in 1975 to about 5.5% in 1981. The most frequent security measure imposed on convicted adult persons was the withdrawal of the driving licence (63%); the second most frequent being prohibition from exercising a certain occupation, activity or duty, which is explained by the increase in the commission of economic offences.

In the period under consideration there was an increase in the number of measures calling for the compulsory treatment of alcoholics and drug addicts which shows the increased danger of this category of perpetrators, and also a rise in the number of alcoholics and drug addicts.

The table that follows summarizes the above-mentioned information using the mean (XA), standard deviation (SD) and the registered maximum in the population.

Table 1

Crime Category		1973	1980	1986
Offences against life and limb	XA	9.86	7.56	6.55
	SD	6.58	4.5	4.53
	max	43.25	25.70	31.50
Property crime	XA	8.62	9.22	14.58
	SD	7.55	6.67	13.39
	max	77.03	38.90	67.18
Economic crime	XA	5.25	4.59	7.88
	SD	5.18	3.84	9.51
	max	44.74	48.26	40.73
Sexual offences	XA	0.39	0.38	0.37
	SD	0.52	0.47	0.49
	max	2.80	2.88	2.87
Traffic offences	XA	7.32	11.11	8.66
	SD	7.31	7.66	5.72
	max	45.79	51.87	70.32
Other offences	XA	13.50	10.71	9.56
	SD	10.65	6.98	6.95
	max	101.87	62.54	50.16
Recidivism	XA	6.54	7.41	9.80
	SD	6.60	6.34	9.41
	max	51.35	33.64	102.07

Table 1 reveals the already noted trends in crime. Thus, offences against life and limb show constant decrease, while property crimes increase constantly. Both economic crime and traffic offences vary but in opposite directions: traffic offences increased while economic crime decreased between 1973 and 1980; the reverse trends (although slight) are noted in the 1980-1986 period. Only sexual offences exhibit constant rates throughout the period of examination. Finally, there is an increase in recidivism rate which can be attributed to its high association with property crime (0.77) and traffic offences (0.70).

Development and Crime: Interrelations

Examination of interrelationships between crime and individual developmental variables and prediction of certain crimes on the basis of development parametres.

As can be noted in Table 2, developmental variables are most significantly linked with property crime, with a predictive value as high as 70-79%. The trend is that of relatively mild stagnation during the period when developmental parametres increase, followed by the increase of property crime during the period of development recession. Developmental variables have a relatively strong predictive value for traffic offences and recidivism. Economic crime in both developmental periods shows solid links with parametres of development.

Table 2: Multiple Correlation and Coefficients of Determination: Development and Crime

Crime Category		1973	1980	1986
Offences against life and limb	Rm	0.49	0.55	0.56
	D	25%	30%	31%
Property crime	Rm	0.86	0.84	0.88
	D	74%	70%	79%
Economic crime	Rm	0.47	0.49	0.54
	D	22%	24%	29%
Sexual offences	Rm	0.58	0.51	0.48
	D	34%	26%	23%
Traffic offences	Rm	0.79	0.72	0.65
	D	62%	52%	42%
Recidivism	Rm	0.79	0.71	0.78
	D	62%	51%	61%

Rm: multiple correlation, D: prognostic value of factors

The association between discrete developmental variables and selected crime categories provides more detailed information on the above-mentioned trends. These results are presented in Tables V, VI, and VII in Annex.

Offences against life and limb are positively associated with just a few developmental variables that characterize rural areas (e.g. income) while developmental variables indicating standards of living typical of urban environment are negatively correlated with this crime category.

Property crime is more strongly associated with a number of developmental variables. Almost 50% of discrete developmental variables are significantly associated with property crime while some twenty developmental variables have, on average, above 0.50 correlation with property crime for all three years under consideration. From among discrete developmental variables, positive and significant correlations show, in particular, parameters of income, individual standards of living, social standard of living and intensive touristic activities. It should be noted that there is no single negative association between any developmental variable and property crime. In addition, only a few developmental variables have significant partial coefficients of correlation which indicate indirect links even for property crime which in turn, as noted, is most reflective of trends in development. This, of course, highlights the limits of macro-social explanation of the criminal justice phenomena.

Sexual offences which show almost a constant rate throughout the period under consideration are related to developmental parametres characterizing sites with intensive industrial development, but at the same time, located in a predominantly agricultural environment.

Traffic offences, as expected, are most significantly related with developmental parametres of social and individual standard of living. It is worth noting that the association between traffic offences and developmental parametres steadily declined over the 1973-1986 period; thus, for example, the correlation between the number of cars and traffic offences decreased from 0.69 in 1980 to 0.48 in 1986. Similar to property crime, none of the partial correlations was greater than 0.25, and the majority were of zero order, indicating indirect links.

The above findings may be summarized as follows:

—some crime categories "follow," to a certain extent, trends in development but exhibit also opposite variations. For example, during the period of upward trend in developmental parametres, property crime registered a slight increase which then became quite significant in the period of downward trends in development; decrease in economic crime during the former pattern of development and a significant increase over the latter one;

—some other crime categories exhibit more autonomy with respect to development, as exemplified by offences against life and limb and sexual offences;

—practically all links are indirect including those between property crime and development, which is otherwise most contingent, indicating the limits of a macro-social level of explanation;

—coefficients of association and prediction are lower on the level of discrete developmental variables with respect to the joint effects indicating the higher explanatory and predictive power of development as an integral process rather than its singular aspects. Yet, a particular configuration of developmental parametres (developmental profile) seems to possess some explanatory potential for particular crime categories.

These findings directed further analysis towards the structural level. Factorial analysis of developmental variables revealed the existence of several factors of development.

General factor of development comprises variables indicating standard of living and is defined by marked income, investments in health care, education, cultural institutions and employment in sectors of education, medical services, financial and trade agencies.

Factors of agricultural development describe typical agricultural environment defined by the size of land ownership, yields of agricultural products and income from agricultural activity in the private sector. In addition, lower natality rates and higher divorce rates also characterize this developmental profile. However, the structure of this factor appears to be differentiated in two additional subtypes. The first refers to public sector agriculture and the second to rather passive agricultural regions.

Development of tourism and urban development were also identified as distinct developmental factors. Urban development also had a differentiated structure comprising centres with developed health and cultural institutions network, those characterized by intensive housing construction, and finally, those which are also important transport and traffic sites.

The analysis of correlations (linear and partial) between developmental factors and crime indicates that only the general factor of development is significantly and meaningfully associated with certain crime categories. These associations are revealed in Table 3.

Table 3

Crime Category		1973	1980	1986
Offences against life and limb	R	-.14	-.25	-.19
	PR	-.01	-.16	-.14
Property crime	R	.68	.69	.69
	PR	.46	.40	.27
Economic crime	R	.04	-.02	-.13
	PR	.14	-.05	-.17
Sexual offences	R	.19	.13	.19
	PR	.03	-.01	.04
Traffic offences	R	.45	.48	.37
	PR	.14	.24	.16
Recidivism	R	.49	.50	.26
	PR	.22	.32	.19

R: linear correlation, PR: partial correlation

The association between the general factor of development and property crime is most significant and high as compared with other crime categories save traffic offences.

Furthermore, partial correlation indicates direct links with property crime. This association decreased in the period 1980-1986 although, as noted, there was a rapid increase in property crime in the period of development recession. This finding is strongly supported by trend analysis (for each separate year over the twenty-year period under consideration).

In addition to property crime and traffic offences, the general factor of development is also highly associated with recidivism, which, as already noted, is in itself highly correlated with property crime and traffic offences. Therefore, the general factor of development has significant predictive potentials vis-á-vis property crime, traffic offences and recidivism with coefficient of prognosis of 47%, 23% and 25% respectively.

The explanatory and predictive power of the general factor of development are negligible as regards offences against life and limb, sexual offences and economic crime, with either negative or insignificant coefficients of correlation.

Due to the differentiated structure of the agricultural development factor, its explanatory potential is reduced. Areas with developed agriculture in the private sector tend to be associated with property crime (R = 0.26; PR = 0.27), sexual offences (R = 0.24; PR = 0.19) and traffic offences (R = 0.20; PR = 0.21). On the other hand, in regions characterized by developed agriculture in the public sector, negative low but significant association is found with offences against life and limb (R = 0.22; PR = 0.25) and, inversely, positive with property crime (R = 0.18). Other crime categories are not significantly associated with this developmental factor.

Factors coined "development of tourism" and "urban development" are significantly but mildly associated with property crime and traffic offences.

The advantage of factorial structural analysis seems to be reflected more in terms of the characterization of different developmental profiles and their links with certain forms of crime rather than in terms of prediction. This is revealed in Table 4.

Table 4: Multiple Correlation and Coefficients of Determination between Factors of Development (Orthoblique Solution) and Crime

Crime Category		1973	1980	1986
Offences against life and limb	Rm	0.39	0.40	0.36
	D	15%	16%	13%
Property crime	Rm	0.82	0.77	0.83
	D	67%	60%	63%
Economic crime	Rm	0.32	0.23	0.34
	D	12%	5%	11%
Sexual offences	Rm	0.43	0.32	0.32
	D	18%	10%	10%
Traffic offences	Rm	0.60	0.68	0.47
	D	36%	47%	19%
Recidivism	Rm	0.66	0.60	0.44
	D	44%	36%	19%

Rm: multiple correlation, D: prognostic value of factors

By comparison of prognosis of crime on the basis of discrete development variables and sets of variables (OBQ factor) a systematic reduction in prediction is noted. One of the possible explanations could be that a number of significant developmental variables are excluded from the separated sets, which lead to a decrease in the predictive capacity of the system. Nevertheless, the general factor of development has a much higher predictive potential than any other factor.

An attempt towards exploration of predictive potentials of the developmental variables lead to a canonical analysis of factors for 1980. While seven pairs of factors were identified, only the first pair provided significant results, as presented in Table 5.

The developmental component of the first pair (on the left hand side) refers to development defined in terms of the parameters of the standard of living. This may be identified as predominantly of economic nature

Table 5: First Pair of Canonical Factors, 1980

Variables of Development	Loading	Crime Variables	Loading
Income	.82	Property	.92
Turnover in trade	.85	Recidivism	.71
Number of automobiles	.77	Traffic	.63
Number of radio apparatuses	.75	Conditional sentences	.61
Number of TV appliances	.82	Security measures	.61

although, for the lack of better indicators, the use of radio and TV sets contains elements of cultural life. The crime component (on the right hand side) refers to crime categories which are most significantly connected with the developmental set. Again, property crime, traffic offences and recidivism associate with development; furthermore, the possibility of property crime prognosis on the basis of the given configuration of developmental variables is as high as 85%. In addition, both offences against life and sexual offences are absent, indicating their possible linkage with different configurations of developmental variables.

The second pair of canonical factors indicates a developmental configuration comprising parameters of demographic growth, developed agriculture in the public sector and developed transport. However, all links with crime categories are low, save negative association with offences against life and limb.

Other canonical pairs present a variety of developmental profiles with rather low projections on crime categories.

Concluding Remarks

The preliminary analysis and presentation of the results thereof are primarily of descriptive character. Moreover, the analysis aims at outlining certain major trends and characteristics of the interrelation between development and crime. Thus, through description and noting of trends it directed both further data analysis and its integrated interpretation. In fact, the preliminary analysis is more exploratory than explanatory.

This is so because of its preliminariness and because of the limits set by the type of data used and models of data analysis applied. An integrated interpretative reading must be based on a number of additional information coming from the economy, social policy, crime policy and penal law. This integrated interpretation cannot be based solely on quantitative data and quantitative type of data analysis. Furthermore, limits stem also from the fact that the preliminary analysis considers only three points in time (1973, 1980 and 1986) over the twenty-year period. Another limit emerges from the fact that one of the central hypothesis of the study regarding the relationship between development and crime in a more dynamic perspective (rhythm and disproportions), is not fully tested in the preliminary analysis. As noted in the introduction, further work is needed in order to elaborate and validate some of the otherwise interesting findings in this respect. Perhaps the most serious shortcoming of this preliminary analysis is the lack of clear empirical references as to the concrete municipalities which exhibit distinct developmental profiles and/or levels of corollary crime types. Only such concrete empirical references would enable meaningful integrated interpretation of the results. Finally, some of the problems noted at the beginning of this paper also set limits not only to the preliminary analysis but to the whole research endeavour.

Although the primary goal of the preliminary analysis was to explore the capacities of the methodological model adopted for this study, some significant tendencies regarding the relationship between development and crime can be noted.

The general picture of this relationship in Yugoslavia shows that neither intensive development (upward increase of developmental parameters) nor recession in development

(downward trend of developmental parameters) have, in general, lead to significant increase or decrease in crime. This is supported by the preliminary results regarding rhythm and disproportions in development and their effects on crime; a trend only noted and still requesting further investigation.

However, a more detailed analysis indicated significant variations within this overall picture.

With regard to crime, it is demonstrated that property crime is increasing while offences against life and limb are decreasing. Recidivism, which is closely connected with property crime, is also increasing. Traffic offences and economic crime show different patterns in different time periods—the former increasing and then decreasing, the latter decreasing and then increasing. Sexual offences have kept constant and low rates throughout the period under observation.

The interrelation between development and crime is not universal nor unidirectional, at least not in terms of direction of trends in development and crime. Some crime categories "follow," to a certain extent, the trends in development but also exhibit significant variations in direction. Thus, during the period of intensive upward trends in development (1973-1980), property crime has registered a slight increase, followed by significant growth in rates over the period of socio-economic crisis (1980-1986); economic crime showed a reverse trend in the former developmental period and then the same upward trend as property crime in the developmental period characterized by socio-economic slowing down and crisis. Other crimes exhibited more "autonomy" in their trends with respect to trends and characteristics of development, as exemplified by offences against life and limb and even more so by sexual offences. Similarly, but to a lesser extent, such "autonomy" is present with traffic offences, although, while the association between these offences and development declined over time, traffic offences are most significantly related with developmental parameters exhibiting social and individual standards of living.

Notwithstanding these significant variations in directions, it is important to keep in mind that the preliminary analysis seems to support the hypothesis that the determination of the relationship between development and crime is at approximately the same level throughout the whole period. While, as already mentioned several times, this indication needs further methodological elaboration, it also requests significant interpretative efforts. At present it certainly indicated at least the limits of the macro-social analysis applied to the relationship between development and crime, and consequently, the "autonomy" of criminal justice phenomena with respect to social change processes, particularly when the latter are methodologically treated in such a way as to exclude the impact of changes in the criminal justice system's behaviour. The discourse on the autonomy is also complicated by the consideration that "crime" cannot be explained away solely, nor predominantly, on a macro-level; *inter alia* evidentiated by the indirect links between macro-social processes of change and the criminal justice phenomena.

Analysis of developmental variables either in a discrete form or as factors of development and their relationship with crime categories revealed convergent results. While the predictive potentials of developmental categories are higher when the joint effects of all discrete variables are measured, the reduction of variables in the form of developmental factors did not significantly lower the system's predictive capacity. Thus, the general factor of development seems to be appropriate for the analysis of the macro-social level influences. Yet, this appears to hold true only for some crime categories, and in particular, property and economic crime, which, in any case, stand in a "dependency" position vis-á-vis developmental profiles, as compared to other more "autonomous" crimes. However, the identification of developmental factors indicates the possibili-

ties of taxonomisation of concrete territorial units (municipalities) on the basis of the level and socio-cultural and economic structure of the factors. This, it is expected, could enable identification of distinct developmental profiles and corollary crime types. Furthermore, it would provide a concrete empirical reference and meaningful basis for integrated interpretation.

The results of the preliminary analysis indeed provide important insights into the complexity of the subject matter. Some of the indicated findings have quite interesting theoretical implications and are in need of further reflection. Similar considerations apply to the methodological model adopted although its basic explanatory potentials and limits were already tested.

In addition to responding to the research-related objectives, as identified by the Project Document, the work carried out so far also fulfilled some of the objectives pertaining to the field of technical assistance. These mainly consist of the collection and systematization of an enourmous quantity of developmental and criminal justice information, which lead to the creation of a specific developmental and criminal justice data-base for the twenty-year period. such data-base did not exist in Yugoslavia before this research project started and its research and policy use potentials are, without any doubt, of great significance. Moreover, this project brought together experts from different fields and stimulated the identification and adoption of an appropriate methodology for the systematic collection, evaluation and analysis of developmental and criminal justice data. In itself, this may be considered an important achievement of this joint research endeavour. It is also an example of research-related technical assistance between the UN body (UNICRI) and national research and governmental authorities within the context of international co-operation in crime prevention and criminal justice.

Annex

Table I: Adults Convicted*

Year	Total Number			Of Which Women	
	Number	Chain Indices	Rate per 1,000 Adult Population	Total	Percentages
1975	115,649	100	7.8	17,989	15.6
1976	113,576	98	7.6	17,163	15.1
1977	107,398	94	7.1	16,309	15.2
1978	93,880	87	6.1	14,078	15.0
1979	94,395	101	6.0	13,311	14.5
1980	98,865	105	6.3	13,533	13.7
1981	98,213	99	6.2	13,078	13.3
1982	104,317	106	6.5	13,980	13.4
1983	107,759	103	6.7	14,454	13.4
1984	113,655	106	6.9	15,406	11.5
1985	107,593	95	6.5	14,808	13.8

*Tables I to IV reproduced from: D. Cotic, S. Mrkic, "Criminality and Basic Characteristics of Penal Policy, 1975–1985," *Yugoslav Survey*, 1987, pp. 41–62.

Table II: Adults Convicted, by Kind of Offence, 1975–1985

Year	Total	Offences against										
		State Order and Security	Life and Limb	Civil Liverties and Rights	Honour and Reputation	National Economy	Property	General Safety of Persons and Property	Public Traffic Safety	Public Order and Legal Transactions	Official Duty	Other
1975	115,649	543	22,835	3,399	17,705	9,355	26,275	1,119	20,096	6,065	3,958	4,299
1976	113,576	589	21,466	3,078	16,476	8,002	28,129	1,156	19,803	6,085	4,284	4,508
1977	107,398	398	19,621	2,818	14,798	7,406	26,538	1,171	20,188	5,481	4,464	4,515
1978	93,880	119	16,540	2,087	13,401	6,613	20,780	1,099	20,438	4,976	3,937	3,890
1979	94,395	114	15,690	2,089	12,059	6,643	20,854	1,194	23,021	4,601	4,063	4,067
1980	98,865	177	15,605	2,089	10,428	7,803	23,143	1,311	24,996	5,049	4,036	4,201
1981	98,213	202	14,353	1,790	9,405	10,109	23,848	1,405	24,235	4,752	4,083	4,031
1982	104,317	431	14,409	2,005	9,829	12,291	26,336	1,478	24,207	4,649	4,109	4,373
1983	107,770	255	15,233	2,231	10,164	12,420	28,655	1,645	23,435	4,975	4,532	4,225
1984	113,655	295	15,749	2,260	9,938	13,125	33,046	1,638	23,200	5,115	4,821	4,459
1985	107,593	199	15,209	2,271	9,391	12,798	32,338	1,536	19,384	5,153	4,941	4,373
		Percentage Composition (%)										
1975	100.0	0.5	19.7	2.9	15.3	8.1	22.7	1.0	17.4	5.2	3.5	3.7
1980	100.0	0.2	15.8	2.1	10.5	7.9	23.4	1.3	25.3	5.2	4.1	4.2
1985	100.0	0.2	14.1	2.1	8.7	11.9	30.1	1.4	18.0	4.8	4.6	4.1

Table III: Adults Convicted by Kind of Sanction

Year	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
Grand Total	115,649	113,576	107,398	93,880	94,395	98,865	98,213	104,317	107,770	113,655	107,593
Death penalty	3	1	4	7	6	4	5	–	3	1	3
Unsuspended imprisonment – Total	26,901	28,071	25,009	20,621	21,271	21,221	21,520	20,892	23,943	24,778	23,067
20 years	20	16	23	20	24	23	10	11	17	24	19
15 years	10	29	.....	18	21	8	3	4	5	8	18
10 to 15 years	187	208	227	160	172	141	160	131	165	131	132
5 to 10 years	545	606	624	470	454	458	455	447	503	466	423
2 to 5 years	1,991	2,225	2,272	1,753	1,788	1,672	1,900	1,738	1,806	1,842	1,775
1 to 2 years	2,905	2,936	3,605	2,229	2,394	2,319	2,498	2,286	2,412	2,453	2,393
6 to 12 months	4,983	5,038	3,681	3,639	4,020	3,956	3,979	3,719	4,156	4,028	3,981
3 to 6 months	6,371	6,973	6,140	4,723	6,419	5,730	5,690	5,634	6,652	7,075	6,643
2 to 3 months	4,215	4,488	3,871	3,103	3,414	3,393	3,551	3,709	4,342	4,532	3,874
1 to 2 months	2,278	2,824	2,403	2,034	1,977	2,077	1,780	1,820	2,242	2,503	2,275
Up to 30 days	2,887	2,728	2,163	3,472	1,588	1,434	1,494	1,393	1,643	1,716	1,534
Unsuspended fine – Total	33,156	32,053	30,957	28,098	30,068	32,060	31,523	35,948	37,719	40,949	39,666
Suspended sentences – Total	52,481	50,768	48,744	42,681	40,712	43,250	43,103	45,945	44,088	45,956	42,727
Imprisonment	44,399	43,651	42,078	35,889	35,279	38,346	38,903	40,960	40,293	42,031	38,742
Fine	8,082	7,135	6,666	6,792	5,433	4,904	4,200	4,985	3,795	3,925	3,985
Judicial admonition	3,050	2,632	2,642	2,362	2,207	2,177	1,838	1,822	1,821	1,681	1,890
Found guilty, punishment remitted	51	18	34	88	116	138	200	137	147	218	202
Educational measures	6	9	6	26	16	26	26	26	49	72	38

Table IV: Adjudicated Adults by Kind of Measure Administered

Year	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
Total	4,097	4,337	5,143	4,194	5,017	5,218	5,309	5,525	5,682	5,233	4,577
Compulsory psychiatric treatment on an outpatient basis	.....	.....	6	48	73	61	45	24	53	57	42
Compulsory psychiatric treatment in an institution	23	32	42	37	40	47	47	31	39	46	33
Compulsory treatment of alcoholic and drug addicts	361	348	373	317	318	437	485	515	515	543	523
Prohibition from exercising an occupation, activity or duty	753	991	1,048	790	835	697	764	690	864	802	765
Withdrawal of driving licence	2,146	2,170	2,421	2,204	2,871	3,197	3,305	3,635	3,479	3,260	2,672
Prohibition from appearing in public	3	10	4	5	3	6	10	4	5	5	5
Expulsion of foreigners from the country	40	39	63	22	67	32	21	24	77	44	39
Confiscation of objects	771	747	1,186	771	810	741	632	603	650	476	498

Table V: Correlations between Variables of Development and Crime Variables (Statistically Significant Coefficients), 1973

Offences against Life and Limb		Property Crime		Economic Crime		Sexual Offences		Traffic Offences		Recidivism	
OSNAC	R-.24	TRGPRO	.75	OSKUC	.23	PRIPSN	.23	AUTI	.69	AUTI	.61
	PR-.12		.14		–		–		.26		–
DOHSEL	R .21	DOHDRU	.73	OSNAC	.22	PRIKUK	.24	DOHDRU	.61	DOHDRU	.61
	PR –		.15		–		.14		–		.17
POVVOC	R .19	DOHTRG	.70	RADIO	-.21	ZANRAD	.27	TRGPRO	.57	TRGPRO	.60
	PR-.14		–		–		.16		.19		.19
AUTI	R-.17	AUTI	.63	TV	-.16	DOHIND	.32	RADIO	.55	RADIO	.52
	PR-.12		–		–		–		–		–
DECA	R-.22	TV	.63	MRTVI	-.21	INRAD	.28	TV	.54	TV	.49
	PR –		–		–		–		–		–
POSBIO	R-.16	TRGRAD	.68	MRODOJ	.18	AUTI	.27	DOHIND	.48	DOHTRG	.51
	PR –		–		–		–		–		–
STANOV	R-.16	OSSSRD	.62	OSSKOL	.16	RADIO	.27	DOHTRG	.47	DOHIND	.46
	PR –		–		–		–		–		.13
PROPUT	R –	OSSPR	.62	PRIKUK	-.19	TV	.26	INVPR	.45	INVPR	.46
	PR .12		–		–		–		–		-.11
		INVPR	.58	PRIPSN	-.17	OSKUC	-.26	ZANRAD	.43	TRGRAD	.44
			-.13		–		–		–		-.14
		RADIO	.60			PRODAV	.17	SAORAD	.42	INRAD	.43
			–				.12		–		–
		TURUK	.47			MRODOJ	-.17	TRGRAD	.41		
			.15				–		–		
		DOHIND	.46			DJECA	-.16	INRAD	.44		
			-.13				–		–		
Multiple correlat.	.55		.84		.49		.51		.72		.71
Determin.	.30		.70		.24		.26		.52		.51

R: linear correlation, PR: partial correlation.

Legend for Tables V, VI and VII

1. ECONOMIC VARIABLES

Number of workers in public sector (per 1,000 inhabitants):

INRAD	v1 –	industry and mining
POLJRAD	v2 –	agriculture, foresty and water resources
GRARAD	v3 –	construction
SAORAD	v4 –	traffic and communications
TRGRAD	v5 –	trade and hotel business and catering
ZANRAD	v6 –	crafts and communal activities
FINRAD	v7 –	financial and other services

Active basis assets at purchasing value (1,000 dinars per inhabitant):

OSSSED	v8 –	total
OSSPR	v9 –	activities in economy

National income (1,000 dinars per inhabitant):

DOHDRU	v10 – public sector
DOHPRV	v11 – individual sector
DOHIND	v12 – industry
DOHAGR	v13 – agriculture
DOHTRG	v14 – trade and hotel business and catering
DOHOST	v15 – other activities
DOHSEL	v16 – individual sector in agriculture

Realized investments in basis assets of public sector (100 dinars per inhabitant):

INVPRV	v17 – economy
INVRDU	v18 – non-economy
PRIPSN	v19 – yield of wheat per hectar in tons
PRIKUK	v20 – yield of maize per hectar in tons
DRVO	v21 – volume of wood in 1,000 m^3 per km^2 of surface area
SECSUM	v22 – felling of woods in m^3 per hectar of surface area
GRADNJ	v23 – accomplished construction works in 1,000 dinars per inhabitant
	v24 – number of freight vehicles per 1,000 inhabitants

Sale of agricultural products in 1,000 dinars per inhabitant:

OTPOLJ	v25 – total
	v26 – sales

Hotel business and catering per 1,000 inhabitants:

HOTELI	v27 – business units
HOTKRV	v28 – number of beds
HOTPRO	v29 – turnover in mil. of dinars

2. ECOLOGICAL VARIABLES

POVRS	v30 – surface of municipality in km^2
POVORA	v31 – agricult. surf. – plough fields and gardens in hectars/hectars of municipality surface
POVVOC	v32 – agricult. surf. – orchards in hec/hec municipality surface
POVVIN	v33 – agricult. surf. – vineyards in hec/hec municipality surface
POVLIV	v34 – agricult. surf. – meadows and pastures in hec/hec municipality surface
	v35 – surface under woods in hec/hec municipality surface

3. TRAFFIC AND COMMUNICATIONS (per 1,000 inhabitants)

STANIC	v36 – number of railway stations
ZEPROM	v37 – turnover of goods in railway stations in 1,000 tons

POSTE	v38 – number of post offices
PROPUT	v39 – turnover of passengers in railway stations (departed)
AUTI	v40 – number of passenger cars

4. TOURISM (per 1,000 inhabitants)

TURUK	v41 – number of tourists (total)
TURSTR	v42 – number of tourists (foreign)
NOCUK	v43 – number of lodgings (total)
NOCSTR	v44 – number of lodgings (foreign)

5. EDUCATION (per 1,000 inhabitants)

OSSKOL	v45 – number of elementary schools
OSUC	v46 – number of pupils in elementary schools
OSNAS	v47 – number of teachers in elementary schools
SEEUC	v48 – number of pupils in high schools
VANPRI	v49 – budget expences of non-economic activities (education)

6. CULTURE

BIBLIO	v50 – number of peoples' libraries per 1,000 inhabitants
BOOKS	v51 – number of books in libraries, per 1,000 inhabitants
BIOSK	v52 – number of cinemas per 1,000 inhabitants
POSBIO	v53 – number of cinema visitors per inhabitant
RADIO	v54 – number of radio subscribers per inhabitant
TV	v55 – number of TV subscribers per inhabitant

7. MEDICAL AND SOCIAL CARE (per 1,000 inhabitants)

BOLPOS	v56 – number of patients' beds
LEKARI	v57 – number of physicians and dentists
	v58 – number of independent medical organizations (without pharmacies)
PARZDR	v59 – budget expences for health care
	v60 – budget expences for social assistance

8. HOUSING AND LEVEL OF URBANIZATION

Accomplished construction works (1,000 dinars per inhabitant):

STANOV	v61 – public sector (total)
STAIZG	v62 – housing construction
STIDR	v63 – housing construction in public sector

Number of constructed apartments (per 1,000 inhabitants):

UKIZDR	v64 – total
IZSDR	v65 – public sector
PRODAV	v66 – number of shop
TRGPRO	v67 – turnover in retail trade (in mil. of dinars)

9. DEMOGRAPHIC VARIABLES

PEOPLE	v68 – number of inhabitants in total (evaluation)
SKLBRA	v69 – number of registered marriages per 1,000 inhabitants
RAZBRA	v70 – number of divorces per 1,000 inhabitants
CHILDREN	v71 – number of live births per 1,000 inhabitants
DEEADEAD	v72 – number of deaths per 1,000 inhabitants
MRODOJ	v73 – infant deaths per 1,000 live born births

Table VI: Correlations between Variables of Development and Crime Variables (Statistically Significant Coefficients), 1980

Offences against Life and Limb		Property Crime		Economic Crime		Sexual Offences		Traffic Offences		Recidivism	
POVVOC	R .28	TRGPRO	.69	SAORAD	.15	RAZBRA	.24	DOHDRU	.47	TRGPRO	.53
	PR .19		.17		.11		.11		.17		.18
HOTELI	R-.27	DOHDRU	.66	DECA	.11	POVOOC	.19	AUTI	.41	AUTI	.48
	PR -		-		.15		.16		-.11		-
DOHDRU	R-.25	TV	.66			BIBLIO	.19	MRTVI	.35	PARZDR	.38
	PR -		-				.11		.22		.19
TRGPRO	R-.24	RADIO	.62			RADIO	.22	RAZBRA	.35	RAZBRA	.37
	PR -		-				-		.12		.15
AUTI	R-.23	AUTI	.61			PRIPSN	.19	DOCHIND	.31	PROPUT	.29
	PR -		-				-		-.15		.11
TELEV	R-.22	DOHTRG	.56			OSSKOL	-.19	TV	.50	LEKARI	.24
	PR -		-.13		-		-		-		-.14
OSSSRD	R-.22	OSSRD	.56			STIZDR	.17	RADIO	.46	INVPR	.20
	PR -		-				.13		-		.14
DOHTRG	R-.21	OSSPR	.53			ZUNRAD	.16	TRGPRO	.50	TURUK	.17
	PR -		-				-		-		.14
VANPRO	R-.21	DOHOST	.52			PRIKUK	.16	DOHTRG	.40	NOCSTR	.12
	PR -		-				-		-		.10
POSBIO	R-.21	DOHIND	.51			AUTI	.15				
	PR -		-				-				
Gradnja	R-.20	HOTELI	.50			DOHPRV	.14				
	PR -		-				.12				
INRAD	R .13	POSTO	.51								
	PR-.12		.15								
Multiple correlat.	.55		.84		.49		.51		.72		.71
Determin.	.30		.70		.24		.26		.52		.51

R: linear correlation, PR: partial correlation

Table VII: Correlations between Variables of Development and Crime Variables (Statistically Significant Coefficients), 1986

Offences against Life and Limb		Property Crime		Economic Crime		Sexual Offences		Traffic Offences		Recidivism	
POVVOC	R .26	TRGPRO	.78	SREUC	.25	TRGRAD	.24	TRGPRO	.34	TRGPRO	.64
	PR .13		.15		.11		–		.12		.12
DJECA	R–.21	DOHDRU	.73	OSKUC	.22	DOHDRU	.24	MRTVI	.25	DOHDRU	.58
	PR–.12		–		.11		–		.13		–
TV	R–.20	VANPRI	.71	LEKARI	.17	DOHTRG	.24	DOHIND	.25	LEKARI	.49
	PR–.13		.17		.14		–		–.13		–.13
OSSKOL	R .18	PARZDR	.71	DJECA	.17	TRGPRO	.22	OSSSRD	.21	PARZDR	.57
	PR .10		.21		–		–		–.17		.19
OSSSRD	R–.18	DOHTRG	.69	AUTI	–.16	TURUK	.21	OSSPR	.20	VANPRI	.55
	PR –		–		–.10		–		.17		–
OSSPR	R–.18	RADIO	.57	OSNAC	.15	RADIO	.21	PARZDR	.18	AUTI	.52
	PR –		–		–		–		.13		–
DOHDRU	R–.18	LEKARI	.66	SESUM	.12	POSSIO	.20	STIZDR	.15	DOHTRG	.49
	PR –		–		.19		–		–.13		–
AUTI	R–.18	POSSIO	.61			AUTI	.19	NOCUK	.12	RADIO	.47
	PR –		–				–		.15		–
OSKUC	R–.18	ZANRAD	.58			IZSTDR	.19	OSSKOL	–.08	PROPUT	.44
	PR .10		–				–		.15		–
STIZDR	R–.17	TRGRAD	.52			OSSSRD	.18	NOCSTR	.07	ZANRAD	.44
	PR –		–				–.12		–.16		–
DOHTRG	R–.16	TV	.54			PARZDR	.18	PRODAV	.03	INRAD	.33
	PR –		–				.17		–.16		.10
DOHSEL	R .15	INRAD	.37			OSSPR	.17			MRTVI	.28
	PR –		.12				.12				.19
Multiple correlat.	.56		.88		.54		.48		.65		.78
Determin.	.31		.79		.29		.23		.42		.62

R: linear correlation, PR: partial correlation

The National Strategy of the Philippines to Reduce Crime in the 1980's

by Reynaldo J.D. Cuaderno *

Casual factors in criminality and social disorders are so numerous and occur in such an infinite variety of combinations that their isolation and analysis become extremely difficult. Genetic inheritance, behavior, imprinting during infancy and early childhood, family relationships, social interaction, and community and institutional influences have varied effects on the personality and behavior of individuals. The prevention of criminality, therefore, cannot be the exclusive task of one community agency.[1] Concepts of cause, related to such issues as genetics, economics, cultural values, criminal associations, education, recreation, and family life, have been espoused, but none seems to answer the question, Why?[2]

The goals of crime control are not simply to produce uniformity of conduct but to anticipate and, so far as possible, to direct or manage the processes of social change. If the task is more difficult today than before, it is largely because of the increasing disparities in people's beliefs, interests, practices, and resources.[3]

Dealing with crime and delinquency is a pervasive, complex and difficult social problem. The extent of crime in different countries and the means to control the same are matters of great importance for social planners and policy makers. The debates over these issues remain the concern of all.

In Radical Nonintervention: Rethinking the Delinquency Problem, Professor Edwin Schur argues that any attempts to bring about change in the nature or extent of crime in our society should focus not so much on the offender, in the manner of the positivistic tradition, but upon the structure of the criminal justice system and how it might inadvertently contribute to the creation and maintenance of crime.[4]

The Concept of the Criminal Justice System

The Criminal Justice System is the institution charged with direct responsibility for the prevention and control of crime.[5]

The Criminal Justice System has been defined as the enforcement, prosecution, defense, adjudication, punishment, and rehabilitation functions carried out governmentally with respect to penal sanctions.[6] The Criminal Justice System consists of three identifiable components, each operating within its own sphere of influence and communications. These three components can be categorized generally as Police, Court and Corrections—or in systems terminology, the input, process, and output components.[7] It is commonly assumed that these three components—law enforcement (police, sheriff, marshals), the judicial process (judges, prosecutors, defense lawyers) and corrections (prison officials, probation and parole officers)—add up to a system of criminal justice.[8]

Criminal Justice is mostly concerned with the decision process in the crime control agencies of police, prosecutors' offices, trial courts, and correctional facilities, and in programs like probation and parole.[9]

The U.S. National Advisory Commission on Criminal Justice Standards and Goals identifies two (2) kinds of systems in crimi-

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nal justice administration, namely *Criminal Justice System 1* which pertains to the traditional series of agencies that have been given the formal responsibility to control crime: police and sheriffs' departments, prosecutors and their staffs, defense offices, judges, jails and prisons, and probation and parole agencies; and *Criminal Justice System 2*, the larger criminal justice system encompassing the many public and private agencies and citizens who are involved with issues related to crime reduction and prevention, plus the traditional triad of police, courts and corrections.[10]

Criminal Justice 1 is an overt system, the one seen every day in operation, the one customarily understood and referred to in crime and delinquency literature. On the other hand, our Congress, for example, becomes part of the larger criminal justice system when it considers and debates any proposed law that might affect, even remotedly, any area of criminal justice activities. So also the executive agencies of the State, educational administrative units, welfare departments, youth service bureaus, recreation agencies, and other public officers become a part of Criminal Justice System 2 in many of their decisions and actions related to crime prevention and control.

The Criminal Justice System in the Philippines

The Philippines considers its Criminal Justice System as a conglomeration of five (5) vital components, commonly referred to as the five (5) pillars of the Criminal Justice System, namely: law enforcement, prosecution, courts, corrections and the community. Specifically, the community pillar encompasses private groups and citizens who perform certain functions which are related to the purposes and objectives of the components of the formal criminal justice system. At the time that these community organizations or individuals perform related criminal justice activities, they become part of the criminal justice system.

In the Philippines, members of the community in each *"barangay"* (the smallest political unit of the country) usually organize themselves into neighborhood action groups called "rondas" for purposes of crime prevention activities. This has been given impetus recently with the issuance by the President of the country of a directive[11] authorizing each *barangay* head (called *barangay* captain) to organize a "Neighborhood Support Group" that shall play the role of assisting the policemen assigned to his community and monitoring the performance of said policemen.

Significantly, the Philippines has formally organized and institutionalized[12] a system of amicably settling disputes at the community or *barangay* level in order to help relief the courts of docket congestion. For this purpose, conciliation bodies, known as *"Lupong Tagapayapa"* have been created in each *barangay,* composed of the *barangay* captain as chairman and not less than ten (10) nor more than twenty (20) members. For each dispute brought before said conciliation body, a conciliation panel, known as Pangkat ng *"Tagapagkasundo,"* is constituted, consisting of three (3) members chosen by agreement of the parties to the dispute from the list of membership of the conciliation body. The jurisdiction of the aforesaid *barangay* conciliation body extends to all forms of disputes, except offenses punishable by imprisonment exceeding 30 days or a fine exceeding P200.00. No complaint involving any matter falling within the jurisdiction of the *barangay* conciliation body can be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before said body and no conciliation or settlement has been reached as certified by the said body.[13]

In effect, the community participates in the task of justice administration in the Philippines through the foregoing activities.

Need for Systematization of the Criminal Justice Network

One of the principal barriers to systematization of the network of criminal justice agencies is that of intramural conflicts among the various components. These conflicts lie in the differing roles and goals of the police, prosecution, courts and correctional agencies, even though all are supposed to be concerned with the "formal responsibility to control crime." The need for cooperation among concerned agencies appears to be indisputable, but the ways in which they should be working together and developing consensual philosophies and goals are not always clear. The President's Crime Commission in the United States (Task Force Report: Science and Technology, 1967: 53) puts in this way:

> Police, courts and corrections officials all share the objective of reducing crime. But each uses different, sometimes conflicting, methods and so focuses frequently on inconsistent sub-objectives. The police role, for example, is focused on deterrence. Most modern correctional thinking, on the other hand, focuses on rehabilitation and argues that placing the offender back into society under a supervised community treatment program provides the best chance for his rehabilitation as a law-abiding citizen. But community treatment may involve some loss of deterrent effect, and the ready arrest of marginal offenders, intended to heighten deterrence, may be affixing a criminal label complicate rehabilitation. The latent conflicts between the parts may not be apparent from the viewpoint of either subsystem, but there is an obvious need to balance and rationalize them so as to achieve optimum overall effectiveness.[14]

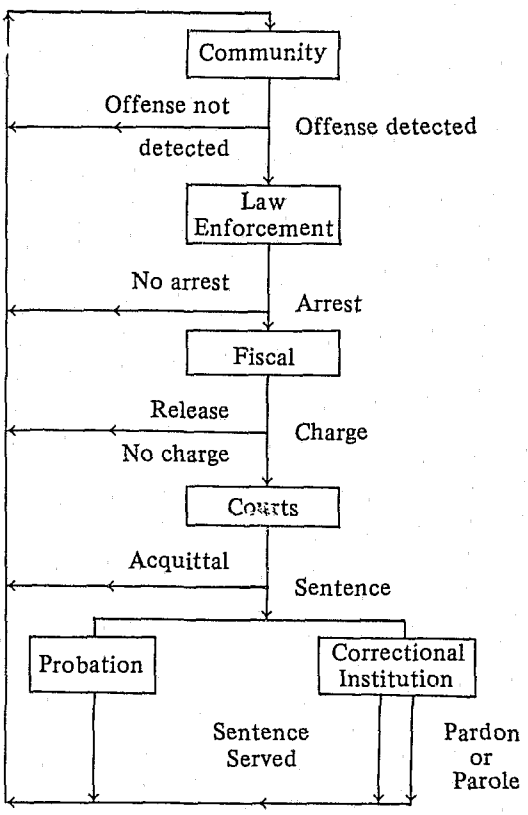
The same need to synchronize criminal justice administration has long been felt in the Philippine setting. The administration of criminal justice in the Philippines involves hundreds of agencies which function within their own distinctive organizations and specialized work patterns, sometimes working toward common goals but more often toward the accomplishment of their individual objectives. Often times, these agencies work within separate spheres with an apparent disregard for the many other spheres within the system. A significant number of these agencies involved in the Philippine criminal justice administration either fail to relate to each other in a meaningful manner or work at cross-purposes with each other.

System Approach to Crime Prevention and Control in the Philippines

Walter Buckley, a well-known authority on systems theory defines a system as a complex of elements or components directly or indirectly related in a causal network, such that each component is related to at least some others in a more or less stable way within any particular period of time. The more or less stable interrelationships of components that become established at any time constitute the particular structure of the system at that time, thus achieving a kind of "whole" with some degree of continuity and boundary.[15]

While there are considerable disagreements concerning models, theories and concepts associated with the notion of "systems," all seem to agree that a systematic approach to organizational study must address such issues as interrelationships and goals. Without an understanding of how individuals and organizations relate to and among each other and without an understanding of the significance of goals, we cannot possibly understand the administration of criminal justice and its myriad of problems, conflicts, issues and services.[16] The Criminal Justice System Flow model appears in Figure 1.

Fig. 1: The Criminal Justice System and Main Flows



As early as 1976, the National Police Commission, a government agency mandated by law to supervise and regulate the police forces in the Philippines, formally advocated the systems approach to crime prevention and control when it published the *National Strategy to Reduce Crime under the New Society,*[17] a multi-sectoral and interdisciplinary strategy to reduce crime in the Philippines through the active participation of and coordination among the five (5) pillars of the criminal justice system. Incidentally, the formulation by the National Police Commission of the said strategy is in pursuance of one of its major functions under Sec. 4 (k) of Republic Act No. 4864, otherwise known as the "Police Act of 1966," namely: "to recommend within sixty days before the commencement of each fiscal year, a crime prevention program."

In adopting the system approach to crime prevention and control, the Philippines has finally recognized the fact that all the agencies involved in crime prevention and control work toward the same goals and all are interrelated and affect each other in their operations. Through a system-wide perspective, the nation seeks to maximize coordination and integration of efforts between and among the different pillars of the criminal justice system. More positive and constructive interrelationships are likewise envisioned among the between the component agencies and their respective administrators.

Program Structure of the Philippine Criminal Justice System

Delineating the program structure of the criminal justice system facilities determination of the agencies or participants which play a role in meeting the objectives of the system. The following set of programs[18] can be identified as a possible program structure for the criminal justice system:

1. Prevention, which creates the appropriate environment that will be conducive to encouraging the members of society to respect the law. Prevention may include deterrence and prediction. Prediction involves the discovery of criminal tendencies before they manifest themselves, particularly in the adolescent.
2. Detection, which involves the search for and the gathering of information leading to the identification of suspected violators of the law. Detection and investigation go hand in hand.
3. Adjudication and Disposition, which involves the legal proceedings leading to court decisions such as convictions and sentencing.
4. Control and Custody, to monitor or restrain the behavior of individuals as a means of protecting their welfare as well

as that of others.

5. Rehabilitation, which provides treatment so as to change the behavior or the attitude of violators in order to ensure future conformity with the law.
6. Administration, which provides the agencies' operating units with resources necessary for the successful completion of their objectives.
7. Research, to engage in scientific study of the outstanding problems in the criminal justice field.
8. Education and Training, to provide informational support to all systems, and to ensure through training the consistency of treatment of all offenders.
9. Legislation, to initiate meaningful dialogue with legislators so as to keep them informed of the reality of problems confronting violators and agencies alike, while ensuring compliance with existing or contemplated laws.

Table 1 depicts the program-agency matrix that serves to identify the role of all the agencies involved in the development of the different criminal justice programs in the Philippines.

The National Strategy to Reduce Crime in the 1980's

Promulgated in 1985, the *National Strategy to Reduce Crime in the 1980's* is the follow-up strategy to the 1976 *National Strategy to Reduce Crime under the New Society.* It was likewise prepared by the National Police Commission in consultation with the members of its Technical Committee on Crime Prevention and Criminal Justice. The aforesaid Technical Committee is an *ad hoc* interdisciplinary body working under the auspices and functional supervision of the Commission. It is composed of acknowledged experts, representing the different pillars of the Philippine criminal justice system, who meet monthly for the purpose of studying and deliberating on major issues affecting the administration of the system and recommending appropriate measures to improve the same.

The Strategy for the 1980's has been formulated against the backdrop of the present crime situation in the Philippines and the developments that transpired during the period covered by the First Strategy (1976 to 1984). Particularly, what had or had not been

Table 1: Criminal Justice System Program-Agency Matrix

Programs	Agencies				
	Law Enforcement	Prosecution	Courts	Corrections	Community
Prevention	*	*	*	*	*
Detection and Investigation of Crime	*				
Adjudication and Disposition		*	*		
Control and Custody	*			*	
Rehabilitation	*			*	*
Administration	*	*	*	*	*
Research	*	*	*	*	*
Education and Training	*	*	*	*	*
Legislation	*	*	*	*	*

accomplished so far in the prevention and control of crime has provided the groundwork for the formulation of the *National Strategy to Reduce Crime in the 1980's.*

The latest strategy is a compendium of action programs intended for consideration and/or implementation in the 1980's by the five components of the criminal justice system, with the different programs dovetailing into a synchronized blueprint of system-wide crime prevention and control measures. It sets objectives and targets which are measurable by both quantitative and qualitative indicators for purposes of evaluation. It embodies a mechanism for quantifying and qualifying programs of action against set goals established by concerned government agencies.

Crime Control Strategy Goals, Objectives and Targets for the 1980's

The sum total of the activities of law enforcers, prosecutors, judges, defense attorneys and corrections personnel as well as the activities of the community relative to crime prevention makes up the criminal justice process. In human terms, the relationship of these agencies to the individuals accused of crime is by far the most significant consideration in criminal justice. To understand this factor, one has to consider the nature of the criminal justice process which is to control, or at least seek to control, human behavior as a means of maintaining an orderly environment.

In recognition of this vital facet of criminal justice, the *National Strategy to Reduce Crime in the 1980's* has focused its goals and objectives within the context of national development that is man-centered. The priorities of action established therein for each of the five (5) pillars of the criminal justice system are therefore aligned towards the attainment of the fundamental and overriding goals of promoting social defense and facilitating speedy and fair administration of justice, with the end in view of contributing to national development and improving the people's quality of life.[19]

Within the framework of these broad goals, the strategy seeks to attain the following objectives and targets[20] within a span of five (5) years:

Objective 1: To promote the security of persons and property—In any society, the security of persons and property is a foremost concern. A citizen must be secure in his home, work and streets. To attain this objective, the following targets have been established as measured by the corresponding indicators:

Targets	Indicators
1.1 Adequate and improved quality of police/fire services	—Crime clearance rate —Police response time —Police-population ratio —Number of trained policemen —Ratio of convicted policemen in administration and criminal cases over the police strength —Firemen response time —Firemen-population ratio —Number of trained firemen —Ratio of convicted firemen in administrative and criminal cases over the fire service strength —Ratio of law enforcement budget over total government budget
1.2 Decrease in specific crimes such as: Murder, Homicide, & Physical Injuries by at least 10%	—Crime rate per 100,000 inhabitants —Victimization rate per 100,000 inhabitants
Robbery, Theft, Consumer Frauds, Swindling & Bank Frauds, Drug Abuse, and Smuggling by at least 10%	—Average volume of losses due to crimes against property
1.3 Decrease in fire incidents by at least 10%	—Number of fire incidents —Number of deaths and injuries due to fire —Total value of property losses

1.4 Decrease in traffic accidents by at least 15%	—Rate of road accidents (Total road accidents over total vehicle kilometrage)

Objective 2: To provide fair and humane treatment of suspects—The constitutional rights of suspects and accused must be upheld and justice must be administered with speed and certainty. Towards this end, priorities of action targeted to be undertaken by the prosecution and courts are the following:

Targets	Indicators
2.1 Provision for speedy prosecution of cases by reducing preliminary investigation time by at least 20% of current average time spent	—Annual average duration of preliminary investigation —Case input/output rate
2.2 Provision for speedy trial of cases by reducing trial time by at least 20% of current trial time spent	—Annual average duration of trial —Case input/output rate
2.3 Adequate and improved quality of prosecutorial and judicial services	—Number of prosecutors trained annually —Ratio of prosecution budget over total government budget —Number of judges trained annually —Ratio of court budget over total government budget

Objective 3: To provide effective rehabilitation of offenders—A correction program is effective when the correctional practitioners are able to motivate their clients toward more constructive, lawful behavior which would enable the inmates to be successfully reintegrated into the community.

Targets	Indicators
3.1 Adequate and improved quality of correctional services/facilities	—Number of correctional practitioners trained annually —Number of inmates trained annually —Prison occupancy density (Total prison population over prison capacity) —Number of employed released prisoners over number of released prisoners —Number of successful probationers (those who have successfully complied with the terms and conditions of probation) over number of probationers —Ratio of corrections budget over total government budget
3.2 Decrease in recidivism to a level of 5%	—Rate of recidivism
3.3 Decrease in habitual delinquency to a level of 5%	—Rate of habitual delinquency

Objective 4: To enhance citizens' awareness and participation in the functions of the criminal justice agencies—The community as the base of the criminal justice system must be harnessed to the fullest.

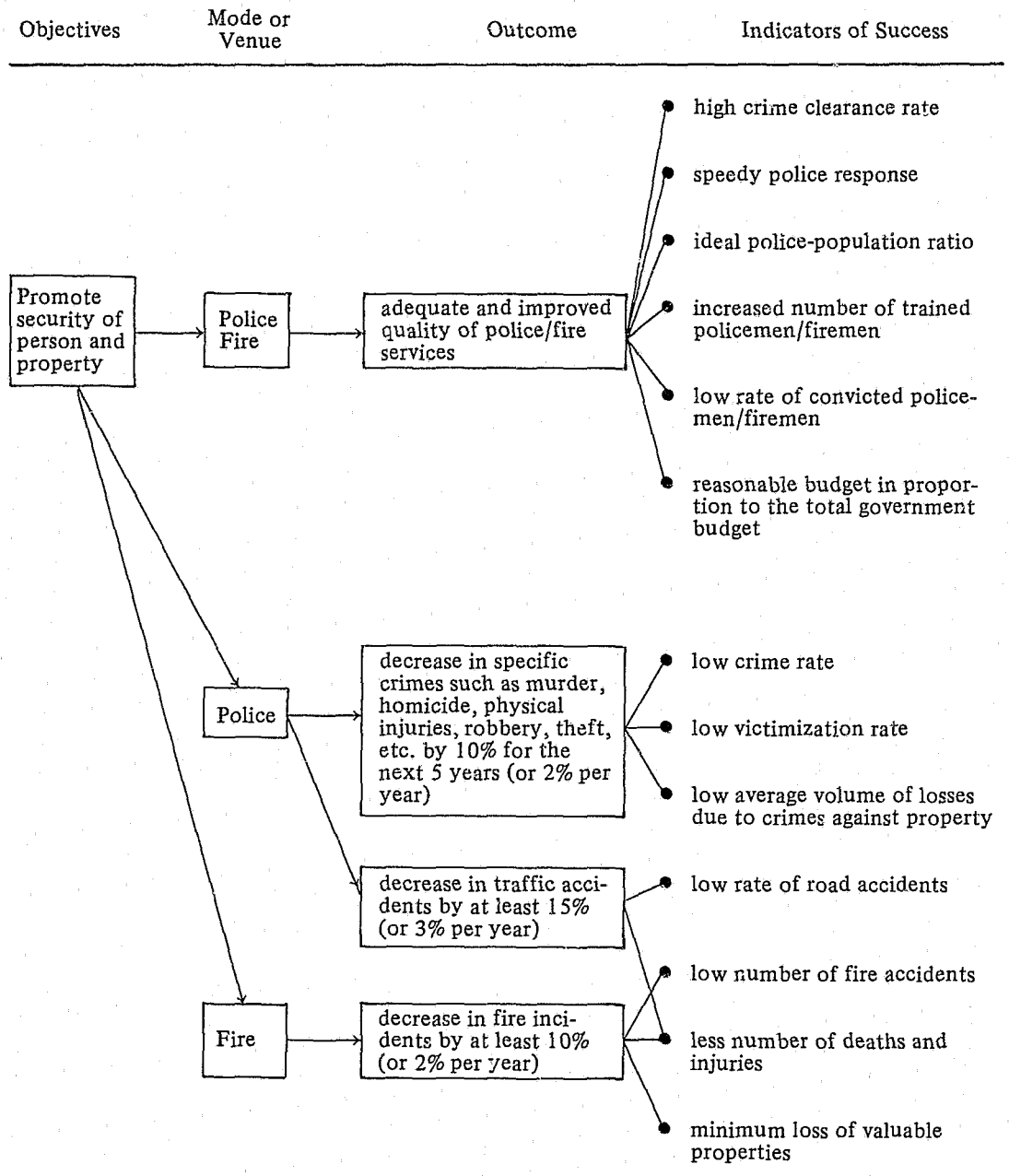
Targets	Indicators
4.1 Information dissemination	—Level of familiarity with laws and procedures affecting the agencies of the criminal justice system
4.2 Increased community participation	—Number of community-based crime prevention organizations/programs set up

Illustrated in the succeeding pages (Figure 2) is the corresponding paradigm of the National Strategy to Reduce Crime in the 1980's.

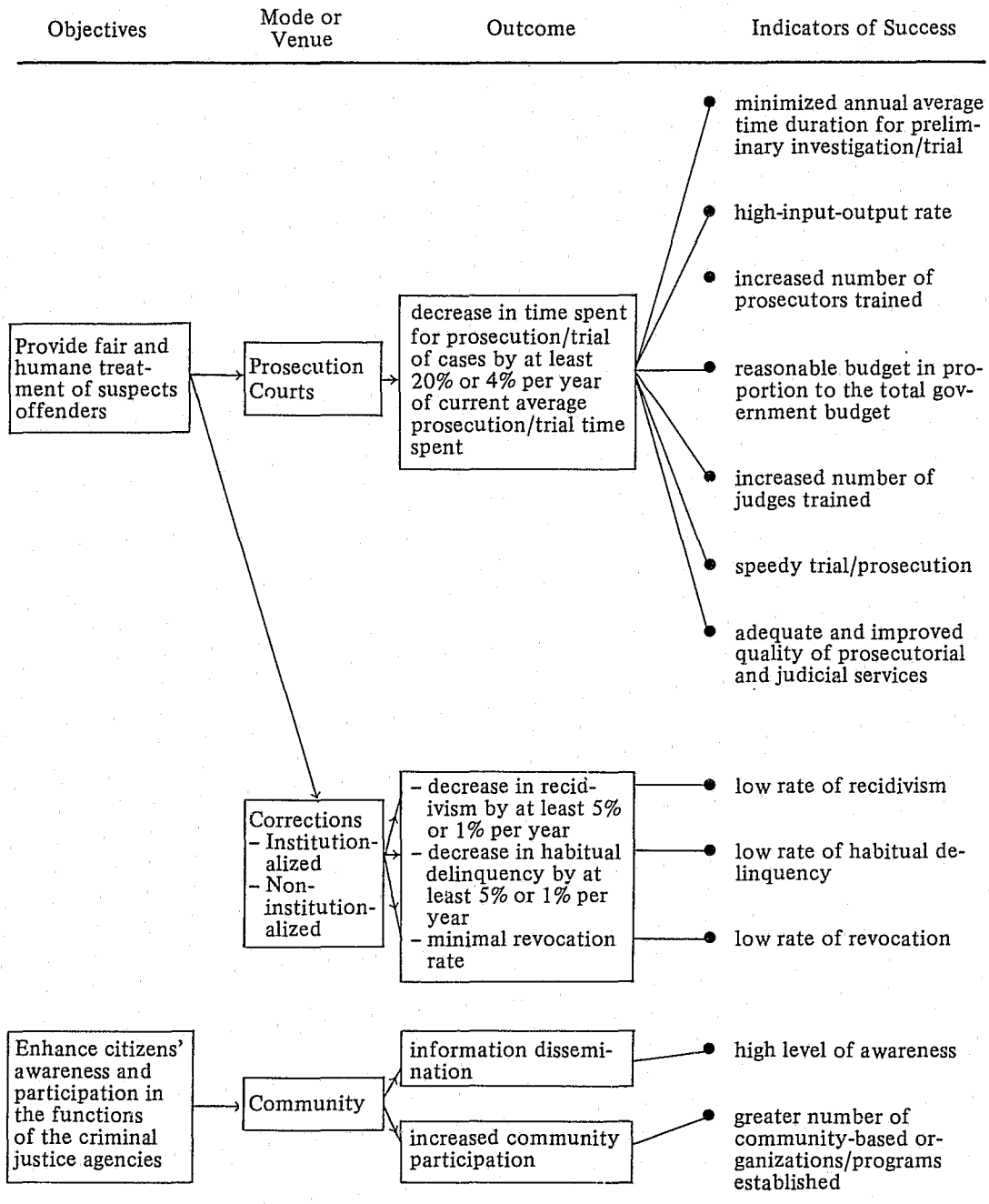
The 1989 National Crime Prevention Program

Formulation of the 1989 National Crime Prevention Program has been oriented towards the general objectives of upgrading the operational effectiveness of the Criminal Justice System and promoting higher level of ethical standards for system personnel. Specifically, the 1989 Crime Prevention Program seeks:

Fig. 2: Paradigm of the National Strategy to Reduce Crime in the 1980's



(To be continued)


Objectives
Mode or Venue
Outcome
Indicators of Success
Provide fair and humane treatment of suspects offenders
Prosecution Courts
decrease in time spent for prosecution/trial of cases by at least 20% or 4% per year of current average prosecution/trial time spent
minimized annual average time duration for preliminary investigation/trial
high-input-output rate
increased number of prosecutors trained
reasonable budget in proportion to the total government budget
increased number of judges trained
speedy trial/prosecution
adequate and improved quality of prosecutorial and judicial services
Corrections
- Institutionalized
- Non-institutionalized
- decrease in recidivism by at least 5% or 1% per year
- decrease in habitual delinquency by at least 5% or 1% per year
- minimal revocation rate
low rate of recidivism
low rate of habitual delinquency
low rate of revocation
Enhance citizens' awareness and participation in the functions of the criminal justice agencies
Community
information dissemination
increased community participation
high level of awareness
greater number of community-based organizations/programs established

1. To increase the efficiency of the Criminal Justice System;
2. To reduce crime; and
3. To enhance fairness, justice, integrity and morality in criminal justice administration.

Accordingly, said Program calls for priority programs directed toward the following goals:

a. Firming up the coordinating mechanisms of the different pillars of the Criminal Justice System, with the various levels of Peace and Order Councils providing the monitoring mechanisms;
b. Systematizing the administration of criminal justice,where the different pillars continue to exercise their delineated functions while interweaving their efforts for a comprehensive and responsive delivery of criminal justice service to the public;
c. Instituting more comprehensive and effective measures to safeguard basic human and civil rights as guaranteed by the Constitution and laws, with due consideration of the interests of both the offenders and victims of crime; and
d. Pursuing relentlessly the campaign against graft and corruption and other abuses committed by some elements of the Criminal Justice System.[22]

The 1989 Program covers projects and activities which are envisioned to be implemented in CY-1989 by the concerned agencies of the Criminal Justice System. It includes projects formulated and implemented during the previous years but which are continuing in nature. These on-going projects will be pursued in 1989 to progressive accomplishments. New projects have been incorporated in the Current Program to respond to new challenges. With the recent reactivation of the various Peace and Order Councils in all levels, the 1989 Program Thrusts have been aligned with those recommended by said Councils to maximize positive results.

1989 Crime Prevention Program of Action

The 1989 Crime Prevention Program is a sequel to the programs developed for implementation in prior years. Priority projects undertaken last year (CY-1988) were monitored, assessed and evaluated to determine the progress thereof, taking into consideration funding limitation, time constraint and related problems encountered. On the basis of such assessment, the following revised Program of Action[22] has been established for CY-1989.

Priorities of Action

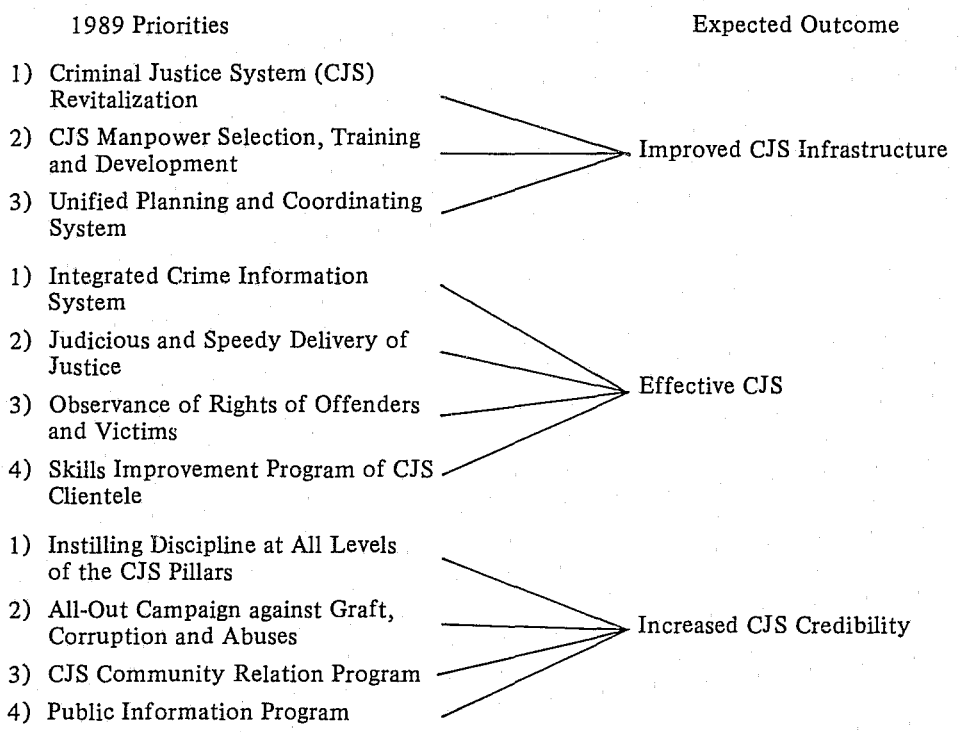
In the establishment of priority projects for incorporation in the 1989 National Crime Prevention Program, preferential attention and consideration have been given to the following areas:[23]

A. Improvement of Criminal Justice Infrastructure

The development of sound administrative structure is vital in any organization that seeks to promote efficiency and effectiveness. The organizational structure or network of relationships in an agency is the basic framework within which the operations and activities in the agency take place. Accordingly, the nature of the structure greatly influences the quality of activities effected within it.[24] The axiom that an agency cannot permanently occupy levels of effectiveness higher than those determined by the capacity of its personnel is self-evident, but it is not generally understood that the influence of a superior organization upon the accomplishments of personnel can rise the agency to heights not otherwise attainable.[25]

Because the administration of criminal justice is an exceedingly complex process involving a large number of formal agencies concerned with the different aspects of crime and delinquency, resources should be carefully allocated to meet alternative ends and means. Crime prevention planners should assign priorities and simplify resource allocation on the basis of pre-determined

Fig. 3: 1989 Program of Action



objectives. With respect to organizational capability, therefore, efforts should be geared to (1) manpower resource development, (2) training for higher efficiency and effectiveness, and (3) mobilizing support not only from within the formal criminal justice system but from the community in general.

1. Need for criminal justice system planning and coordination

Planning for crime prevention would be virtually ineffective unless there is concerted action on the part of every pillar of the criminal justice system. Primordial importance should therefore be placed on effecting unified and coordinated criminal justice system planning for crime prevention and control. Furthermore, coordination of crime prevention activities can proceed more effectively if there are organic planning units in each pillar of the criminal justice system assuming responsibility for long-range planning and synchronization of efforts on an intra and inter-agency basis. In its broad concept, such planning should include the establishment and management of objectives, policies and strategies.[6]

Organic planning units can promote unified direction and integration of efforts within and outside the agency and eliminate duplication and overlapping of efforts. Such units can initiate broad, long-range plans, and assist in the development of enhancement objectives and responsive strategies.

The placement of planning responsibility on a high level gives visibility and prominence to the importance of the planning function. This will provide the necessary leadership, creativity and innovation in planning.

2. Need for information exchange

Planning depends for its effectiveness on the quality and quantity of data available to

the planner. The planner needs to line up reliable sources of information and retrieve the information in a timely manner. The value of constant flow of information cannot be overemphasized.

Considering the voluminous data involved in criminal justice administration, there is an imperative need to establish an integrated criminal justice information system to service all criminal justice agencies. A management information system for criminal justice would remedy the inadequacy of information, a factor that contributes to the fragmentation of the system. A management information system must place emphasis not only on criminal record retrieval but also on information aids in decision-making.

At present, different government agencies disseminate crime information and issue clearance, thus creating confusion and undue difficulties to the general public and other end-users. The need to establish a centralized crime data processing center that could service the information needs of all the pillars of criminal justice system has prompted the Napolcom Technical Panel on Crime Prevention and Criminal Justice to recommend to the Office of the President the adoption this year of an Executive Order establishing an offender-based National Crime Information System. The proposed System will facilitate the generation and exchange of crime information and retrieval thereof by concerned agencies.

B. Speedy Delivery of Justice That is Fair and Humane

The delay in the delivery of criminal justice services seems to be the predominant problem in the operation of the criminal justice system. It is markedly manifested in the recurring delay in the disposition of cases as substantiated by findings in previous surveys undertaken by the National Police Commission through its Crime Prevention and Coordinating Branch.

The clamor for speedier dispensation of justice has been given added impetus by the 1987 Constitution which prescribes that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies"[27] and providing that "in all criminal prosecutions, the accused. . . shall enjoy the right. . . to have a speedy, impartial, and public trial. . ."[28] Priority actions to carry out these constitutional prescriptions are evidently imperative.

C. Observance of the Rights of Both the Offender and Victim

The need for according respect for the basic rights of both the offender and victim of crime finds greater significance with the ratification of the new Constitution. Aside from the fundamental civil and political rights enshrined in the Bill of Rights under Article 111 thereof, there are new provisions guaranteeing free access to the courts and quasi-judicial bodies and adequate legal assistance,[29] the right to have competent and independent counsel,[30] non-waiver of the right to silence and counsel except in writing and in the presence of counsel,[31] prohibiting secret detention places, solitary, incommunicado or other similar forms of detention,[32] directing penal and civil sanctions for violation of the rights of persons undergoing investigation, as well as compensation to and rehabilitation of victims of torture or similar practices, and their families,[33] and prohibiting detention solely by reason of political beliefs and aspirations,[34] as well as the employment of physical, psychological or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions.[35]

In recognition of these constitutional concerns, a significant number of the priority projects under the 1989 Crime Prevention Program have been oriented towards more meaningful observance of the rights of both the offender and victim of crime.

D. Instilling Greater Discipline in All the Pillars of the Criminal Justice System

Criticisms against improper or misdirected exercise of power and influence attached to a public office have affected the credibility and service delivery of a significant number of agencies involved in criminal justice administration. Various legislative, administrative and judicial institutions and measures have been set up to improve integrity in the public service. However, much remains to be done in this area of concern.

More incisive measures need to be taken to enhance the moral values and sense of integrity of key personnel in the different agencies involved in criminal justice administration. Hence, the inclusion of this area of concern among the program thrusts of the 1989 Plan of Action.

Priority Projects under the 1989 Crime Prevention Program

Tabulated hereafter by pillar are the priority projects[36] targeted for implementation this year under the 1989 Crime Prevention Program.

A. Law Enforcement

1. Conduct of re-orientation training programs for police recruits/training officers to promote positive moral values and nationalism.

2. Conduct of specialized training courses in Social Intervention and Anti-Insurgency Operations to develop increased awareness of policemen's role in such operations.

3. Development of the Integrated National Police (INP) Master Training Program.

4. Review of the Program of Instruction (POI) of the INP Training Command (INPTC) and Philippine National Police Academy (PNPA) as reflected in the yearly INP Master Training Program, for possible inclusion in the POI of the following subjects: Communication Arts, Value Education, and Civil Disturbance and Crowd Control Operations.

5. Promotion of the search for the most outstanding, honest and dedicated policemen to develop role models in the police service and promote better image for the police.

6. Reduction of corrupt practices among policemen through establishment of the following task force and operational center:

a. Operation Quick-Action (Napolcom special task force that shall monitor and act on complaints from the public involving mulcting and extortion activities of law enforcers).
b. Complaint Action Center (coordinating center that will receive and act with dispatch on all complaints against police abuses and irregularities).

7. Formulation of a joint organizational police declaration against corruption among the five pillars of CJS to give force and substance to the present thrust of government to eradicate graft and corruption.

8. Research study on police practices involving police-civilian transactions in all police functions to identify the causes of bureacratic red tape in the police service.

9. Monitoring and auditing of the internal activities of NAPOLCOM employees occupying sensitive positions and performing sensitive functions.

10. Stricter enforcement of ban on police presence in cockpits, beerhouses and similar public places.

11. Increased citizens' participation in the arrest of "wanted" persons through an expanded rewards system.

12. Intensification of crime prevention activities through:

a. Increased police visibility by augmenting foot and mobile patrols in pre-determined patrol beats and construction of detachments and sub-stations in crime prone areas.
b. Closer control of conditions that abet crimes by pursuing vigorously public information drives and dialogues among residents and organized volunteer groups.

c. Improvement of crime solution efficiency by improving the skills of police investigators and providing the police with better equipage, mobility and instrumentation.
d. Closer monitoring and control of crime syndicates and conduct of special operations to identify organized crime groups.

13. Closer monitoring of court appearance by policemen cited as witnesses.

14. Preparation of a Manual on Procedures for Law Enforcers to insure systematization of police practices and foster greater respect for human rights.

B. Prosecution

1. Computerization of prosecution data to facilitate systematic data gathering and utilization thereof.

2. Establishment of the National Prosecution Service Academy (NPSA), which shall serve as an institution for continuing legal education and inservice training of prosecutors.

3. Creation of additional positions of prosecutors to correct imbalance between the number of courts and prosecution personnel.

4. Drafting of a proposal for the decriminalization and depenalization of certain special penal laws (continuing project) as a measure to reduce the case workload.

5. Monitoring and strict implementation of Department of Justice (DOJ) Memo-Circular No. 27, dated Sept. 15 1988, requiring completion of preliminary investigation and/or review within 60 days from date of submission of case for resolution.

6. Monitoring the work of the Provincial/City Committees on Justice in ensuring the speedy disposition of detainees' cases and inspecting jail conditions.

7. Follow-up of the proposal for repeal of Presidential Decree No. 1850 so as to return to civilian courts jurisdiction over criminal cases committed by members of the police.

8. Designation of specialized warrant officers as process servers of the courts to facilitate service of such processes.

9. Formulation of a draft bill compelling persons transferring residence to report to their barangay chairman at old and new residence so as to discourage absconding and to give leads on their whereabouts to law enforcement officers.

10. Enhancement of prosecution personnel discipline and work attitudes.

C. Courts

1. Establishment of a Continuing Judicial Education Program for trial judges to upgrade their trial skills.

2. Filling existing vacancies at all levels of the judiciary for both judges and personnel complement.

3. Construction of additional Court Houses to provide adequate and dignified infrastructure for justice administration.

4. Upgrading the skills of court support staff.

5. Installation of a computer system to accelerate the processing of records and streamline monitoring of pending cases.

6. Institution of a continuous trial calendar for selected courts to facilitate speedy case adjudication.

7. Upgrading the disciplinary and ethical standards in the judiciary to improve and enhance the public image of judges.

D. Corrections

1. Reorganization of the Office of Jail Management and Penology from a special staff to a line organization, so as to constitute the same as a separate custodial service of the Integrated National Police (INP), for a more effective and responsive administration of city and municipal jails.

2. Transfer of supervision and control of provincial jails from the provincial government to the INP to effect better supervision and control thereof.

3. Conduct of agro-industrial skills training for inmates to provide the latter with opportunities for employment after incarceration.

4. Conduct of a survey ("Bilis-Litis" Project) of city/municipal jails in Metro Manila so as to effect speedy disposition of inmates' cases.

5. Expansion of the coverage of Presidential Decree No. 1508 (Barangay Justice System) to include those charged of offenses punishable by arresto mayor.

6. Amendment of Republic Act No. 6036 (Release on Recognizance Law) so as to include offenses punishable up to 6 years and 1 day in order to harmonize the said law with the Probation Law (Presidential Decree No. 968) through legislative action.

7. Amendment of the Probation Law to include first offenders whose sentence exceeds 6 years and also drug dependents.

8. Full implementation of the fusion of probation and parole supervision pursuant to Executive Order No. 292.

9. Establishment of linkages with the National Prosecution Service to insure more protection of rights of detained inmates.

10. Conduct of conferences and seminars of correctional agencies to assess policies in the rehabilitation and treatment of offenders.

11. Intensified inspection and audit of prisons and jails.

12. Modification of the bail procedure for detention prisoners to make bail affordable to more detention prisoners.

13. Establishment of a new classification scheme for probationers to provide an improved treatment plan for the latter.

E. Community

1. Revitalization of Peace and Order Councils to help improve peace and order conditions and intensify socio-economic development.

2. Intensification of Crime Information Campaign to generate active community involvement in crime prevention activities.

3. Establishment of linkages with non-government organization (NGOs) for possible assistance in reducing criminality.

4. Conduct of group sessions on effective and responsible parenthood, population awareness and sex education for youth, day-care services for pre-schoolers and volunteer resource development to provide opportunities for the individual to develop self-awareness, acquire positive values and skills, and understand his responsibility.

5. Full utilization of mass media as an effective mechanism for redress or grievances and protection of victims.

6. Harnessing local resources in checking government abuses and instilling in the minds of citizens responsibility to respect and uphold the rule of law. (including the development of a plan for the establishment of a Complaint Action Center (CAC) in every *barangay* where citizlens can report abuses committed by government officials).

7. Intensification of strategies for the prevention and control of drug abuse through:

a. School-based drug education program integrated into major subject areas.
b. Community-based programs designed to enhance the knowledge of barangay officials in the fight against drug abuse.
c. School-community oriented programs designed to harness the potentials of the youth.

8. Conduct of Victimization Survey to determine the number of unreported crimes in Manila and Quezon City and the reasons for not reporting those cases to the police.

Major Accomplishments under the National Strategy to Reduce Crime

While the targeted goal of reducing crime has become an elusive goal, the adoption of the National Strategy to Reduce Crime in the 1980's has brought about significant major accomplishments, as follows:

1. Establishment of a Criminal Justice System Coordinating Mechanism in the development and formulation of crime prevention and control projects of different pillars of the Criminal Justice System. This has

been institutionalized with the establishment of the *echnical Committee on Crime Prevention and Criminal Justice,* composed of acknowledged experts of the different pillars of the Criminal Justice System, vested with the continuing task and responsibility of studying and formulating annual crime prevention programs for consideration by the operating pillars of the system.

2. Establishment of the Peace and Order Councils on the national, regional, provincial and municipal/city levels, for purposes of coordinating and monitoring peace and order plans, policies and strategies, to include the effective functioning of the Criminal Justice System. Presently, the National Peace and Order Council is chaired by the Secretary of the Department of Local Government, with fourteen (14) members from other government agencies involved in peace and order activities, and eight (8) representatives from the private sector. (Executive Order No. 309 dated November 11, 1987, as amended). The aforesaid Peace and Order Council provides the necessary mechanism for coordinating system-wide activities and efforts towards crime reduction and control.

3. *Organization of Provincial and City Committees on Justice,* pursuant to Executive Order No. 856 dated December 12, 1982, for purposes of monitoring and ensuring the speedy disposition of cases of detainees, thus alleviating jail congestion. The Provincial/City Committee on Justice is composed of the provincial governor/city mayor as chairman, and the provincial/city police commander, provincial/city fiscal, provincial/city warden and executive judge thereof, as members.

4. Establishment of a system of amicably settling disputes, through conciliatory proceedings, at the community or *"barangay"* level pursuant to Presidential Decree No. 1508 dated June 11, 1978. This operates as a sort of neighborhood paralegal adjudicatory committee. In terms of resolved cases, the system has settled a total of 716,262 on the *"barangay"* level nationwide from 1980 to 1987, valued at a minimum aggregate national savings of P2,077,448,100.00, excluding the unquantifiable values of the resultant peace and harmony, not only among the litigants themselves, but also among the members of the community.

5. Adoption of a continuous trial calendar system for selected courts to speed up case disposition. Under this system, cases filed before selected pilot courts are scheduled for hearings from day to day until complete termination.

6. Establishment of organic planning units in all pillars of the criminal justice system. This has promoted better direction and coordination of criminal justice planning for crime prevention and control.

One of the more important projects of the Philippine government is the proposed establishment of an offender-based National Crime Information System that could service in a timely and systematic manner, the information needs of all the components of the Criminal Justice System through a centralized and coordinated network. With such a system, comprehensive data about the offender can be recorded at every stage of the criminal proceedings, from arrest to release from imprisonment.

The full operationalization of the proposed National Crime Information System necessitates, however, the full integration of all information systems existing in the other pillars of the Criminal Justice System. At present, the National Bureau of Investigation of the Department of Justice maintains its own computerized system on crime data from the prosecution, courts and corrections. Some agencies, however, appear reluctant to transfer their crime information data to the proposed nationwide system in view of some perceived diminution of their functions.

Epilogue

Apart from the goal of attaining greater ef-

fectiveness in the delivery of services in the realm of criminal justice, the National Strategy to Reduce Crime in the 1980's, as implemented this year through the 1989 Crime Prevention Program, incorporates, as its focal concern, a more balanced humanistic approach to the administration of justice. Given due recognition and appropriate consideration are the respective rights of all concerned in the criminal justice process—the victim, the accused, and the community. There is thus a balanced and holistic approach permeating through the Strategy. The over-all goal points towards prompt, enlightened and responsive administration of justice.

Notes

1. O.W. Wilson & Roy Clinton McLaren, *Police Administration* (New York: McGraw-Hill Book Company, 1977) p. 4.
2. Alvin W. Cohn, *Crime and Justice Administration* (Philadelphia: J.B. Lippincott Co., 1976), p. 4.
3. Clarence Schrag, *Crime and Justice: American Style* (Maryland: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971), p. 10.
4. Edwin Schur, *ibid.* (New Jersey: Prentice-Hall, 1973), p. 237.
5. Hazel B. Kerper, *Introduction to the Criminal Justice System* (Minnesota: West Publishing Co., 1972), p. 1.
6. National Advisory Commission on Criminal Justice Standards and Goals, *Criminal Justice System* (Washington, D.C.: U.S. Government Printing Office, 1973, p. 257.
7. Thomas F. Adams, et als., *Criminal Justice Organization and Management* (California: Goodyear Publishing Co., 1974), pp. 1-2.
8. Daniel J. Freed, *"The Nonsystem of Criminal Justice," Law and Order Reconsidered: A Staff Report to the National Commission on the Causes and Prevention of Violence* (Washington, D.C.: U.S. Government Printing Office, 1969), pp. 265-284.
9. Donald J. Newman, *Introduction to Criminal Justice* (Philadelphia: J.B. Lippincott Co., 1975), p. x.
10. National Advisory Commission on Criminal Justice Standards and Goals, *op. cit.*, p. 1.
11. Presidential Memorandum Circular No. 103 dated July 17, 1989
12. Presidential Decree No. 1508 dated June 19, 1978.
13. *Ibid.*, Secs. 1, 2 & 6.
14. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Science and Technology* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 53.
15. *Sociology and Modern Systems Theory* (New Jersey: Prentice Hall, 1967), p. 41.
16. Alvin W. Cohn, *op. cit.*, pp. 169-170.
17. An official publication of the National Police Commission (Metro Manila: Napolcom Administrative Service, 1976).
18. John P. Van Gigch, *Applied General Systems Theory* (New York: Harper & Row Publishers, Inc., 1978), pp. 25-26.
19. *National Strategy to Reduce Crime in the 1980's* (Metro Manila: Napolcom Administrative Service, 1985), pp. 74-75.
20. *Ibid.*, pp. 75-79.
21. 1989 National Crime Prevention Program, a National Police Commission Publication (Metro Manila: 1989), pp. 31-32.
22. *Ibid.*, p. 33.
23. *Ibid.*, pp. 34-37.
24. Dalton E. McFarland, *Management Principles and Practices* (New York: Macmillan Co., 1970), p. 335.
25. Dr. H.A. Hopf as quoted in Ernest Dale, *Planning and Developing the Company Organization Structure,* in American Management Association, Research Report No. 20, 1952, p. 17.
26. D.E. McFarland, *op. cit.*, p. 134.
27. Sec. 16, Art. 111, id.
28. Sec. 14, Art. 111, id.
29. Sec. 11, Art. 111, 1987 Constitution.
30. Sec. 12 (1), id.
31. *Ibid.*
32. Sec. 12 (2), id.
33. Sec. 12 (4), id.
34. Sec. 18 (1), id.
35. Sec. 19 (2), id.
36. 1989 National Crime Prevention Program, *op. cit.,* pp. 41-82.

The Legal Education and Judicial System in the Republic of Korea

by Yoo, Joe-In *

I. Introduction

Korea is a developing nation which has increasingly attracted worldwide attention. This has been primarily due to its phenomenal economic growth over the last decade. Yet few scholars or lawyers outside Korea are aware of the legal system of Korea and there is a tendency for foreign scholars to regard Korean legal system as an identical one to the Japanese legal system. It is true that the heritage of the Japanese colonial rule has provided the basic legal and bureaucratic infrastructure of Korea. However, modification has been made on those basic legal systems to reflect the Korean traditional culture and the influences of a variety of auspices of Western legal concepts of justice and the sharing and distribution of power. This paper aims at briefly overviewing the current Korean legal education system and judicial system.

II. Current Status of Legal Education

1. Undergraduate Law Schools

Like many other countries' civil law systems, Korea has made law school an undergraduate institution. There are a limited number of graduate level law programs, but as will be discussed later, these graduate law programs have distinctive purposes and characteristics which distinguish them from the main undergraduate law programs. Accordingly, their contribution to the mainstream culture of the legal society is minimal, if any.

Currently, fifty universities or colleges have law departments and eight of them have made the law department an independent college. In schools below the college level (and above the high school level) the law department is normally a part of "The College of Law and Political Sciences," "The College of Law and Economics," "The College of Law and Social Sciences," or another related school. The general trend is to establish the law department as an independent college. Some law schools divide their law departments into two sub-departments, for example, "Private Law" and "Public Law" sub-departments. Others have three sub-departments, adding "Administrative" sub-department thereto.

Only one university (Korean University) has a law department which consists of more than 300 students yearly. In schools having relatively large law departments, the size of an annual class rarely exceeds 200, averaging 160 to 200. A majority of the schools have law departments with less than 30 students in each class. The total number of law graduates (awarded B.A. or LL.B. degree) throughout the entire nation was 1,675 for the year of 1982 and presumed to have been around 2,000 for the year of 1986.

Partly due to the fact that many universities place their law department within other departments of a different name, the precise number of the law faculty is unknown. Looking at the bulletins of each school, however, only one school (Seoul National University) has more than 20 full-time faculty members (29). Relatively large schools possess an average of slightly over 10 professors; the smaller schools allow only nominal seats of from 2 to 3 for their law faculty. The worst part of the reality is that such law professors

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are in charge of graduate teaching, in addition to their inherent tasks. No sign of improvement is likely to be seen in the near future.

Typically, 140 semester units are required for an LL.B. degree. The requirements have been reduced from the original 160 units. Excepting the units for the general education subjects, the requirements for the major subjects are relatively low. Seoul National University, for example, only requires 42 law units as mandatory subjects out of 150 units totally needed for an LL.B. The case of S.N.U. does not seem outlandish when compared with other cases. The worst case would require as low as 15 units of law subjects as mandatory for an LL.B.

The highest possible number of law units, mandatory or elective, attainable, in theory, during the four-year course amounts to 80 to 90 units. In practice, however, 70 is a practical maximum. This appears to be quite comparable to the practice of American counterparts, where 82 to 86 semester law units are required for an equivalent degree (J.D.). However, caveat is the practical demand of the courses.

2. Graduate Law Program

Most universities and colleges have graduate law programs. In a institution, the graduate program is run by an independent institution commonly called "graduate school." This institution is, in theory, charged with the administration of all graduate programs, regardless of subject, and therefore oversees the graduate law program as well. In practice, however, each college enjoys virtually complete autonomy in managing graduate program pertinent to the subjects offered in its undergraduate program.

Graduate law programs aim primarily at producing law professors and high level theorists. Simply put, these are for prospective scholars, not for practitioners. Graduate programs consist of two levels of degree courses, i.e., LL.M. (Master-in-Law) and S.J.D. (Doctor-in-Law). LL.M. is a prerequisite for entering the S.J.D. course. In a typical case, four resident semesters are required during which period candidates should complete 24 units and write a thesis. No restrictions are imposed on the subjects of law that may be taken, but the thesis topic is determined by what kind of law one choses as his main focus.

The S.J.D. program is an extension of and an intensified prolongation of LL.M. Candidates should complete a total of 60 units (including those already taken during LL.M.) and submit a dissertation. Candidates for both degrees are selected through competitive exams, and upon completion of the required units, must pass the qualification exam, to be eligible for the submission of a thesis or dissertation. Usually, English as well as a second foreign language are tested, in addition to the law subjects chosen as a main focus, on both entrance and qualification exams. Although technically, graduate law programs are a part of the overall graduate school directly affiliated with the university, academic administration falls within the domain of the law school or law department. Although graduate law programs are detached from the undergraduate courses, no school possesses separate faculty for their graduate programs. Law professors, usually holders of LL.M. or higher degrees are responsible for the teaching of both undergraduate and graduate law programs.

S.N.U., holder of the largest graduate law program and the main supplier of law professors, annually accepts 120 graduate students (100 for LL.M. and 20 for S.J.D. respectively). Other schools cannot afford such a number; four to five on an annual base is the usual case. Since only a small proportion of the graduate students eventually become professors, the only feasible job for the graduate degree holders, there is a serious problem of finding a suitable job for those who do not become professors.

III. Current Status of the Bar System

The only way to be admitted to the bar is to go through the two-year course offered by the Government-run Judicial Research and Training Center. Of course only those who passed the bar exam are eligible for the education and training by the Center.

A successful graduate of this program is qualified for any of the three positions of judicial nature: judge, prosecutor, or private attorney.

Anybody, regardless of age or prior education of any level, can take the bar exam (National Judicial Exam). This means one can become a judge even without a high school diploma, much less a law degree, as long as he passes the bar exam and completes the Training Center Program. All the prerequisites formerly imposed have been eliminated.

The annual bar exam is administered by the Ministry of General Affairs, a branch of the executive body. Examiners are normally selected mainly from law professors and supplementarily, from practitioners. Annually 300 persons, or 3 to 4 percent of the total applicants, are selected through a 3 stage exam. At the outset, examinees are screened through the multiple-choice questions on subjects covering basic laws and general education. The second and main test consists of essay writing on purely legal subjects. The third and last part of the exam, called "the oral test," is rather perfunctory: few people fail unless they show clear lack of incompetency.

The successful 300, out of over 10,000 examinees, are admitted to the Judicial Research and Training Center which is attached to the Supreme Court of Korea. Every trainee of the Center attains the status of public officer for the training period. Upon successful completion of the training program stretched out for two years, a graduate is licensed to practice law. Apparently due to the limited openings on the judicial positions, only half of the graduates eventually become judge or prosecutor; the rest voluntarily or involuntarily take the road of private practice.

An additional note: it was not until 1981 that a fixed number of people, annually 300, passed the bar exam. Before then, very few exam takers cleared the almost prohibitive hurdle, 20 to 30 prior to the 1970's, and 50 to 120 during the 70's.

The total number of incumbent judges and prosecutors amounts approximately to 1,400 as of this date, while a similar number of attorneys are in private practice. The term "attorney" (Byunho-sa) denotes only those who are licensed to practice before the court. It does not include those who are engaged in non-court legal practice, with or without a license for the same. Law practice, in broadest terms, is not exclusively reserved for the court-licensed attorneys (Byunho-sa). For example, the so-called "quasi lawyers" such as tax attorney (Semu-sa), Patent attorney (Byunri-sa), judicial scrivener (Sabopsoe-sa) or administrative scrivener (Haengjongsoe-sa) perform tasks which in most countries would fall into the exclusive domain of a bar member.

IV. The Current Judiciary System

1. The Guarantee of an Independent Judiciary

A. The Principle of Judicial Independence

The independence of the judiciary is one of the fundamental principles of a modern democratic constitutional society. Its purpose is not only to insure the independence of the judges in conducting adjudication but to safeguard the fundamental rights of the people as guaranteed by the Constitution.

The first Constitution of Korea declared this principle by stating: "Judges shall make judgement independently bound only by the Constitution and laws" (Art. 77). The current Constitution reaffirms this doctrine by stating that: "The judicial power shall be vested in a court composed of judges" (Art. 101) and that: "Judges shall rule indepen-

dently according to their conscience and in conformity with the Constitution and laws" (Art. 103).

B. Institutional Independence of the Court

(1) Relationship with the legislative branch

Under the doctrine of the separation of powers, the judiciary should be independent from both the legislative and the executive branches. The fact that the judiciary is composed pursuant to legislation enacted by the legislative body and that judges are bound by statutes in deciding cases does not denote the subordination of the Judiciary to the Legislative Body. The binding authority of Legislation on the Courts and Judges is obviously a basic requisite to the rule of law in modern constitutional states.

(2) Relationship with the executive branch

In as much as the principle of judicial independence has developed to prevent Monarchial or Cabinet interference with the Judiciary, the institutional independence of the Judiciary from the Executive's power has been the inherent element of the principle. Accordingly, under the modern system of separation of powers, the two branches are not allowed to intervene in each other's operations.

The checks and balances of the two branches are sustained by judicial review of the constitutionality and legality of administrative decrees, regulations and dispositions and, on the other hand, by the authority of the Executive to prepare the budget proposal for the Judiciary and to grant general or specific amnesties. The President has the authority to appoint the Chief Justice and the Justices with the consent of the National Assembly. Although the court has jurisdiction over executive operations, when their legality or constitutionality is a prerequisite to adjudicating a case, matters that may be defined as discretionary or sovereign acts of the Executive may not be reviewed.

C. Independence of Trial

Independence of the judicial power or of judges is ultimately a means to guarantee the independence of trial. A judge who sits on the bench is assured of independence from any state institution. No institution, whether it be Legislative, Executive or Judicial, is authorized to exercise control over or to give directions concerning trials. No institution can annul or reverse a judgement after a trial except by means of appeal. Even a higher court cannot influence or restrain a judge's authority with respect to a specific trial. A higher court's power to supervise the judicial administration of the lower court does not give it this authority.

D. Safeguards for Judicial Autonomy

In order to conduct fair trials and realize the ideal of the rule of law, all judges must be able to exercise their authority according to their conscience and must be free from any pressure or coercion from outside or from judicial administrative agencies, subject only to the Constitution and laws. To this end, it is necessary to fully guarantee the status of judges. To guarantee their status, the Constitution and the Court Organization Act also contain several provisions concerning judges' qualifications, duties, salaries, and so forth.

The independence of the judicial power in itself ultimately concerns the independence of judges in the conduct of trials. Specifically, it means prohibiting the removal of judges from office without cause, as well as prohibiting the application of any other form of pressure intended to interfere with a judge's opinion. If a judge could be deprived of his position or otherwise threatened by any person or agency, his judgement would be subjugated to that person or agency and he would lose his independence.

Korea, like almost every other nation, has not always been able to live up to these goals, but they are now part of the fabric of the system and the courts aspire to make them a continuing reality.

2. Courts

The Court Organization Act enacted on September 26, 1949, has remained basically unchanged in spite of several constitutional changes. The major exception has been an increase in the numbers of District and High Courts and judges to keep up with population and business increases.

The Act provides for three levels of courts: 1) the District Court (including the specialized Family Court) which is the court of original jurisdiction; 2) the High Court, an intermediate appellate court; and 3) the Supreme Court, the highest level. High Courts and District Courts are divided into geographic districts.

The Act empowers the courts to adjudicate civil, criminal, administrative, election and other judicial cases, and to decide noncontentious cases and such other matters as are brought under their jurisdiction in accordance with the provisions of other laws.

In addition, court-martials may be established, under the Constitution, as special courts to exercise jurisdiction over military criminal cases. The Supreme Court has final appellate jurisdiction over them.

A. Supreme Court

The Supreme Court is the highest judicial tribunal of the Nation and it exercises primarily appellate jurisdiction. It hears, as a court of last instance, appeals from the judgments and rulings rendered by high courts and appellate divisions of district courts or family court. It also reviews the decisions of appellate court-martials.

In addition, it has the initial and final jurisdiction in proceedings involving the validity of election of the members of the National Assembly.

Since cases before the Supreme Court almost always involve the review of decisions of inferior courts, no witnesses are heard and no new evidence may be submitted. In each case, the Supreme Court has before it a record of the prior court's proceeding, with briefs containing the arguments of each side. Oral arguments may be heard in the Supreme Court's proceedings.

The grounds for appeal to the Supreme Court are limited.

In civil cases, the grounds for appeal have been limited to constitutional and legal questions material to the judgement appealed from. The code of civil procedure includes six specific grounds for appeal. However, the new special statute which was enacted in 1981 with a view to expediting judicial proceedings further restricts causes of appeal. According to the statute, the grounds for appeal are limited to:

i) A violation or improper interpretation of the Constitution;
ii) An improper decision regarding the constitutionality or legality of administrative decrees, regulations, or dispositions;
iii) Conflict with prior judicial precedents on the interpretation of laws, decrees, or dispositions.

Appeal on the ground of legal questions other than those specified above may be lodged only upon approval of the Supreme Court.

In criminal cases, an appeal to the Supreme Court may be lodged on the following grounds; (i) a violation of the Constitution, law, order or regulation material to a judgement of the inferior court; (ii) the abolition, alteration or pardon of penalty; or (iii) a grave mistake in fact-finding or an extreme impropriety in sentencing in cases where the death penalty, life imprisonment, or imprisonment of more than ten years has been imposed.

As a general rule, appeals to the Supreme Court are filed against the judgements or rulings of the intermediate appellate courts, that is, high courts and appellate divisions of district courts or family court.

However, in civil cases a direct appeal to the Supreme Court may be filed against a judgement of a district court when both parties agree to do so. In criminal cases, an ap-

peal may come directly to the Supreme Court where errors were found in the application of laws and regulations, or where the penalty imposed was abolished or altered by subsequent legislation.

The Supreme Court is composed of 14 Justices including the Chief Justice. Hearings and adjudications at the Supreme Court are made either by the Grand Bench composed of all the Justices sitting together or by the Petty Benches, each usually composed of three Justices.

Following civil law tradition, a decision of the Supreme Court does not have the binding force of a precedent in later cases of a similar nature. It merely has a persuasive effect. However, the interpretation of law rendered in a particular case by the Supreme Court has a binding effect on the inferior courts when the case is remanded to them.

The Constitution has vested the Supreme Court with rule-making power and the authority of judicial administration. Under its rule-making power, the Supreme Court may establish rules of practice and procedure, and rules relating to internal discipline of the courts and the administration of judicial affairs.

This power is exercised by the Justices Council, which is composed of all Justices of the Supreme Court and presided over by the Chief Justice.

To assist the Justices of the Supreme Court in their judicial work, a certain number of judicial research officials may be appointed from among the judges of inferior courts. At present, two research judges are assigned to each Justice.

B. High Court

The High Court is an intermediate appellate court with jurisdiction over appeals from judgements or rulings rendered by the collegiate division of three judges of a district court or a family court.

In cases contesting administrative actions, however, the high court has original jurisdiction as a trial court of first instance. In addition, the high court decides such other cases as designated by law.

Cases in the high court are heard by a collegiate body of three judges which is called a division. There are three kinds of divisions: civil, criminal and special.

The special division deals with administrative cases. Each division is chaired by a presiding judge who is senior judge among the three.

The high courts are located in four major cities in Korea: Seoul, Taegu, Pusan and Kwangju. Each high court has its own territorial jurisdiction, and a chief judge is appointed for each judicial district to handle administrative matters of the court.

C. District Court

The district court is the court of general original jurisdiction, and it decides all cases except those coming under the exclusive jurisdiction of other courts, such as administrative cases and election disputes.

However, district courts also have appellate jurisdiction over appeals filed against the decisions of a single judge of district courts, branch courts and circuit courts. This appellate jurisdiction is exercised by the collegiate division of three judges.

Cases in the district courts are handled by either a single judge or a collegiate body of three judges, depending upon the nature and importance of each case.

The district court is divided into 13 judicial districts, the area of which generally coincides with that of administrative province.

For convenience, branch courts and circuit courts have been established within the judicial district of a district court.

On the civil side, the judge may order a case to be settled in a conciliation proceeding by a conciliation committee composed of a judge and two or more laymen. If the case is not successfully conciliated, the judge may render a decision which he deems reasonable after weighing both parties' positions. In summary proceedings, the court is not bound

by strict rules of evidence, but appropriate remedial measures are fully provided for the dissatisfied parties.

The district court also has jurisdiction over various non-contentious cases such as reorganization or liquidation of business corporations, and registration of real property and of corporate matters. Bankruptcy and conciliation proceedings also come under district courts' jurisdiction.

D. Family Court

The family court is a specialized court dealing exclusively with family affairs and juvenile delinquency cases. So far, only one family court has been established, and that is in Seoul. In other areas, the function of the family court is performed by the respective district courts.

The family court has jurisdiction over all disputes and conflicts within the family and other related affairs of legal significance. As a general rule, most domestic cases are first referred to conciliation proceedings, and if the parties are not able to reach an agreement, then the case is transferred to ordinary trial proceeding.

Those domestic cases which are by their nature non-contentious are heard by a single judge and other cases are handled by a collegiate body of three judges.

Appeals against the judgements and rulings of a single judge are heard by an appellate division of the family court consisting of three judges.

All the juvenile cases are heard by a single judge regardless of their nature and importance. For disposition of cases in the family court, investigation officers are extensively used.

3. Judges

A. Qualifications

Judges are vested with great authority and assume heavy responsibilities in safeguarding the fundamental rights of the people, and therefore qualifications for the appointment of judges are high. The Korean respect for educated government officials is clear in these qualifications. The tradition of civil law system also requires an educated and professional judiciary.

The qualifications for judges prescribed by the Court Organization Act are:

(1) completion of two years of training at the Judicial Research and Training Institute after passing the national judicial examination, or
(2) possession of qualifications as a prosecutor or an attorney.

(The latter includes an increasingly small group of prosecutors and attorneys who began practicing before the establishment of the Judicial Training Institute, and those who qualify because of service as Court Martial Judge or Prosecutor.)

Qualification for Chief Justice or Justice of the Supreme Court is 15 years experience; for the chief judge or senior judge of an appellate court, or chief judge of a district court, 10 years; and for the judge of an appellate court or a senior judge of a district court, 5 years. Such formal requirements are provided in order to protect judicial appointments from improper political influence.

B. Tenure and Age Limits

The tenure of judges is set at 10 years. They may serve consecutive terms. The Justices of the Supreme Court may also serve consecutive terms, but their tenure is for six years. However, the Chief Justice may not serve consecutive terms beyond the tenure of 6 years. The reason for not adopting a life tenure system is to insure that the bench retains its vigor. No judge may be dismissed from office or be forced to retire during his good behavior.

Judges are required to retire from office as they reach the age limits prescribed by law. The Chief Justice is retired from office at the age of 70. Justices of the Supreme Court at 65, the chief judge of an appellate

court at 63, and other judges at 60.

C. Guarantee of Status

To insure that judges are subordinate to no other agency of the state, the personal status of judges is legally guaranteed as follows.

i) Dismissal of judges from office

No judge may be dismissed from office except by impeachment or criminal punishment. Under the previous Constitution, judges could be removed from office by administrative disciplinary action, but the present Constitution provides greater security for judges.

If a judge is impeached or sentenced to punishment by imprisonment, he will be dismissed from office.

ii) Disciplinary action against judges

No judge may be suspended from office, have his salary reduced or otherwise be disciplined, except through disciplinary action by the Judicial Disciplinary Committee. The Committee is established in the Supreme Court, and matters regarding the discipline of judge are prescribed by law.

V. The Prosecution System

1. Public Prosecutor's Office

A. Introduction

The public prosecutor's office belongs to the Executive while the court is a component of the Judiciary. Although the public prosecutor's office is attached to the Ministry of Justice, it is a separate organization that consists of the Supreme Public Prosecutor's Office, high public prosecutor's offices, district public prosecutor's offices and their branches, each corresponding to a coordinate court. The public prosecutor's office enjoys a quasi-independent status.

B. The Supreme Public Prosecutor's Office

The Supreme Public Prosecutor's Office, headed by the Prosecutor General, is located in Seoul and corresponds to the Supreme Court.

The Prosecutor General is the chief law enforcement officer of the nation who supervises and controls all prosecutorial functions in Korea.

The Supreme Public Prosecutor's Office has 1 Deputy Prosecutor General who assists the Prosecutor General and 7 departments, and 1 Secretariat Bureau thereunder. Twenty-three divisions belong to the departments and the Secretariat Bureau.

The Deputy Prosecutor General shall be the rank of senior chief public prosecutor and the chief of the department shall be the rank of chief public prosecutor; seventeen division chiefs among 23 divisions shall be the rank of senior public prosecutors. The Chiefs of the Secretariat Bureau and 6 divisions shall be the prosecution administrative officers.

There are also 11 prosecution research officers who directly assist the Prosecutor General and conduct planning, research, and studies concerning prosecutorial matters. Prosecution research officers shall be the rank of senior public prosecutors or public prosecutors.

C. High Public Prosecutor's Office

There are now 4 high public prosecutor's offices, located in Seoul, Taegu, Pusan and Kwangju, corresponding to the high courts.

Each high public prosecutor's office is composed of 1 chief public prosecutor, 1 deputy chief public prosecutor, 4-17 public prosecutors and 1 secretariat bureau. Seoul High Public Prosecutor's Office has 3 divisions (General Affairs Division, Criminal Case Division, and Civil Litigation Division) while Taegu, Pusan and Kwangju High Public Prosecutor's Offices have 2 divisions (General Affairs Division, and Case Division) and the Secretariat Bureau respectively.

The chief public prosecutor of a high public prosecutor's office shall be the rank of senior chief public prosecutor and the deputy chief shall be the rank of chief public prosecutor. Public prosecutors of a high public

prosecutor's office shall be the rank of senior public prosecutor.

Public prosecutors in high public prosecutor's offices are mainly responsible for conducting all aspects of criminal proceedings and government litigations in the high courts.

D. District Public Prosecutor's Office and Its Branch

There are 12 district public prosecutor's offices and 38 branches corresponding to the district courts and their branches which are the first-instance trial courts.

Each district public prosecutor's office is composed of 1 chief public prosecutor, 1-3 deputy chief public prosecutors and a number of department chief public prosecutors thereunder. The number of prosecutors varies according to the size of the office. Also, each district public prosecutor's office has 1 secretariat bureau and 1-10 divisions the number of which varies as the size of the office. For example, Seoul District Public Prosecutor's Office has 3 deputy chief public prosecutors, 15 department chief public prosecutors, 114 public prosecutors and 12 divisions.

The chief public prosecutor of a district public prosecutor's office shall be the rank of chief public prosecutor and the deputy chief and the department chief shall be the rank of senior public prosecutors.

Structures of branches of district public prosecutor's offices vary greatly according to the caseloads of the offices. A large branch has 1 deputy chief public prosecutor and some department chief public prosecutors in addition to 1 branch chief and 1 secretariat bureau with divisions thereunder while a small branch has only 1 branch chief public prosecutor and 1 division supporting public prosecutor's job.

Usually the branch chief, the deputy branch chief and the department chief shall be the rank of senior public prosecutors.

District public prosecutor's offices and their branches are field offices that are responsible for investigation of all crimes and their prosecutions. There are no functional differences between these two organizations concerning criminal proceedings. But a branch of a district public prosecutor's office is under the general direction and supervision by the chief of the district public prosecutor's office because, hierarchically, a branch belongs to a district public prosecutor's office.

2. Public Prosecutor

A. Rank of Public Prosecutor

There are five ranks of public prosecutors; the Prosecutor General, senior chief public prosecutor, chief public prosecutor, senior public prosecutor and public prosecutor. (In this paper the term "public prosecutor" usually refers to the exercise of prosecutorial powers irrespective of rank. When it indicates the rank, special reference is added.)

B. Appointment of Public Prosecutor

The qualifications for a public prosecutor are identical to that for a judge and a private attorney. As mentioned above, any one who wants to be appointed a public prosecutor should first pass the National Judicial Examination and complete the 2-year training course of the Judicial Research and Training Institute that belongs to the Supreme Court. In addition to this requirement, some professional career experience is needed in order to be appointed a high ranking public prosecutor.

The President has the authority to appoint and assign public prosecutors upon recommendation of the Minister of Justice. In case of appointment of the Prosecutor General, prior deliberation by the State Council is required.

C. Retirement and Protection of the Status of Public Prosecutor

The retirement age of the Prosecutor General is 63 years and that of all other public prosecutors is 60 years.

The President may order the resignation of a public prosecutor upon recommendation of the Minister of Justice in the case that he or she is unable to perform his or her duties due to serious and prolonged mental or physical defect.

Public prosecutors, like judges, are protected in their status. Public prosecutors may not be dismissed, suspended from the exercise of their powers or subjected to a reduction in salary other than through impeachment, conviction of crimes punishable by imprisonment or more severe penalties, or disciplinary action. A special law called The Public Prosecutor Discipline Act governs the disciplinary proceedings against public prosecutors.

3. Function of Public Prosecutor

A. Introduction

The Public Prosecutor's Office Act provides that the authority and duties of a public prosecutor as a representative of the public interest are as follows:

(1) Matters necessary for the investigation of crimes, institution and maintenance of prosecution;
(2) Direction and supervision of the police and other investigative agencies concerning investigation of crimes;
(3) Request the court for appropriate application of laws and regulations;
(4) Direction and supervision of the execution of criminal judgement;
(5) Institution, pursuit, direction and supervision of civil suits and administrative litigations in which the government is a party or participant.

Although, in addition to this provision, there are other laws, e.g., the Civil Code, the Commercial Code which prescribe the authority and duties of a public prosecutor, the major part of a public prosecutor's job is the prosecutorial function in the criminal proceedings.

B. Public Prosecutor's Role in Criminal Proceedings

(1) Overview of criminal proceedings

When crimes have been committed, the police that belong to National Police Agency usually conduct criminal investigations. In the case of special offences such as customs offence or tax evasion, special investigative agencies, e.g., the Customs Office, the Tax Administration Agency, etc. conduct the investigations. Sometimes, public prosecutors themselves, using a special investigation division within a public prosecutor's office, conduct the investigations into intellectual and complicated offences or serious and large offences, e.g., official corruption, economic offences, narcotic offences, environmental pollution, organized crime, tax evasions, police misconduct and similar offences.

In the course of criminal investigation, a police officer or a special investigative agent may detain a suspect when a detention warrant is issued by a judge on the grounds that the suspect has no fixed residence or there has been reasonable cause to believe that the suspect may hide or destroy evidence or the suspect has escaped or may escape. A public prosecutor may also detain a suspect by the detention warrant issued by a judge on the same grounds as above. The maximum detention period in the police or in a special investigative agency is 10 days and, therefore, the case with the documents and other evidences should be transferred to the competent district public prosecutor's office or the branch office within 10 days from the date of detention.

In a case where a suspect is not in detention, the police or special investigative agency should transfer the case with all documents and other evidences to the above-mentioned office within 2 months from the date of the commencement of investigation unless special permission from the public prosecutor is obtained.

After the receipt of a case, a public prose-

cutor continues and completes the investigation by questioning the suspect, examining the documents and other evidences and conducting additional investigation as necessary. At the conclusion of prosecutorial investigation, the public prosecutor decides whether the suspect should be prosecuted or not. If the suspect is in detention, this decision must be made within 20 days from the date of the receipt of the case or from the date of the detention by the public prosecutor. In the case where the suspect is not in detention, the public prosecutor should decide the case within 3 months from the date of the receipt of the case or from the date of the commencement of investigation by the public prosecutor.

After a case has been transmitted to the court by a public prosecutor, he or she as a representative of the State bears the responsibility of carrying forward the case. Trial proceedings resemble in their external aspects those in Anglo-American legal systems except that there is no jury. Crimes punishable by death, confinement or imprisonment for life or a minimum term of one year or more (excluding burglary, habitual theft, etc.) are tried by a collegial court of 3 judges. All other criminal cases are tried before a single judge.

A public prosecutor and/or a defendant who is dissatisfied with the judgement rendered by the trial court can appeal to a higher court. The high court tries appeals against the judgement of a collegial court of 3 judges. The appellate division of a district court tries appeals against the judgement of a single judge.

Either party dissatisfied with the appellate judgement can seek further review in the Supreme Court.

If the final sentence is the one of death, confinement or imprisonment, it is executed in the prison. In case of forfeit, the sentence is executed by the clerk of a public prosecutor's office or the bailiff.

(2) Investigation

Public prosecutors have the original authority of criminal investigation. Practically, the police and 35 special investigative agencies initiate the basic investigations in most criminal cases (approximately 99% of the total cases). But the Code of Criminal Procedure vests the power of the initiation and the conclusion of criminal investigation only to public prosecutors. Therefore the police and special investigative agencies serve only as assistants to public prosecutors and should conduct their investigations in accordance with the general standards and/or special directions issued by public prosecutors and, necessarily, transfer all cases to public prosecutors for the conclusion of investigations.

Since the detention of a suspect is a serious infringement on suspects' rights, such detention of a suspect is performed only under the absolute control of a public prosecutor. Any police official or special investigative agent who deems it necessary to detain a suspect should submit the request to a public prosecutor for the issuance of a detention warrant and only when the public prosecutor agrees that detention is necessary, the public prosecutor submits the request for the issuance of a warrant to a judge. Public prosecutors also inspect the detention places located in police stations once or more every month or ensure that there are not illegal detentions.

Public prosecutors also bear the responsibility to carry out an inquest when a unnatural death, one of the most important causes of crimes, is reported. But, practically, the police conduct most inquests (about 97% of the total) in accordance with the orders of public prosecutors because of the severe shortage of manpower in the public prosecutor's offices.

Korean public prosecutors utilize advanced devices, e.g., computer system, VTR, polygraph and like other equipment in performing their prosecutorial functions to enhance the efficiency in criminal procedure.

(3) Prosecution, non-prosecution

Public prosecutors have the sole but discretionary power to decide whether a suspect should be prosecuted or not and also if the suspect has been detained, whether the suspect ought to be continued in detention at the conclusion of the investigation.

In the case where a public prosecutor believes that a suspect should be punished in consideration of the seriousness of offence, the circumstances of the suspect, the motive of offence, the national policy, etc., the public prosecutor may decide to prosecute the suspect.

There are two kinds of prosecution, a request for formal trial proceedings and a request for summary trial proceedings. A request for formal trial proceedings is made for a suspect who should be sentenced to death, confined or imprisoned in the opinion of the public prosecutor. A request for summary trial proceedings is made for a suspect for whom a fine is suitable in the opinion of the Public Prosecutor. In the latter proceedings, the case is adjudicated by a single judge on the basis of documentary evidence. Any defendant dissatisfied with the sentence imposed through these proceedings can request formal trial proceedings; the case is automatically referred for formal trial proceedings.

Although incriminating evidence against a suspect is enough, a public prosecutor may decide to suspend the prosecution if the public prosecutor believes the offence is a petty one and/or the suspect showed sincere repentance and/or there are other reasons that make the punishment unnecessary. This discretionary power of public prosecutors has proven very useful in correcting criminals, protecting society, lessening the heavy caseloads of courts and preventing the overcrowding of prisons. In 1988 11.8% of the total cases were decided by suspending the prosecution by public prosecutors.

In the case where the investigation was initiated by complaint, any complainant who is dissatisfied with a public prosecutor's decision not to prosecute may appeal to a competent high public prosecutor's office. If the decision of the high public prosecutor's office is not satisfactory, the complainant may re-appeal to the Supreme Public Prosecutor's Office. This appeal and re-appeal system is similar to that of the courts.

SECTION 2: PARTICIPANTS' PAPERS

Crime Prevention and Criminal Justice in the Context of Development—The Malaysian Perspective

by Arthur Edmonds *

As an introduction to the subject, I have opted to present a general profile of Malaysia as this will provide participants with some background knowledge of Malaysia's socio-political character that has given form and direction to its Criminal Justice System. I will then proceed to discuss compendiously, specific topics relevant to crime prevention and criminal justice in Malaysia. These topics will include the following:

1.1 General crime trends in Malaysia (1979-1988) with a brief discussion on some of the major offences identified and the causal factors of crime;
1.2 Criminal Justice Administration in Malaysia—the Role of the Police, Prisons, Courts and Community involvement in crime prevention;
1.3 International cooperation in crime prevention—the Malaysian Experience.

Malaysia in Profile

2. Malaysia, with a population of 16.7 million people, is a fast developing country in South East Asia. Her strong economy is primarily based on agriculture with developments in her industrial sector being vigourously pursued. The Malaysian society is multi-racial. There is mutual respect for customs, traditions, religions and values amongst different races namely the Malays, Chinese, Indians, Kadazans and other ethnic groups in Malaysia.

2.1 The Malaysian Constitution and Government

Malaysia's political system rests on the country's written Constitution which is the supreme law of the Federation. The Constitution, as in all other parliamentary systems of government, is founded upon the "Doctrine of Separation of Powers." An underlying feature of the nation's Constitution and legal system is its adherence to the rule of law, a system based primarily on the English Common Law System, and the Independence of the Judiciary and a corpus of written common law judgements and statutes. The hopes and aspirations of a multi-faceted society are reflected in the Malaysian Constitution thus ensuring peace, harmony and social stability.

Among other Fundamental Liberties guaranteed by the Constitution are:

—That no person shall be deprived of his life or personal liberty save in accordance with law; and
—All persons are equal before the law and entitled to the equal protection of the law.

2.2 The Legal System

The judicial structure and the administration of justice are based on the Common Law System. Justice in Malaysia is dispensed through a hierarchy of courts, the lowest being the Penghulus Court and the highest, the Supreme Court. (A Penghulu is a headman appointed by a state government. The criminal jurisdiction of a Penghulus Court is lim-

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ited to the trial of offences of a minor nature which can be adequately punished by a fine not exceeding $25/=). Subordinate Courts in Malaysia include the Juvenile Courts, Magistrates Courts and the Sessions Courts while Superior Courts include the High and the Supreme Courts.

The courts can pronounce on the legality or otherwise of executive acts of government. They can pronounce on the validity or otherwise of any laws passed by Parliament and they can pronounce on the meaning of any provision of the Constitution.

2.3 National Ideology

Guiding and charging the political, social and economic destiny of Malaysia is our National Ideology of 5 principles namely:

2.3.1. Believe in God;
2.3.2. Loyalty to the King and Country;
2.3.3. Upholding the Constitution;
2.3.4. Rule of Law; and
2.3.5. Good Behaviour and Morality.

This is a philosophy that every Malaysian citizen who is loyal to the country subscribes to irrespective of race, religion, culture or creed. This Ideology expresses the spirit of the Constitution making it workable in the Malaysian Society. What our National Ideology attempts to do is to make every citizen respect each others' rights and duties. These principles are today revered as lofty principles by the Malaysian Society.

3. The Malaysian Society of today has been moulded by the spirit of its Constitution and further guided by its National Ideology. Love and respect for the country and its ruler and the adherence to the rule of law has led to society's receptiveness to the idea of "Collective Responsibility" and of "Working Together in Partnership" in nation building. This value orientation is seen in the nation's social make-up of today and it is this very orientation that is contributing to the much sought after development of an environment of community approval for police functions. Furthermore, it has been observed that there is now a better understanding of the Criminal Justice System by the other individual agencies in the System. These agencies are reassessing their roles and are attempting to avoid the pitfall of restricting their views going by the perimeters of their organisations only.

4. Having briefly deliberated on the nation's socio-economic and political character and values ensuing therefrom, I will proceed to outline matters related to Crime Prevention and Criminal Justice in Malaysia.

The Crime Trends in Malaysia (1979-1988)

5. An upward crime trend was noted for the period 1979-1988. The Index of Crime Offences recorded an increase of 10.74% i.e. from 70,866 offences in 1979 to 78,479 offences in 1988. In between this time period, 1982 saw a marked decline in the Index of Crime Offences. A total of 67,733 offences were recorded. However, an all time high of 95,159 offences were recorded in 1986. In 1987, after a year of rigorous counteraction, offences dropped by 10.41% when compared to 1986. There was a further decrease of 7.94% in 1988 over 1987. Crimes per 100,000 population ratio for the 1987/1988 period decreased by 11% i.e. from 532 crimes per 100,000 in 1987 to 478 crimes per 100,000 in 1988.

5.1 Major Offences Identified

Four major criminal offences, all preventable in nature and in the property crime category, have been identified as critical to the crime situation of the country and have been the focus and concern of enforcement and preventive action. These offences are:

5.1.1. Robbery including firearm robbery;
5.1.2. Theft of Motor Vehicles;
5.1.3. Burglary of Homes and Theft; and
5.1.4. Other Thefts.

These crimes taken together constitute approximately 90% of the total volume of crime recorded annually in Malaysia. In 1988 alone, the total volume of crime recorded in Malaysia was 78,479 of which 6,798 cases of robbery were reported; 16,147 for theft of motor vehicles; 19,770 for the offence of burglary of homes and theft and 28,989 for other thefts. Other thefts alone contributed to about 37% to the total annual volume of crime.

5.2 Factors Influencing Crime in Malaysia

Many socio-economic factors have been identified as influencing crime trends and patterns in Malaysia. However, no one factor can be conclusively singled out as being the main cause. It has been observed that crime does not necessarily increase with economic development *per se.* But the socio-economic conditions that are created as a result of development may give rise to greater opportunities for the commission of crime. For example, the difference in wages and social mobility such as the rural-urban drift have influenced crime in Malaysia.

We have also observed that in Malaysia, population in itself does not satisfactorily explain crime trends although it has been established that there is some degree of association/correlation between population/crime. It has been noted in Malaysia that other demographic variables such as racial composition/distribution and population structure have a profound influence on the incidence of crime.

Other contributory factors to crime in Malaysia have been identified as:

5.2.1. The Rural-Urban Migration phenomenon.

5.2.2. The Dadah or Drug Problem. For the period 1986/1988, 34,243 people were arrested for various drug offences.

5.2.3. Triad or Secret Society Activities.

5.2.4. Yet another is the influx of illegal immigrants and refugees since 1970's; and

5.2.5. The burgeoning unemployment rate due to the recession of 1983-1988.

Criminal Justice Administration in Malaysia

6. It will be pertinent at this juncture to reflect on the functional aspects of the components of the Criminal Justice System in Malaysia.

6.1. The Role of the Royal Malaysia Police—Preventive Measures

A combined proactive-situational approach has been adopted by the Royal Malaysia Police to prevent and control crime in Malaysia. Circumstances appear to lead to crime risk are constantly evaluated and measures are taken to remove or at least reduce that risk. Police action covers every type of action that can be legally and fairly taken to prevent or reduce the number of occasions on which a crime can be committed. Preventive and enforcement measures undertaken by the Royal Malaysia Police broadly are as follows:

6.1.1. *Target-Hardening Related Activities* such as advising banks, financial institutions, goldsmiths and other commercial sectors, to upgrade their security systems and securing their premises from being potential targets to criminal attacks. Members of the public are also advised via the mass media to take steps to minimise opportunities for the commission of crime;

6.1.2. There is the promotion of other *Police/Public Relations Programmes* so that the Police are looked upon as friends and defenders of the public—an organisation that cares. The Police maintain a close liaison with all agencies of the public and private sectors.

6.1.3. In the area of *crime reporting* and in criminal intelligence collection activities a responsive system of Beats/Patrols is relied upon and Police Detectives and Investigators are made more accountable for the efficient

discharge of their duties and responsibilities;

6.1.4. The *location of police personnel* in strategic areas and their easy relocation in keeping with crime trends;

6.1.5. *Preventive Arrests and Rehabilitation Measures*: Over and above some of the penal laws providing for increased and stiffer penalties, there exist in Malaysia Preventive Laws that are invoked against certain categories of criminal offenders. These preventive laws provide for the more effectual prevention of crime and for the control of criminals, members of secret societies and other undesirable persons. These laws further provide for the securing of public order and the suppression of violence. They also provide for the preventive detention of those with a history of using violence to carry out criminal activities.

I must mention here that it is through the enforcement of these laws that triad and other organised criminal activity in Malaysia have been contained considerably.

6.1.6. *School Information Programmes*: Police Officers are assigned to schools not only to investigate any crimes involving students but also as guest speakers. These officers are from time to time called upon by the school to deliver talks on the various components of the criminal justice system and on specific criminal matters.

6.2. Community Involvement in Crime Prevention

Community involvement is a necessary crime prevention ingredient. It has been acknowledged as the most influential component of the Criminal Justice System in Malaysia. It has been recognised that because of its pervasiveness, people can make a significant difference in the prevention and detection crime and in the treatment and rehabilitation of offenders. There are voluntary organisations, societies, clubs and associations that have responded positively to prevention initiatives and other activities incidental thereto.

6.2.1. The National Concern

This spirit of community involvement consistent with the idea of Collective Responsibility is reflected in some of our country's National Programmes namely:

6.2.1.1. *The Formation of Vigilante Corps*: One of the objectives of this corp is to assist in the maintenance of peace and security in outlying rural areas.

6.2.1.2. *The Neighbourhood Watch Groups:* This programme aims at:

—fostering a closer relationship among the multi-racial communities and instilling a sense of responsibility among them to maintain the peace that is prevailing in the community;
—strengthening the relationship between the government and the people based on mutual respect, trust and confidence;
—promoting good citizenship and unity among the multi-racial communities within a neighbourhood through good neighbourliness.

6.2.1.3. *The National Association against Dadah (Drug) Abuse*: This Association was set up in March 1976 to play a complementary and supplementary role in the government's war against dadah or drug abuse. Membership is open to all Malaysians. The objectives of this Association are:

—to cooperate with Federal and State governments, their agencies and other bodies in all efforts to eliminate the unlawful production of and dealing in dadah and dadah use in any form;
—to eliminate and conduct research into dadah abuse and to rehabilitate dadah dependents;
—to foster public consciousness of the problems of dadah use and public involvement in all efforts against dadah use.

The activities undertaken by the association are in the areas of preventive education; legislation enforcement; treatment, rehabilitation and aftercare; and research and training.

It is through these programmes that the nation hopes to expand social consciousness and community awareness as these have been identified as essential factors to reverse trends of increasing criminality. Though the full potential of these programmes has yet to be fully realised, we are nevertheless optimistic that with our National Ideology guiding us, these programmes would eventually fit neatly into the overall Criminal Justice System of our country.

6.2.2. The Royal Malaysia Police—Response to Community Policing

The Royal Malaysia Police, in its endeavour to relate more to the people in line with the strategy of Community Policing, has gone through two distinct but interlinked phases with the introduction of:

6.2.2.1. "The Sedia Berkhidmat" or "Ready to Serve" concept which was initiated in the 1950's; and

6.2.2.2. "The Salleh System of Policing initiated in The 1960's."

The philosophy underlying these two interrelated strategies has moulded all community based programmes directly undertaken by the Royal Malaysia through which the message of policing is spread and in the process, a supportive relationship between the police and the community is nurtured and developed. The emphasis here is mutual trust and understanding because every problem in police work today is in some sense a matter of police—community relations and furthermore the Royal Malaysia Police subscribes to the view that initiatives on prevention taken in isolation must be replaced by concerted action.

In marking its 182nd anniversary on the 25th March 1989, the Royal Malaysia Police adopted as the year's theme the following:

"The People and the Police: together in crime prevention." We hope that by this integrated approach, we will achieve even better success in the future.

6.3. The Role of the Prison Department

The duties and responsibilities of the department are contained in the Prisons Ordinance 1952. Among other aspects this statute provides for:

—the admission, discharge, removal and safe custody of prisoners;
—the treatment of prisoners (bedding, clothing, cleanliness, diets, etc.);
—letters and visits to prisoners;
—religious instructions, education and general welfare of prisoners.

6.3.1. Rehabilitation Measures

Inmates are provided with vocational training and academic lessons. They are also given spiritual and moral guidance through religious instructions and worship. Rehabilitation related activities for prisoners about to be discharged include:

—undertaking community projects like repair work on the homes of the aged and the handicap;
—land-scaping activities;
—and being gainfully employed in construction firms and in agricultural activities.

To enable discharged prisoners to return to the mainstream of social activity through the process of rehabilitation and reintegration, the *Society for the Aid of Discharged Prisoners* has been established. The objectives of this society are:

—to ensure that discharged prisoners are gainfully employed;
—to assist them in finding suitable accommodation;
—and to look into their other welfare needs.

6.3.2. Response to Overcrowding in Prisons

In view of the growing prison population, the Department has taken positive measures to evenly accommodate prison inmates in

some of the 21 prisons and 14 rehabilitation/correctional and protection centers in the country. A new prison has also been constructed and is now occupied. Action is underway to convert certain existing prisons only for remand prisoners (prisoners awaiting trial). This action has, to an extent, helped to redress the problem of overcrowding in prisons and centers and in the process, it has contributed substantially to better amenities, facilities and improved prison conditions making for better treatment of prison inmates.

6.4. Role of the Courts

6.4.1. Overcoming the Backlog of Cases and Delays in Judicial Proceedings

The backlog of cases and the ensuing delay of judicial proceedings is being viewed seriously by Judicial Administrators. To ensure that justice is done, priority has been given to hasten judicial proceedings and to dispose of all remand cases and other pending legal matters. On this score Judges, Judicial Commissioners and Magistrates have been appointed to further streamline the administration of the courts and to further contribute to its functional requirements. Furthermore the act of granting postponements of cases either on the request of the prosecution or the defence has been subjected to severe scrutiny and rules have been formulated to check this cause for delays. It has been decided that requests for postponements can be granted only in certain exceptional and pressing circumstances and situations. It is hoped that with this action, delays in court proceedings will be minimized.

International Cooperation in Crime Prevention

7. It has long been recognised by the Royal Malaysia Police that preventive measures within the country alone are not sufficient to effectively counter the incidence of criminality in the country and that external factors must also be given due consideration. In this context it was felt that prevention must have an international dimension.

By virtue of the close proximity of countries in the South-East Asia Region and taking cognizance of the fact that organised crime and some other criminal activities have become transnational and the need for mutual action and assistance in the detection and deterrence of these crimes and criminals, regional police cooperation has always been viewed as the only practical means by which local enforcement authorities can pursue a criminal matter outside its jurisdiction. In this respect, the Royal Malaysia Police is not only a member of the I.C.P.O. but has established a close working relationship with countries in the ASEAN (Association of South East Asian Nations) Region through the following:

7.1. Regional Police Cooperation

7.1.1. The Association of National Police Forces of the Asean Region

In 1981 Asean Chiefs of Police, namely Singapore, Indonesia, Thailand, Philippines, Malaysia (and more recently Negara Brunei Darulsallam) held their first conference in Manila, formalising and charting the destiny of the Association consistent with crime related matters. This is an annual conference with venues alternate amongst member countries.

7.2. Bilateral Cooperation

Malaysia has always viewed that the limitations of regional cooperation within a formal framework should not prevent countries of the region from trying to forge the closest possible links on a bilateral basis with one another. Such bilateral contacts which may be mutually acceptable should be pursued as far as possible. In this respect, the Royal Malaysia Police is already in close bilateral cooperation with the following countries through:

7.2.1. The Malaysia/Singapore Criminal Investigation Department Liaison Meeting

Meetings between the C.I.D.s of Malaysia/Singapore are held quarterly. C.I.D. related matters are discussed and criminal intelligence is exchanged at these meetings. Many criminals have been brought to court on both sides of the causeway with the quick and timely dissemination of information between both the Police forces.

7.2.2. The Joint Malaysia/Thailand Working Committee on Criminal Activity

This working committee has just been formalised. This bilateral arrangement will further center around the exchange of criminal intelligence and on matters relating to the improvement of communication on the following types of crimes:

—Smuggling;
—Forgery/Currency Counterfeiting;
—Robbery/Extortion;
—Other syndicated criminal activities with regional implications; and the matter on,
—The handing over of fugitive criminal offenders.

The Royal Malaysia Police has a special relationship with the Office of the Narcotic Central Board (O.N.C.B.) of Thailand. Bilateral meetings are held once a year.

7.2.3. Indonesia/Malaysia

The "Rapat" conference is held annually between the Royal Malaysia Police and the Republic of Indonesia Police. A strong working relationship between the forces has been firmly established.

7.3 Scope of Cooperation

The scope of police cooperation either on a regional or bilateral basis has centered around 3 main areas, namely:

—Preventive Intelligence;
—Exchange of Information and effective Communication in urgent cases; and
—The exchange of personnel and training, taking the form of familiarisation attachments and course attendance.

With these regional meetings, the Police Forces are now able to relate better and are mutually responsive to relevant police matters.

Conclusion

8. Malaysia is a fast developing country striving to improve the quality of life of her people. The progress of the country is dependent on sound socio-economic development policies and strategies conducive to a favourable investment climate. This can only come to fruit when people help in the maintenance of peace and security of the nation. The Criminal Justice System is geared towards this objective whereby the community, the public, the private sectors and the components of the criminal justice system can work together to further strengthen the foundation upon which the stability of the nation rests. With greater commitment, shared responsibility and with expanding community awareness and involvement in prevention, a more meaningful and a workable Criminal Justice System in Malaysia is envisaged. With the encouraging response and development seen thus far in Malaysia we are confident that the full potential of the Criminal Justice System will be realised in the years to come.

International Cooperation in Recording Evidence for Use in Criminal Proceedings with Particular Reference to Singapore

*by Francis Tseng Cheng Kuang**

Part I: Introduction

International crime trends show a growing need for evidence recorded in countries outside the jurisdiction of local courts. Modern modes of transport and communications, the development of countries in general and the changes in styles of living lie behind this growing need. Offences committed locally which may be planned, abetted or contributed to in foreign countries include, but are by no means confined to white collar crimes, the infringement of intellectual property rights, and trafficking in drugs or illegal immigrants.

This paper will deal with Singapore's experience of requests made by other countries for evidence to be recorded in Singapore and the local domestic statutes enabling this to be done, and will suggest a practical approach for the courts in acceding to such requests. It will also be suggested that in view of the inadequacies in the present system, the UN has a major role to play in fostering such cooperation among member countries and in coordinating the drafting of domestic statutes so as to iron out some of the hiccups which may occur when countries try to extend such cooperation to each other.

It must be stressed, however, that the views expressed herein are solely the personal views of the writer who does not represent them as those of his country or the Department to which he belongs.

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Part II: Singapore Statutes Enabling Evidence to Be Recorded for Other Countries for Use in Criminal Proceedings

There are 2 statutes which enable the Courts of Singapore to record evidence for use in the criminal proceedings of other countries. The High Court of Singapore has ruled[1] that the Extradition Act governs the taking of evidence for use in the Courts of foreign states other than Commonwealth Countries (i.e. countries which were formerly British Possessions and including, presumably, Great Britain itself). This leaves the Commonwealth Countries with the Evidence by Commission Act, 1885, an English Act which by its terms was applicable to Singapore then as a British Colony. This Act continues to apply to Singapore by virtue of transitional provisions which are outside the scope of this paper to examine.

A. The Extradition Act (Cap. 103)

Section 43 of this Act which is self explanatory reads as follows:

"Taking of evidence in respect of criminal matters pending in courts of foreign States:

43. (1) The Minister may, by notice in writing, authorise a Magistrate to take evidence for the purposes of a criminal matter pending in a court or tribunal of a foreign State other than a matter relating to an offence that is, by its nature or by reason of the circumstances in which it is alleged to have been committed, an offence of a political

character.

(2) Upon receipt of the notice, the Magistrate shall—

(a) take the evidence of each witness appearing before him to give evidence in relation to the matter in the like manner as if the witness were giving evidence on a charge against a person for an offence against the law in force in Singapore;

(b) cause the evidence to be reduced to writing and certify at the end of that writing that the evidence was taken by him; and

(c) cause the writing so certified to be sent to the Minister.

(3) The evidence of such a witness may be taken in the presence or absence of the person charged with the offence against the law of, or of the part of, the foreign State and the certificate by the Magistrate that the evidence was taken by him shall state whether the person so charged was present or absent when the evidence was taken.

(4) The laws for the time being in force with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, upon the hearing of a charge against a person for an offence against the law of Singapore shall apply, so far as they are capable of application, with respect to the compelling of persons to attend before a Magistrate, and to give evidence, answer questions and produce documents, for the purposes of this section."

Special note should be taken of subsection (2) (a) above, which requires the appointed Magistrate to take the evidence "in the like manner as if the witness were giving evidence on a charge against a person for an offence against the law in force in Singapore." This provision could create difficulties where the code of criminal procedure of the requesting state differs from the Singapore Criminal Procedure Code. A form of compromise will be suggested in Part IV of this paper.

B. The Evidence by Commission Act, 1885

Section 3 of this Act reads as follows:

"3. Power in criminal proceedings to nominate the Judge or Magistrate to take depositions.

Where in any criminal proceeding a mandamus or order for the examination of any witness or person is addressed to any court, or to any judge of a court, in India. . ., or the Colonies, or elsewhere in Her Majesty's dominions, beyond the jurisdiction of the court ordering the examination, it shall be lawful for such court, or the chief judge thereof, or such judge, to nominate any judge of such court, or any judge of an inferior court, or magistrate within the jurisdiction of such first-mentioned court, to take the examination of such witness or person, and any deposition or examination so taken shall be admissible in evidence to the same extent as if it had been taken by or before the court or judge to whom the mandamus or order was addressed."

According to Halsbury's Statutes of England[2] no power of issuing a commission to procure evidence for use in criminal proceedings was created by this Act, and neither does such power exist at common law—see *R.* v *Upton St. Leonard's (Inhabitants)* (1847) 10 Q.B.827. Save under certain laws such as the Slave Trade Act, 1843 and the Merchant Shipping Act, 1894,, which specifically provide for such a power, evidence taken abroad on a mandamus is not admissible at a criminal trial in England and Wales. A probable reason for this was advanced by Erle, J in *R* v *Upton St. Leonard's (Inhabitants)*[3]: "The reason why criminal proceedings were not included in the Act[4] may have been that, according to principle, an accused party ought to have the opportunity of seeing and cross-examining the witnesses against him." Since the British position is that evidence procured abroad is generally not admissible (apart from the 2 exceptions above-mentioned) it is understand-

able that Britain would not have provided for a power to have evidence recorded for use in British Possessions (which are now Commonwealth countries). Any power to use evidence procured abroad must accordingly have been enacted by such countries after independence was attained, failing which they would have no such power. Conversely, if any Commonwealth country has the power to record evidence for use in another Commonwealth country, this must also have been enacted after independence, as the British legislature would have considered such a power superfluous.

The situation is not quite the same as regards the power to record evidence for use in criminal proceedings in foreign States other than Commonwealth countries. In such cases, the U.K. Extradition Act of 1870 extended the operation of the Foreign Tribunals Act of 1856 so as to enable the evidence of a witness to be obtained for use in criminal proceedings of a foreign country other than the U.K. and the British Possessions. This privilege accorded to foreign States is unilateral as Britain generally would not, as stated above, utilise evidence procured abroad for criminal proceedings in England. This position was maintained in Singapore, when the U.K. 1870 Act was repealed and replaced by the Singapore Extradition Act (now Cap 103) in 1968.

Part III: Requests by Foreign States for Evidence in Criminal Proceedings to Be Recorded in Singapore

Over the last 10 years, Singapore received 17 requests (up to the time of this writing) from other countries for such evidence to be recorded. The trend shows a high increase in such requests being made recently, particularly over the past 2 years which accounted for about half of the 10-year total.

The types of offences in respect of which requests were made included trafficking in and importation of drugs, notably heroin, breaches of banking and foreign exchange regulations, fraud, and forgery.

The following are examples of some of the types of evidence which Singapore Courts were requested to obtain:

A. In Drug Trafficking Cases

(1) Information relating to the foundation of drug syndicates.
(2) Identification of members of such syndicates and their functions.
(3) The participation of the accused persons in those syndicates.
(4) The organisation of the syndicates and the countries in which they had connections.
(5) Channels through which information was transmitted and the languages used.
(6) Identification of code words used.
(7) The means of transportation used for conveying drugs.
(8) The involvement of accused persons in particular transaction (relating to specific charges).
(9) Identification of the master-minds and contacts involved.
(10) Information on the origins and ultimate destinations of the drugs, and the routes taken.
(11) The total quantities of the drugs involved.
(12) Evidence to exclude tampering with the parcels containing the drugs by persons other than the accused persons.
(13) Information given by the accused persons to witnesses as to the parcels' contents (to prove knowledge).
(14) Bank documents to show transfer of funds believed to be proceeds from drug importations and laundering of those funds so as to subsequently use those funds to finance further drug importations as part of an on-going conspiracy.

B. In Cases of Breaches of Banking and Foreign Exchange Regulations

(1) Public records maintained by the Registry of Companies.

(2) Bank accounts.
(3) Solicitors' files.
(4) Company Records and Correspondence.

Such evidence was required to demonstrate fraudulent intent and moral culpability, by proving control of certain Singapore companies and access to their bank accounts by the accused persons.

C. For Cases of Fraud

Evidence was required to show that funds collected from the public were not used in the activities for which they were collected. Such evidence included:

(1) Amounts of money transferred to Singapore.
(2) Bank accounts through which such amounts passed.
(3) The tracing of particular sums of money.
(4) What those sums were expended on.

D. For Forgery Cases

(1) Identification of fake documents issued in Singapore according to the instructions of the accused which were submitted to the Customs of the other country by the accused or found in his premises.
(2) Identification of genuine invoices in respect of the same transactions issued in Singapore which were not presented to Customs. These documents were found in the accused's premises.
(3) Evidence that the prices in the documents submitted to the Customs were not the actual prices.
(4) Evidence that payments made on the genuine invoices were only for the goods specified therein and not for any other expense.
(5) Identification of the person who dealt with the Singapore companies.
(6) Production of the Singapore companies' office copies of the invoices involved.
(7) Evidence of the payments received by the Singapore companies for the shipments referred to in the invoices.

Various special requests have been made in respect of such recordings of evidence. Representation by the prosecution and defence as well as by the forum or tribunal of the foreign country has been asked for.

Singapore Courts have also been requested to fix early dates for hearings, to conclude such proceedings speedily and to transmit the notes of evidence recorded expeditiously. A wise type of request sometimes made asks that certain provisions of the requesting country's laws be complied with in the recording. Singapore Courts have, for example been asked on occasion to ascertain the willingness of certain witnesses to testify, as such witnesses would not be required to do so unless they choose to waive certain rights and privileges they are given by the laws of the requesting country. Other examples include compliance with certain specified provisions of the criminal procedure code or evidence rules of the requesting country.

Such laws have to be clearly spelled out in the letters of request together with a concise explanation of how compliance is to be effected, as a Singapore Court cannot be expected to be conversant with foreign procedures and laws. A special request cannot be acceded to if it contravenes or is inconsistent with Singapore laws. Such requests may be also not be granted if they directly offend against Singapore Constitutional rights or human rights recognised by Singapore or public policy. Foreign political offences are specifically excluded from such assistance by Singapore law[5].

Part IV: The Approach to Be Taken by the Courts

It had been pointed out earlier that a Singapore Court is required to take the evidence requested "in the like manner as if the witness were giving evidence on a charge against a person for an offence against the law in force in Singapore." Apart from spe-

cial requests for certain provisions of foreign laws to be complied with, there may also be practices requested which, while not prohibited by Singapore law, are not normally adopted by Courts in Singapore. Examples of such practices are instances when evidence is tape-recorded before being transcribed and certified, and when foreign counsel and members of foreign tribunals who are not members of the Singapore Bar seek permission to ask questions and to be heard in the proceedings in Singapore.

As long as such matters do not conflict with local laws, constitutional or other recognised human rights, and public policy, it is suggested that the request of the country in which the evidence is to be used should be acceded to. Since it is not a local court but a court of the requesting country that is going to consider the effect of such evidence, the procedures of the latter should always be accommodated as far as possible. In this connection, it has been held in England, that while the evidence on the examination can only be taken there in the English way, the English rules as to admissibility need not be strictly followed where the answers to the questions may reasonably be supposed to throw light on the questions at issue.[6] Rules on admissibility govern the use to which the evidence is to be put and since this use is by the foreign tribunal, a local court should proceed to have the evidence recorded first, without concerning itself with the purpose to which such evidence is later going to be put. After the evidence has been transmitted, the foreign tribunal can, if it thinks fit, exclude such evidence from its deliberations, after applying its own rules on admissibility. Furthermore, effect should also be given to the rules of evidence of the foreign court, if known.[7]

Part V: The Role of the United Nations

The hitherto infrequent use of the available procedures for obtaining useful evidence from other countries points to the fact that much can be done in the international arena to facilitate this aspect of criminal justice. It is suggested that the UN could play a major role in making its members aware of the availability and benefits of such evidence, in encouraging more extensive and universal usage and in coordinating and regulating such usage so that the evidence thereby obtained can be put to practical use in the requesting countries.

Perhaps the most fundamental objection that could be made against the use of evidence recorded by a foreign tribunal is that of constitutionality. In Singapore, for example, judicial power is vested in the Supreme Court and the Subordinate Courts by virtue of Article 93 of the Constitution, and under Article 9 (1) no person shall be deprived of his life or personal liberty save in accordance with law. Section 195 of the Criminal Procedure Code grants every person accused before any criminal court the right to be defended by an advocate, and sections 188 (2) and 180 (1) of the same Code provide that witnesses called by the Prosecution may be cross-examined by or on behalf of the accused person. Where evidence is taken overseas by a foreign court, the accused person may be and is often undefended or even absent, and may thus be denied the fundamental rights mentioned above. It is for this very reason that England does not generally utilise evidence recorded abroad (See Part II of this paper). Any evidence taken while an accused person is deprived of his fundamental rights cannot be used in judicial proceedings and any such evidence which has found its way into the records may have to be expunged.

Another possible ground of objection that may be raised is that of jurisdiction. The court making the request may have no power to do so under the laws of the requesting country or the court requested to record the evidence may not have authority to do so under the local laws. An instance of this last category took place in Singapore when the

Authorisation of the Minister was quashed by the High Court. (Details of this case are provided in my specific case report). Problems may arise if the wordings of the respective laws are inappropriate. The law enabling the local court to record the evidence may, for example, refer to "orders" for such evidence while the law of the requesting country may provide for "requests" to be made but not "orders." In the case of Commonwealth countries, the local laws may limit applications for such evidence to certain colonial statutes. Difficulty will arise if the requesting country has repealed such statutes and/or replaced them with enactments passed after independence was obtained. To take yet another example, the laws of the respective countries may differ as to which authority of the requesting country (e.g., court, foreign ministry, etc.) should issue the request or which authority of the requested country the request or application should be directed to. In addition, questions of whether the offence for which evidence is sought is political in character (and therefore not one in which another country would render assistance under universal extradition practice) and which authority would be the proper one to determine this issue may arise.

A third area of difficulty lies in the procedural differences in the various legal systems of countries. The form of oath or affirmation administered for the taking of evidence varies widely, and the form used in one country may not be acceptable in another. The mode of examination of the witnesses may also present problems. Some of these are closely related to the question of representation. If representation by members of the foreign tribunal, prosecution and defence is allowed, problems relating to the substance of the evidence sought would at least be alleviated. There would remain, however, issues pertaining to the methods by which the attendance of witnesses is to be enforced, the rights of such witnesses to refuse or decline to answer questions put to them and the formalities involved in the waiver of such rights, the types of questions witnesses may be asked, and the sanctions for giving false evidence or refusing to give evidence.[8]

In addition to publicising a scheme for international cooperation in the recording of evidence and urging members to participate in it on the basis of reciprocity, the United Nations could formulate a draft code to propose appropriate domestic legislation to give effect to such a scheme so as to take care of the technical difficulties which arise (some of which have been highlighted above). It is suggested that, for reasons which have already been given in this paper,[9] the procedures, forms, and rules of evidence of the requesting country should be made to prevail in such proceedings. Any criminal or penal sanctions involved should, however, remain the prerogative of the country requested. The draft code could also safeguard human rights in providing for the right of the accused and his counsel to be present and to be heard at any such proceedings at the expense of the requesting country, and provision for representation by the prosecution and members of the relevant tribunal of the requesting country can also be made. The English objection to the use of evidence recorded abroad which was voiced in *R* v *Upton St. Leonard's (Inhabitants)*[10] may thus be overcome, and countries which traditionally place high values on human rights may become less reluctant to utilise such avenues for obtaining additional evidence. Accused persons would also be afforded opportunities to lodge preliminary objections against such proceedings being conducted on jurisdictional grounds such as, for example, where the accused person alleges that the offence for which he is being tried is political in character.

It is therefore to be hoped that the United Nations will, in time to come, play a greater role in fostering cooperation among member states in this aspect of criminal justice.

Notes

1. In Originating Motion No. 132 of 1988.
2. Halsbury's Statutes of England, 3rd Edition, Vol. 12 pages 794-5, 855.
3. (1847) 10 QB.827, 838
4. Statute 1 W.4, c.22, which provided for evidence to be taken on commission for use in civil cases.
5. See section 43 (1) of the Extradition Act (Cap 103).
6. *Desilla* v *Fells & Co* (1879) 40 L.T. 423, per Cockburn, CJ.
7. *Desilla* v *Fells & Co* supra, per Cockburn CJ cited with approval in *Eccles & Co.* vs *Louisville and Nashville Railroad Co.* [1912] 1 KB. 135, C.A. at page 144, per Vaughan Williams LJ.
8. See section 43 (4) of the Extradition Act (Cap 103).
9. See Part IV.
10. See Note (3) supra.

Coping with New Forms of Criminality: the Zambian Experience

*by Winter Archim Nyamawita Kabwiku**

Introduction

Zambia is an independent sovereign state located in Central Africa. It attained its political independence from Great Britain in 1964 after 70 years of colonial rule. It covers a land mass of roughly 750,000 square kilometres (about the size of Japan). It has a population of about 7.6 million inhabitants, and has a National Police Force whose present strength is about 9,000 officers.

Due to the inherited lop-sided development which is biased in favour of urban centres, there has been an unprecedented movement of rural masses into urban areas. This phenomenon makes Zambia not only one of the most urbanised countries in the region, but also one of the most industrialised outside the Republic of South Africa. Zambia follows an administrative structure that is based on the British system. English is the official language.

The Extent of Crime in Zambia

The everyday cry by the national leaders, the clergy, the mass media, and the various wings of law enforcement about the rapidly increasing rate of crime in Zambia is to all intents and purposes not an empty observation; for apart from these utterances, the Zambia Police Force, as one of the Law Enforcement Agencies, has in its possession, statistics on crime that tends to prove that indeed crime in Zambia has and is still increasing in alarming proportions. However, in attempting to analyse these crime statistics, there is a need to caution ourselves on their dependability. This is so because it has been recognised world wide by social scientists and other criminologists that although statistics appear to mean well they nonetheless do not tell the whole or true story about the volume of crime (Radzinowicz 1977, Hood and Sparks 1978). In other words, statistics are said to reflect only upon those criminal acts which have been reported to and recorded by the Police but dismally fail to show the volume of the unrecorded crime or dark figures which could be five times higher than what is actually portrayed. Furthermore, official crime statistics are as we are aware influenced by, among other variables, decreases or increases in Police manpower, which is the main determinant of how the Police might react to given situations.

Despite these limitations, however, official crime data at the moment, supplemented by surveys of victimisation and self reported criminal activities by criminals appear to form the only comprehensive sources through which the incidences of crime can be measured and estimated. Given such statistics therefore as indicated in Table 1, the Zambia Police Force is of the view that contrary to the data which appears to give an impression of diminishing criminality from 1985 to 1988, in which, in 1985 the police recorded a total of 147,742 crimes dropping to 125,408 cases in 1988, the reality of the situation, as adduced by the stated victim surveys and self reports by criminals as read with official data, is that not only does Zambia have a crime situation but that the changes in its shades also require drastic adjustments in policing methods to cope with the scourge. In order to analyse the problems that have created such a phenome-

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Table 1: Recorded Crimes against Police Strength, and Population 1964–1988

Year	Population	Police Strength	Total Crime Recorded
1964	3,385,465	5,838	64,753
1970	4,188,432	8,002	101,400
1975	4,877,447	9,569	106,453
1980	5,679,808	10,837	153,343
1985	46,000,000	−10,000	147,742
1986	+6,000,000	−10,000	146,165
1987	+6,000,000	−9,000	137,563
1988	7,600,000	−9,000	125,408

Source: Zambia Police Annual Reports

non perhaps there is a need to look at the various intervening variables that have brought this up.

1. Geo-political Factors

Zambia shares its borders with eight (8) neighbours within the region. These are: Tanzania, Zaire, Angola, South West Africa (Namibia), Botswana, Malawi, Zimbabwe, and Mozambique. Due to her liberal laws, abundant natural resources and her strong support for the liberation movements, coupled with the relative peace that prevails in the land, three issues appear to have surfaced:

First, Zambia appears to be the one country in the region that has borne the brunt of the refugee problem in that it provides sanctuary to the largest number of refugees from Mozambique, Angola, Namibia and Malawi on account of discords in these countries. The current figure is pegged at over 150,000. Due to their status, many of them are unable to find gainful employment.

Second, because of her strong support for the liberation movements, there has been an increase over the years in the importation, and exchange of firearms by the refugees and freedom fighters, many of which have found their way into the hands of criminals. Cases in point are that during the Zimbabwean and Mozambican liberation wars, Zambia saw an increase in murder and robbery cases prior to 1980.

Third, due to the discovery of precious and semi-precious stones as well as abundant fauna, (elephants and rhinos) coupled with very weak immigration laws, a number of foreigners from West Africa and Kenya have come onto the scene, and appear to have taken control of the entire trafficking of ivory, and drugs as well as the illegal foreign currency markets. In other words, drug barons and other syndicates have sprung up to share the spoils.

2. Economic Factors

Fifteen years ago, the economies of the industrialised world began to decline and Zambia's mainstay too followed the international pattern as prices of her main stay, copper, hesitated and then collapsed, e.g. in 1978 a ton of copper fetched £1,000 but by 1980 it fell to below £900. The effect of this fall on the performance of the Zambian economy was both immediate and traumatic. Industries shrank with the result that several persons ended up being squeezed out of the employment market. This too was followed up by general malaise and inertia in the public service.

To compound the situation, the country's Balance of Payments were sharply eroded as the oil bill rose from the hitherto Pounds 75 million per year before 1975 to an all time high of Pounds 240 million for the same quantity in the subsequent years. In addition, the Zambian economy is basically not only a mono one but import-oriented to fuel its industries. It also has a weak informal sector to cushion the formal one. Many industries tried to grapple with this phenomenon but found no relief and declined further into a state of disarray.

3. Police Strength

The incidence of crime in Zambia can also best be understood if one looks at police strength vis-a-viz the general population. As

can be seen, from Table 1, the population as well as the crime rate have been increasing steadily from 1964 to date. The general picture with regard to police strength is one of massive decreases. The implication of such figures is that when aggregated together with other variables; even with the best of intentions, the police force is not in a position to provide its citizens with qualitative service. To compound the situation, there is the question of lack of logistical support and the size of the area in geographical terms to be covered, in that not only is the number of officers so few, but being a territorial force, a disproportionate ratio occurs in which too few officers are expected to police abnormally large areas. The consequences are that many crimes are committed which go unreported and uninvestigated.

4. The Miasma of School Drop-outs

Zambia's school system is based on the British model which prepares young men and women for formal employment only as clerks, technicians etc. Due to this fact, the process that at certain early stages in the school system, specific quotas must drop out of school due to a lack of places, e.g. at both primary and secondary junior levels, the drop out rate is 60%. With this state of affairs, coupled with the fact that the economy is in a state of stagflation one finds that in the main, our school system churns out citizens who are both ill-equipped for employment in a competitive economic environment, and faced with an economy that cannot absorb them. The result is delinquency.

For instance, it has conclusively been found over the years that the increasing rate of Grade VII drop-outs has resulted in many of them becoming "Mishanga" boys (cigarette selling boys/street boys), whose activities range from petty juvenile crimes to the control and sales of essential commodities which are in short supply. In a study of juvenile delinquency by some researchers in Zambia in regard to the cases referred to the Department of Social Development, over 98% of juvenile delinquents had not proceeded beyond junior high school, and only 37% had attended school at the time of arrest.

5. Population Factors

Zambia's population growth rate according to the World Bank (1986) Report, is estimated at 3.6% per year, whilst the GDP has been growing at the rate of −2.8% in 1982 to a mere 0.6% in 1986. Indications are that unless something close to a miracle occurs to cause this trend to reverse, the country is heading for disaster. The effect this has had on over-all development is that, not only has it outstripped the provision of goods and services, but has also brought about a ploriferation of slums in urban areas, thus placing more strain on an already besieged economy.

6. Inappropriate Monetary Policies

From about 1975, Zambia entered into a marriage of convenience with the IMF and the World Bank. These two institutions came up with economic prescriptions which they stated would restructure Zambia's economy and generate productivity. What followed, rather than improve the economy, was a series of currency devaluations which, in an import oriented economy, finally, reduced the currency unit to nothingness, e.g. whereas in 1975 the Zambian Kuacha was 1:1 with U.S.$, by 1988 it was U.S.$1 to 16 ZK. Although in 1987, Zambia had to divorce herself from the IMF and World Bank programmes, the damage had already been done, as inflation is running at a very high rate. Arising out of this chaos, a currency black market has sprung up under the control of foreigners, at which U.S.$1 fetches ZK 70.

General Overview

Against this background, Zambia has witnessed a lot of social, cultural and economic adjustments which in turn have had a profound bearing on the nation, and the gener-

al rhythm of development, requiring law enforcement agencies to adjust their methods in order to cope with new forms of criminality. Arising out of this gloomy picture, how is the Zambia Police Force coping with new trends of criminality? In attempting to answer the question, a few examples that appear to be pertinent will be given.

Specific Crimes

1. The Drugs Problem

(A) Cannabis

This is a natural plant which grows widely in Zambia. It has been smoked by people from time immemorial. Traditionally, it was smoked for its supposed improvement in vigor, and energy for hard chores. Migrants from South Africa and early miners spread its abuse. Up until 1984, cannabis cultivation and marketing were within tolerable proportions. After that date to the present, there has been a sharp demand for it in overseas markets like the United Kingdom and South Africa, resulting in its widespread cultivation, illicit marketing and general trafficking. The proceeds acquired are used to purchase motor vehicles from South Africa and Botswana which are later sold on the Zambian markets at exhobitant prices thus weakening further an already precarious economy.

(B) Mandrax (Methaqualone)

Unlike cannabis, mandrax trafficking is of a recent origin. Although it first made its appearance onto the Zambia scene around 1982, it generated more interest around 1984. From that date, the country suddenly began to witness unprecedented forms of high standards of living even among the unemployed who could not explain the sources of their funds. Exhaustive investigations led to the discovery of massive importations from India and West Germany of this drug whose destinations were South Africa and London, thus Zambia served as a transit point with a large number of middlemen of Indian origin (see Appendix A). The scourge became so lucrative that a lot of people joined onto the band wagon considering that one tablet fetched between US$4 to US$8. The funds, generated in the case of cannabis, were laundered through the purchase of motor vehicles from South Africa and Botswana which are later imported into the country and sold at exhobitant prices owing to the scarcity of motor vehicles in Zambia. Other methods of laundering take the forms of purchasing foreign currency on the black markets, purchasing government trophies, precious stones and the like which are then exported overseas. The major controllers of these markets are mainly foreign nationals of Kenyan, and Senegalese origin. The impact of these acts on the Zambian economy and general crime is quite devastating.

Government Response

Being concerned with the serious implications drugs create on the over-all development of any society, and bearing in mind that the Police Force appeared constrained at several levels, including having weak laws, the Government, on recommendations from the Police Leadership, came up with a three pronged approach to resolve the issue:

(a) It gave directives to the Police Force to set up an Anti-Drug Team, based at Police Headquarters, and promised massive support. Although this was done, lack of adequately trained supportive manpower, logistics, coupled with existing weak laws made it difficult for the Police to create any impact on the scourge.
(b) The lessons learnt from (a) above led to the complete review of the whole issue, in which a new Bill was proposed which appears to be in line with other progressive nations' laws. It calls for the forfeiture and seizure of assets derived from drug trafficking. It is likely to come into force in August, 1989.
(c) Allied to (b) above, the training and re-

training of a new cadre of officers from all wings of the Defence and Security Forces has led to the creation of an "Anti-Narcotic Drugs and Psychotropic Enforcement Commission" under the direct supervision of the Minister of Home Affairs.

2. Robbery

This form of crime ranks third in regard to frequency and seriousness. The country on average records at least 15 to 20 cases per week. The most notorious area affected is the Copperbelt which forms Zambia's main industrial base, and has the largest population density. The area also shares a very wide border with Zaire. The modus operaidi used by criminals involves the mounting of false road blocks by armed gangs on the main high ways, using various types of firearms mostly from neighbouring Zaire, and a few from within. Items stolen are mainly motor vehicles, household goods and foodstuffs.

Countermeasures

Operationally, the Police have reactivated and better equipped the Anti-Robbery Squads with fast vehicles and increased Manpower for patrol, mostly on the notorious Ndola-Mufulira highway. At the political level, more bilateral talks have been undertaken to try to legalise cross border trade with Zaire as well as to find ways on how to recover the stolen items and also extradite the criminals. Despite these measures, the problem is still thorny.

3. Motor Vehicle Thefts

This also forms one of the most worrisome crimes in the country, owing to the inconveniences the victims are subjected to as well as the serious financial losses on the state-run insurance company. There is an average of 3 motor vehicles stolen everyday in Lusaka (Capital City). Though the figures might not mean much by western standards, it must be analysed in the context that Zambia as a whole has a shortage of motor transport. The culprits modus operandi has shifted from the hitherto crude form of bypassing the use of the ignition system by cutting the wires, to the use of duplicate keys which are obtained by thieves through the connivance with car washers, garage mechanics and key cutters. Most motor vehicle thefts are sponsored by foreigners who appear to have ready markets in Zaire, Tanzania and Burundi.

Countermeasures

The Zambia Police Force has introduced a few measures which appear to be paying dividents:

(a) Introduction of a Policy of contraction on business registarion in which the licensing and establishment of key cutting enterprises has been reduced.
(b) Police permits are required for any key that is to be cut.
(c) Increased security awareness programmes on T.V., Radio and the Dailies.
(d) At the political level, more bilateral and multi-lateral agreements between governments in regard to information exchange and extradition of fugitives.

4. Burglary

Due to the depressed economy which gives rise to low productivity in industry, almost everything is in short supply. There is a thriving black market where one can get anything. This crime forms the highest among all property crimes reported to the Police and most items stolen fall within the range of all house-hold goods, that is, Television Sets, Videos, Hi-Fi Systems, car types etc. All residential areas are at risk. The losses in fiscal terms run into millions of Zambian Kwacha.

Countermeasures

(a) There has been a proliferation of security committee formation in the suburbs

taking the form of vigilante or neighbourhood watch schemes. These are resident directed, but come under the direct supervision of the Police Stations in the areas concerned.

(b) Sting operations on enterprises that are suspected to be in league with criminals are quite frequent, mostly in high density residential area, where the low income groups reside.

5. White Collar Crime

The incidence of white collar criminality is increasingly causing a lot of concern to the police and the general public. White collar crime is generally defined by criminologists as that type of crime which is committed mostly by the rich/upper class or the well to do, in society by virtue of their privileged positions in trade, high office, etc. Examples of white collar crime could be: fraud, embezzlement, tax-evasion, insider dealings on the stock markets, etc.

In Zambia, the pervasiveness of this scourge has provided a major threat to the society and prosperity of the country. The Kanyama Disaster Scandal, TIKA Mine Scandal, Wine Gate, TAW Scandal etc., form good examples of the growth or emergence of white collar crime.

Countermeasures

Mindful that most of the perpetrators of these crimes are highly placed members of the society and that suspects have access to the best legal practitioners, coupled with the fact that the police force is not adequately equipped to handle those cases, the Government established two autonomous institutions which enjoy similar powers like the police force and are under the same Ministry of Home Affairs. These are:

The "Anti-Corruption Commission" headed by a High Court Judge, and the "Special Investigations Team for Economy and Trade" commonly referred to as SITET.

Although it is hard to measure their impact on the over-all crime situation in the absence of data, supportive wings of the Government, and the police in particular will achieve much in the fight against crime especially when one takes into account the heavy fines they impose.

All in all, it would not be an over statement when we reiterate that since depressed economies bring with them many problems for law enforcement agencies, what is required on the part of the latter is to modify its perception of issues and attempt to devise better ways of handling the scourge.

References

Hatchard J. Collected works on crime and criminology (unpublished) 1984. *LUSAKA.*

Hood, R. and Sparks R. (1978). *Key Issues In Criminology*, London, Weidenfield and Nicolson.

G.R.Z. *Zambia Police Annual Reports*. Government Printer, Lusaka.

G.R.Z. *Department of Social Development Annual Reports*. Government Printer, Lusaka.

Radzinowicz L. and King J. (1977). *The Growth of Crime: The International Experience*. Hermondsworth, Penguin.

World Bank (1986). *World Development Report* New York, Oxford University Press.

Appendix A

	Seizures	Arrests	Nationality
1986	49	17	14 Zambians
			1 Indian
			1 Malawian
			1 Zimbabwean
1987	236	236	227 Zambians
			1 Briton
			1 Indian
			1 Kenyan
			3 Zimbabweans
			1 Yugoslav
			1 Malawian
			1 Tswana

Crime Prevention and Criminal Justice in the Context of Development—The Current Trend of and the Countermeasures to Computer Crimes

*by Shinji Ogawa**

1. Introduction

As modern society became highly developed and much more complicated, a system which could transmit, accumulate and analyze various information quickly and correctly became necessary. The development telecommunications technology printing, copying and the like have realized such a system. As the core of this system, computers are sustaining the development of society. Contemporary society would not be able to exist without computers.

On the other hand, some types of crimes which the traditional criminal justice system could not foresee have emerged with the development and popularization of computers; they are called computer crimes. Various problems have been occurring concerning the application of criminal law to computer crimes. Many difficulties have been found in the prevention, investigation and punishment of computer crimes because they are committed with the background of highly specialized knowledge which is not familiar to most lawyers. But neglecting efforts to prevent computer crimes would result in not only distrust of criminal justice, but also the breakdown of computerized society and the obstruction of proper societal development.

In Japan, computer crimes tend to occur frequently. As a countermeasure to this tendency, the Penal Code was amended in 1987. But some problems have been left unsolved and require future solutions. Summarizing these situations will be useful for examining the relation between the development of society and the role of criminal justice.

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2. Functions of Computer and Computer Systems

The development of computers began with the desire for an automatic calculator. First, automatic calculators which were programmed by punched paper tape were invented in 1944. In 1946 a computer which was operated by a processing circuit with vacuum tubes was invented. In 1949 a computer containing an operating program was invented, and the first commercialized computer was made in 1950, which could record and analyze date. Since then the operating capabilities of computers have advanced markedly with the attendant capacity to process data. Parts of memory and process units have evolved from vacuum tubes to transistors, ICs, LSIs and VLSIs. Computers made in the 1980s were called computers in fourth generation. They are multifunctioned electronic devices with which various intelligence functions can be processed.

The facilities of a computer are classified into 5 facilities; in-putting, memorizing, processing, out-putting data and controlling itself. Each facility is carried out by each unit. Control, memory and process units are usually put in one black box called a CPU. Other units are classified into in-put, out-put and assisting memory units. Assisting memory units can memorize enormous data by magnetic tape, magnetic disk, magnetic drum or

optical disk.

The data communicating system is the one in which a central computer and many terminals in distant places are connected by communicating lines. With this system, data can be put in from each terminal to the central computer and can be put out from the central computer to each terminal. Data can be exchanged simultaneously between distant places by this system, so it is called the on-line real time system. By the data communicating system, it also becomes possible for many users who live in distant places and have terminals to use the central computer at the same time. Such a system is called the time-sharing system.

For the data communicating system, telephone cables have mainly been used in Japan. Data translated into electric signals are transmitted through them. In order to transmit further date, laser beam and optical fiber cables have been utilized. Data communicating services are rapidly becoming popular. And networks which connect central large-scale computers and many personal computers in private companies and homes are also being established in Japan.

3. The Spread of Computers in Japan

In Japan, the on-line real time system has become familiar since the Japan National Railway adopted it for the reservation system in 1960. Banking has become on-line too. That means that all terminals in all branches of one bank are connected to a central computer in a computer center; ledgers are memorized into an assisting memory unit in the computer center; all customers are able to deposit or withdraw their money through more than 20,000 cash dispensers set up all around Japan with their CD cards.

Almost all companies have computerized their business such as management of personnel, salary, quality control, stocking, selling, delivering, information about customer, financing and the like. In public offices, computers are used for the administration of statistics, criminal records, drivers licences, registration of cars, social insurance, taxes, resident registration and the like. The popularization of personal computers for individual use is surprising. Networking of these computers is also advancing.

4. Situation of Computer Crime in Japan

In the context of the computerization of society, it may be natural that computer-related crimes are occurring. Crimes which have emerged following the spread of computers and which are committed by abusing computer facilities or attacking their weak points are called computer crimes. Computer crimes have most frequently occurred in the United States. In Japan, computer crimes are beginning to occur as frequently as those in the U.S.

Crimes which are committed by drawing others deposits from CD machines with stolen or acquired CD cards are the most common computer crimes. Nearly 1,000 such crimes are investigated by the police every year. But their means are very simple Criminals only have to supply the 4 key numbers of CD cards such as the date of the owner's birthday. The complexity of computer crime are not revealed in these cases, and such cases will not be analyzed in this report.

The number of computer crimes except for these CD crimes as reported, are noted in the attached table. During a 15 year period from 1971 to 1986, 75 computer crimes were reported. In these crimes, 51 cases occurred during the most recent 5 years, from 1981 to 1986. And in 1986 the number of computer crimes reached 17, the highest number during these 15 years. It is apparent that the number of computer crimes is increasing rapidly.

But the actual number of computer crimes committed each year is considered to be far larger than the reported number. Computer crimes can be committed secretly, and one of their distinguishing features is that they

are very difficult to detect. The rate of the reported number is estimated to be only 15%, in comparison with the amount of damage estimated from the result of one sampling research.

5. Classification of Computer Crime

By analyzing reported computer crimes and computer facilities, computer crimes are classified into 4 categories from the aspect of how computers are related to those crimes. These categories are as follows:

A. Abusing the Facilities of a Computer for Illegal Purpose

Crimes which are committed by utilizing computers, by means of inputting false programs or data, or of altering or erasing already inputted programs or data.

B. Destruction of a Computer or a Computer System

Crimes of destroying the computer itself, attached units, communicating facilities and so on, and those of destroying or erasing software such as programs or data.

C. Unauthorized Acquisition or Leaking of Data

Crimes of unauthorized acquisition or leakage of data which are being processed through the computer, which are being transmitted to be inputted to the computer or which are accumulated in assisting memory units.

D. Unauthorized Use of Computers

Crimes of processing one's own information by using others' computers without permission and without paying any fee.

Computer crimes are also classified from the aspect of how computer facilities are abused in each crime. Important categories of this classification are as follows:

E. Manipulation of Computer Data

Operating a computer wrongly by inputting forged or altered data. This is an easy and common way to commit a computer crime. Almost all Japanese computer crimes were committed in this way.

F. Trojan Horse

Building a secret program which, after insertion into the operating system, processes in accordance with ones illegal purpose in its operating system.

This method can be carried out by specialists such as computer programmers who can gain access to computer systems easily and who have specialized knowledge and techniques. Such crimes are very difficult to discover because the secret program is hidden in enormous programmed orders and because the ordinary program works properly. If the secret program is designed to erase itself after completion, there will be few opportunities to discover such a crime.

Secret programs can be designed to take away a slice of an asset from each source (salami technique). For example, a specialist can build a program by which fractions of interest less than the minimum currency unit in many accounts are taken away and are gathered in an account of a fictional name. In this way a large amount of money can be collected secretly because each depositor does not care about such slight losses.

Secret program also can be scheduled to work at peculiar time, for example, at 3 o'clock in the afternoon 2 years after it was set (logic bomb).

G. Data Leakage

Data leakage means taking out data obtained by illegal measures from a computer system. Several illegal measures to obtain data are imaginable. One of these measures is scavenging. It consists of reading all memories in a computer after one job was finished. Data can also be obtained by wiretapping a communicating line. And also data can be obtained by observing the motion of reels of magnetic tape or by recording the sound of a printer.

H. Simulation and Modeling

Computers can be used for planning and performing a crime. A complex white-color crime might be simulated on a computer before it is committed.

6. Instances of Computer Crimes in Japan and Problems of Applying the Penal Code

A. Instances of Destruction of a Computer or a Computer System

In 1975 Feb. a punch-telex room of a machinery company where a lot of magnetic tapes were stocked was blown up by a time bomb which was set by a radical leftist group. Many magnetic tapes were deformed by the heat of the explosion. One staff was seriously injured and this company suffered enormous damage. In this case the offenders were indicted for attempting homicide and violation of rules on control of explosives. (Case 1)

In May 1978, one main communicating cable and two branch cables, which were buried 3 meters under the ground and which connected a relay station and an aviation control center, were cut by a radical leftist group. By this destruction the aviation center suddenly could not communicate with aircrafts, airports and radar basis so that the functions of controlling aviation stopped. In this case the offenders have not yet been identified. (Case 2)

If a computer system becomes the target of destruction, an important social function would break down and the damage to society would become enormous. It might cause a social panic. Computerized society is obliged to face the serious threats of such crimes. To counter these threats, the security system should be strengthened urgently.

From the aspect of applying the Penal Code to the physical destruction of computer systems, as in these cases, there is no problem. But a computer system might be destroyed not only by a physical measure but also by altering or erasing the program or the data. If such a case had happened before the amendment of the Penal Code in 1987, such provisions as "Destruction of Things" (Article 261), "Destruction of Documents" (Article 258, 259), "Obstruction of Business" (Article 233) and "Forgery of Documents" (Article 155, 159) would have been examined for applicability to the case. But each provision has some difficulty with application.

First, about the application of "Destruction of Things," it is questionable whether altering or erasing memory recorded on magnetic devices can be recognized as destruction of things, because magnetic tape itself is not destroyed at all when its memory is destroyed.

Secondly, about "Obstruction of Business," punishable obstructions have been restricted to cases of spreading false rumors, the use of fraudulent means, or the use of force. It is questionable whether such a crime would fulfil those conditions. In addition to that, the punishment of imprisonment and forced labor for not more than 3 years or a fine of not more than 200,000 yen was thought to be too slight compared with the serious results of computer destruction.

Thirdly, about "Destruction of Documents" and "Forgery of Documents," it is questionable whether magnetic tape, disk and the like can be recognized as documents. In the traditional interpretation, the contents of documents were required to be visible and readable. Stating on each document, the person who was responsible for the contents, was also required. But the contents recorded on magnetic devices are neither visible nor readable, and usually the person who is responsible for the contents is not recorded.

Because of these defections of the Penal Code, it has been very difficult to punish criminals if such computer crimes were committed.

B. Instances of Unauthorized Acquisition or leakage of Data

N publishing company of an economic magazine had made a list of its over 82,000

readers and recorded it in magnetic tapes as data. An unauthorized copy of these tapes were sold for 820,000 yen to B company which publishes English conversation teaching materials yen. It was discovered in February 1971 because B company sent direct mail to all readers. The offender has not yet been identified. (Case 3)

In this case, the applicability of "Larceny" (Article 235) to the act of copying other's tape should be examined. And the applicability of "Purchase of ill-gotten Goods" (Article 256) to B company should also be examined.

If the offender had stolen and sold the original tape itself, such an act would have been apparently recognized as Larceny. But he copied the original one. If he removed it from the place is kept in order to copy it, Larceny is applicable to his act. But if he copied it without removing it, it is difficult to recognize this act as Larceny, because the provision of Larceny is interpreted as protecting physical possession of property.

It is impossible to apply Article 256 to B company even if it knew that the tape was copied without permission, because the copy itself is not recognized as "ill-gotten goods"

International Telegram and Telephone Company (the initials of its Japanese name are KDD) is offering an international data transmission service called Venus P. An American electrical goods company used this service in order to exchange data about stock between the head office in U.S. and its branch office in Japan. In 1985 a password of this company was used several times without permission, and data stocked in the databases of other American companies were put out. A computer belonging to a Japanese machinery company also received unauthorized access from West Germany through the line used for Venus P service. A computer of Hi-Energy Physics Laboratory of the Ministry of Education also received unauthorized access from West Germany and Switzerland. (Case 4)

These cases are instances of so-called hackers. Hacking is an act of getting unauthorized access to other's computer data or programs, and accessing, altering or erasing the data or the program. Punishments vary with the motives and consequences of the acts. Under present criminal law, accessing of data or programs which is not accompanied with altering or erasing them is not punishable. It has not been resolved whether such peeping should be prohibited as a crime.

C. Instances of Abusing Computer Facilities for Illegal Purposes

A female staff of S bank and her lover conspired to obtain a large amount of money by abusing the on-line system. First, she opened an account with S bank under a fictional name. After that, in March 1981, she input false data so that 180,000,000 yen was transferred to the account by the terminal in her office. After that she left the office, went to as many branches of S bank as she could, and withdrew 130,000,000 yen. With this money the two left the country. (Case 5)

This is a typical case committed by abusing computers. The important features of computer crime is that large amounts of money can be obtained easily. But the essense is the same as that of traditional fraud, breach of trust or embezzlement. There is no difficulty to apply those provisions to such cases.

In such cases the false data is recorded in a memory unit. But it is questionable whether "Forgery of Documents" is applicable, because magnetic tape and the like might not be recognized as documents.

D. Instances of Unauthorized Uses of Computers

O university had allowed its staffs and students to use its large-scale computer through telephone lines. A manager of a computer shop obtained, by chance, a registration number and a password of one university staff who visited the shop. He gained access to the computer with this registration num-

ber and password, and displayed its data on a personal computer in his shop in order to advertise its facilities. He used the university's computer without permission for 46 hours. Of course, he did not pay the fee which was estimated to be 160,000 yen.

This is a typical case of unauthorized use of a computer. Although using the computer offers economic advantages, according to Japanese Penal Code, stealing economic advantages is not punished. So, unauthorized use of a computer cannot be punished under the present statute.

7. Countermeasures to Computer Crimes

A. Amendment of the Penal Code in 1987

There were many problems concerning the Japanese Penal Code in preventing and punishing computer crimes, as has already been described. To counter the increase of computer crimes, some new provisions were added to the Penal Code in 1987. Some of problems were resolved by this amendment. The outline of the amendment is as follows: (Newly enacted provisions have not been added to the material "CRIMINAL STATUTES 1")

a. The act of causing an untrue entry to be made in the original of an officially authenticated electromagnetic record was added to Article 157. The act of submitting such records was also added to Article 158.

b. The act of making electromagnetic records, without good reason, which are to be submitted to administer the affairs of another, and which pertain to a right, duty, or certification of a fact, for the purpose of causing an error in the administration of affairs, was added as Article 161-2.

c. The act of obstructing the business of another by destroying a computer or electromagnetic records, or by inputting false information or wrong commands into the computer, or by having the computer not work in accordance with its instruction by other means, was added as Article 234-2. The maximum term of imprisonment was lengthened to 5 years, and the maximum fine was raised to 400,000 yen.

d. The act of obtaining an economic advantage, by making untrue electromagnetic records by means of inputting false information or wrong commands into the computer, or by submitting false electromagnetic records about obtaining, losing, or changing the right of property to the administration of the affairs of another, was added as Article 246-2.

e. The act of destroying electromagnetic records was added to Article 258 and 259.

As described earlier, cases of unauthorized leakage, access, and use have not been resolved yet. These problems should be resolved while considering such points as the necessity and effectiveness of the criminalization and effectiveness of the security system.

B. The Computer Security System

In addition to implementing criminal provisions, strengthening the security of computer systems against computer crimes is also important. Many measures have been suggested and carried out by computer users. Some important instances are as follows. Computer crimes should be prevented by the cooperation of the criminal justice system and the computer security system. And for investigation of computer crimes, it is indispensable to scrutinize how the computer security system was carried out and why it could not prevent them.

a. Restricting entry into the computer room by an identification card, a password, fingerprint or the frequency of voice and so on.

b. Preserving magnetic tape, disk and the like in a strongly-built depot outside the computer room.

c. Encoding data which are transmitted through communicating lines. By arranging different keys for encoding and for decoding, an offender could not read data if he obtained keys for encoding.

d. Making clear designations of authority

and responsibility among staff.

e. Carrying out the inspection of the computer system itself, which includes computer machinery and its operating program, apart from the inspection of business or account by certified public accountant, which is already carried out in every company.

Table: Number of Computer Crimes Except CD Crimes Reported in Japan

Year	Altering or Erasing of Program	Unauthorized Usage of Computer	Destruction of Computer	Illegal Acquisition of Data or Program	Inputting False Data	Total Number
1971	0	0	0	1	0	1
1972	0	0	0	0	0	0
1973	0	0	0	0	1	1
1974	0	0	0	0	1	1
1975	0	0	1	0	2	3
1976	0	0	0	0	1	1
1977	0	0	0	0	0	0
1978	0	0	0	1	3	4
1979	0	0	0	0	3	3
1980	0	0	0	0	0	0
1981	0	3	0	1	6	10
1982	0	0	0	1	5	6
1983	0	0	0	2	4	6
1984	1	1	0	2	8	12
1985	0	0	0	1	9	10
1986	0	1	2	1	13	17
Total	1	5	3	10	56	75

SECTION 3: REPORT OF THE COURSE

Summary Report of the Rapporteurs

Session 1: Major Crimes Affected by Development or Affecting Development, and Countermeasures against Them

Chairperson: Mr. You Sung-Soo (Korea)
Rapporteur: Mr. Shinji Ogawa (Japan)
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Introduction

Nowadays it is commonly recognized that crime has deep roots firmly embedded in the characteristics of offenders and victims and influenced by numerous external factors surrounding the crime. These external factors involve economic, political, social, cultural, and environmental elements of human societies. These elements not only affect the type, incidence, motivations, methods and results of crime, but are similarly affected by the occurrence of crime. Accordingly, development, which is undertaken to improve the welfare of people and change these elements, is inevitably interrelated with crimes.

Such factors as lack of employment, insufficient supply of housing, commodities, and foods, low educational level and so on, which can be seen in underdeveloped societies generate a large number of crimes. These crimes can be decreased by heightening the standard of people's life through development. However, the process of development is often accompanied with many undesirable socio-economic changes such as inequality in income distribution, disparate sector growth, rapid urbanization, unmanageable population increase, unprecedented social mobility, fractured family ties and disintegration of community ties. These changes, which are conductive to crime, may result in an explosive increase in crimes which generate a social climate of insecurity and fear. Societies would be obliged to increase expenditures on crime prevention and control activities. These burdens reduce expenditures on welfare programmes which would cause further increase of crime. Consequently, social development itself may be invalidated by this vicious circle. Furthermore, the situation is exacerbated by such problems as environmental problems, technological advancement of criminality, illicit economic activities, collusion of government authorities and economic activities, which occur relating to development. In this sense, it is quite obvious that societies which have not sufficiently implemented countermeasures against crimes interrelated with development will not be able to achieve equitable, sound and sufficient development.

On the unanimous understanding about the interrelated dimensions of crime and development, we concentrated on crimes which pose the most serious threat to proper social development, and subsequently we discussed the circumstances and possible countermeasures to these major crimes. From this point of view, we concentrated on five categories of crime as follows:

1) Environmental Offences
2) Economic Crimes
   1. Computer Crime
   2. Large Scale Fraud
   3. Infringement of Intellectual Property
   4. Smuggling
   5. Tax Evasion
   6. Corruption
3) Drug Crime
4) Illegal Immigrants
5) Terrorism

While the stages and the aims of develop-

ment differ from country to country, these crimes are, in our opinion, the major ones which are causing serious problems during the process of development. These crimes can be classified as those affected by development or those affecting development. However, it should be stressed that crimes affected by development, also, to some extent, affect development and embody an interactive cycle.

Environmental Offences

A. Problem and Analysis

Environmental offences include any kind of offence which causes environmental destruction, such as pollution of air, water, soil, the destruction of tropical forests by indiscriminate deforestration, and the destruction of ecosystems by indiscriminate hunting or fishing.

Environmental offences are the most salient crimes affected by development, because they have concomitantly appeared with the mass consumption of natural resources, e.g. forest, minerals, petroleum, water, and the mass production of waste materials including various artificial chemical compounds. On the other hand, environmental offences could critically impact development, if environmental hazards endanger public health and safety, and engender distrust and discontent with the social system and development. Therefore, it is necessary to include preventive measures within development plans to ensure positive and harmonious development.

Until quite recently, environmental offences had been referred to as domestic problems. However, nowadays it is recognized that these offences cause global environmental crises such as destruction of the ozone layer by freon gas, intensifying the greenhouse effect by increased carbon dioxide emission and precipitating acid rain by nitrogen oxide build up. Indiscriminate deforestration and hunting are often incited by consumers outside the country in question, usually those of developed countries. These characteristics of environmental offences require global countermeasures and the responsibility of each nation to maintain a clean and healthy environment.

B. Countermeasures

Environmental problems have mainly been discussed from the aspect of administrative control and prevention. However, considering the baneful influences on life and health of the public, environmental destruction must be deterred also by penal sanctions. If any offenders were not punished when such serious results as deaths or serious injuries of many people were caused by contaminated waste materials discharged by gross negligences of some factory workers, the trust of the public in the criminal justice system would evaporate. On the contrary, by imposing proper penal sanctions in such cases, useful side effects can be expected, such as enlightenment about the importance of maintaining a healthy environment, and prompting sincere efforts by each company to grapple with environmental pollution.

However, many difficulties will emerge if special consideration is not used when applying penal sanctions to such cases. For example, provisions concerning death caused by negligence, which is stipulated in almost all Penal Codes will face difficulties. Firstly, it is difficult to prove causation between the discharge and the result, since the waste materials are indirectly taken into the human body through many different means. Secondly, it is difficult to prove whose behavior caused the discharge, because several workers' behaviors are usually involved in such cases. Thirdly, it is difficult to prove a workers' foreseeability of the outcome, because they are usually ordinary employees who do not have any special knowledge. Fourthly, it is more difficult to punish management who ignored the prevention of the discharge, since they do not handle the discharging devices by themselves. Fifthly, it is impossible to punish the company itself without special

regulations. Sixthly, it is very difficult to prevent such tragic disasters beforehand, since these provisions require the occurrence of death or injury of a person as a condition of application.

In order to expect efficient preventive effects, such countermeasures should be examined.

(1) Special laws which regulate administrative controls should be enacted. Concerning administrative controls, all sources which discharge waste materials, including factories, houses, cars, should be the principal objects of control. For factories, the density and the total quantity of waste should be limited and responsible executives in charge of pollution prevention should be selected to delineate clear responsibilities. For machinery which generates engine exhaust such as cars, proper standards should be imposed on manufacturers, and old cars which cannot fulfill these standards should be prohibited. As for households, it is difficult to impose obligations on each household; therefore, harmful materials should be removed from household commodities such as detergents during the process of manufacturing.

Penal sanctions for violations of these administrative controls should be included in these administrative laws. To enact these sanctions, legislations should seek:

—to punish a juridical person and the management;
—to punish an offender regardless of death and injury of the public;
—to punish an offender on the condition that his dangerous behavior specified in regulations is proved, without any evidence that the effect, e.g. the danger to the health of the public, was caused by his behavior, e.g. discharging harmful materials prohibited by law.

Besides these administrative laws, it is necessary to consider enacting penal laws which should be applied when danger to life or health of the public is actually caused and which has far severer punishments compared to administrative laws. A juridical person and the responsible management should be considered punishable by such laws.

(2) Considering that special knowledge and techniques are required to investigate these cases, it would be necessary to create special sections in the police and prosecution department in charge of investigation and prosecution of such cases. They should keep close contact with administrative divisions in charge of preventing environmental hazards. By inspecting the drainage or the exhaust of factories randomly and secretly, the factories violating legal standards may be detected.

(3) Environmental problems cannot be prevented by merely punishing the companies or the managers of factories. The largest cause of pollution is waste materials from the household. This situation will not improve without heightening the consciousness of people through school education, public relations campaigns coordinated with mass media, and activities of volunteer groups in communities.

(4) Since investing in equipment to purify waste materials would undoubtedly burden developing countries, technical and economic assistance should be provided by developed countries, because one nation's environmental degeneration fast becomes a global environmental problem. We share the same planet. International cooperation, e.g. exchange of information, is necessary for prevention and investigation of some environmental offences, e.g. international pollution, indiscriminate deforesting, indiscriminate hunting and so on.

Economic Crimes

Development of national and international economic activity has increased crime related to economic life. As social development is strongly correlated with economic development, damage by these crimes has been a serious threat to societies.

Although these crimes are usually called

"economic crime," the concept differs from country to country. We did not try to create a definition of "economic crime," because our aim is to examine practical countermeasures against them. However, its common characteristics are extracted as follows:

(1) It is committed to acquire illegal economic profits by abuse of trust or power;
(2) It is committed secretly by sophisticated measures, which sometimes require special knowledge, so it is very difficult to detect;
(3) It endangers not merely individual interests but also the whole or at least one sector of economic order;
(4) Its victims tend to become collective and anonymous.

Computer Crimes (Economic Crimes—1)

A. Problem and Analysis

Technologically computers and computer systems are the core of contemporary society, enabling the further development of a developed society. The age in which computers were utilized only for solving multiquadratic equations has already passed, and nowadays computers are permeating daily life. bank systems, traffic control systems, almost all office work of corporations and government are managed through computerization.

Computer crimes are committed by utilizing computer facilities or by attacking the computer system's vulnerable points. Needless to say, they are crimes which were created by development, and it should be stressed that they may seriously hamper development.

Computer crimes may be categorized as follows:

(1) Abusing computer facilities for illegal purposes: crimes committed by inputting false programmes or data, or by altering or erasing already input programmes or data;
(2) Destruction of computers or computer systems: crimes dealing with destroying computers or their peripherals;
(3) Unauthorized acquisition or leakage of data: crimes of acquiring or leaking data from computers or computer systems;
(4) Unauthorized use of computers: crimes of processing one's own information by use of other's computers without permission and without paying any fee.

Among these categories, category (1) is the most common activity to acquire illegal profits. A typical case in category (1) is when a staff member of a bank inputs false data transferring money to an account opened under a fictitious name with the intention of acquiring the money from the account. Another typical case is when a computer programmer inserts a secret programme which commands the computer to send an amount of money to an account into an operating programme. This secret programme can be designed to erase itself after completion. Category (2) will be committed to destroy social facilities, commonly traced to the activities of terrorists. If a central computer or a main communication cable were destroyed, it might cause social panic. And the same results can be caused by erasing or altering programmes or data without physical measures. Relating to category (3) and (4), it should be warned that such crimes can be committed with a personal computer in the home by use of a computer communication system.

From this analysis, such characteristics of computer crime as follows are extracted:

(1) Computer crimes could easily cause an enormous amount of damage as well as social disorder;
(2) Computer crimes are very difficult to detect, and even if they are detected it is more difficult to identify offenders.

The diffusion of computers through the society differs from country to country. Devel-

oped countries whose social systems completely depend up on computers show an increasing concern with computer crimes. On the other hand, in some developing countries where computerization has just begun, only recently have they become aware of its ominous potential. These countries should examine and prepare appropriate countermeasures as soon as possible, because they may confront similar problems later on and because computer crimes can be committed anywhere by use of international communication cables.

B. Countermeasures

Prevention of computer crime should begin by making it more difficult to commit. In this sense it is very important to tighten the computer security system. Concrete countermeasures should be examined as follows:

(1) Tightening the security of locations where computer hardware is installed, namely, making the facilities secure from intruders from outside, restricting entrance into the facilities and allowing entry of reliable persons by use of passwords, fingerprints, voiceprint, and so on;
(2) Tightening the security of supplemental memory units and memory media such as magnetic tapes or disks, e.g. preserving them in study depots to prevent them from being taken out;
(3) Tightening the security of computer terminals, namely, restricting the usage of computer terminals except for a limited number of reliable persons;
(4) Carrying out Access Control, namely, continuously supervising the operation of computers in order to find out extraordinary operations simultaneously;
(5) Carrying out the inspection of the computer system itself, which includes computer machinery, operating programmes and data periodically and unperiodically;
(6) Establishing organizational security, namely by establishing a dual-checking system where the job of one staff member is checked by another staff member;
(7) Employees who are permitted to have access to computers should be carefully selected, educated and auditted, and as their artificial, and controlled environment is isolated sometimes inducing anti-social character, their working conditions, social status, and payment should be checked;
(8) Enlightening people about computer technology and potential problems through school education, public relations, and the like.

From the criminal justice system, such countermeasures as follows should be examined:

(9) When traditional criminal provisions are applied to computer crimes, there may be distinct difficulties. Therefore, it is necessary to examine the applicability of existing provisions and enact new provisions if incompatibility is evident;
(10) Considering that special knowledge is necessary to understand computer systems and to investigate computer crimes, it is necessary to train investigators who have enough knowledge to clear such cases.

Large-Scale Fraud (Economic Crimes—2)

A. Problem and Analysis

Although there is not a clear definition of "Large-Scale Fraud," this crime category was discussed as a newly emerging phenomena in developed countries in the context of economic development. One fraud case which occurred in Japan was introduced and will suffice as a model case. This crime was committed by a fraudulent company for 5 years from 1981 till 1985, swindling more than 200 billion yen from more than 4,000 victims under the pretext of selling gold. Although this company had only a little gold,

it deceived the victims under the pretext of storing gold for customers and handed them certificates. To avoid customers' requests to return the gold, salesmen promised to pay 15% interest annually. This company employed nearly 9,000 skillfully trained workers and had 2 head offices and many branch offices in the centers of major cities. This case was the most notorious, but several similar cases have occurred in Japan rousing social comment.

Major characteristics of "Large-Scale Fraud" can be indicated as follows:

(1) The culprits pretended their acts were legitimate and attracted customers through mass media, and they established offices in expensive and conspicuous locations. Consequently it became difficult to discriminate between them and legitimate businesses;
(2) Victims were indiscriminately collected; consequently the number of victims and the amount of damage became enormous. Although these cases involve victims from the entire age-range, the aged population, over 60, and females occupy a large percentage of victims;
(3) These cases tend to reproduce "Copycat" cases, and it is very difficult to eliminate them.

As already mentioned, these crimes emerged in the context of development. Social factors which bore them are indicated as follows:

(1) Economic development has brought about an increase in disposable income. However, low economic growth rates, dwindling welfare budgets, rapidly accelerating population growth of aged people, increasing prices for commodities and real estate inter alia, have compelled a high rate of savings. Consequently many people become susceptible to occasions of profitable investment in order to prepare for their retired life;
(2) As economic activities have become highly complicated and their situations are influenced by many national and international factors, it is becoming very difficult for ordinary people to understand the complexity of the economic system.

In this sense, these crimes are instances of crime affected by development. By now, these crimes have become a familiar problem for developed countries. However, it is also necessary to examine countermeasures to these cases in developing countries as well, because such cases would emerge also in developing countries according to the economic development.

B. Countermeasures

It is very difficult to prove these fraudulent activities before the companies go out of business, because as long as interests rates are payed to consumers, the customer is not alerted to any wrongdoing or illicit activity. When at last they realize that they have been deceived, the company will have already declared bankruptcy. Consequently, as the criminal justice system is powerless to prevent this type of fraud, special countermeasures should be proposed as follows:

(1) Requiring licenses issued by government authorities for certain kinds of business which may be a vehicle for fraud, researching thoroughly qualifications of applicants, inspecting their businesses continuously, and cancelling licenses when fraudulent activities are revealed;
(2) Expanding rights and protections of consumers, e.g. strengthening the cooling-off system, obliging companies to deposit a certain amount of money as security for compensation;
(3) Providing consumers with various opportunities for counselling about business practices;
(4) Enlightenment of people about possible fraudulent activities through the mass media.

Infringement of Intellectual Property (Economic Crimes—3)

A. Problem and Analysis

Requests from developed countries to enlarge the legal protection of intellectual property are becoming stronger in the context of economical and technological development. These causes can be indicated as follows:

(1) As consumers, who have already been supplied with abundant commodities now attach importance to intangible elements e.g. service, software, producers concentrate their funds to create new services and software. However, these businesses are becoming a high risk, because if these products are incompatible with consumers' tastes, producers are left with unsold products and investment costs. Therefore, the value of intangible products are becoming very high;
(2) Recently emerged industrial activities, such as computer programming or biotechnology, require legal protection for their products, which are quite similar to traditional intellectual property;
(3) Opportunities to counterfeit intellectual properties in developing countries where they are not fully legally protected are increasing in the context of expanding international trade.

Responding to such requests, some countries have widened the protections of intellectual property, criminalized infringements of intellectual property, and have been struggling against counterfeiting. These crimes not only affect technological and economic development within the country, but if such crimes are not prevented effectively, infringed upon countries might refuse to transmit other technologies and it might cause stagnation of international trade.

However, some developing countries resist the requests of developed countries, stressing that expanding the protection of intellectual property can inhibit domestic industry, because almost all intellectual properties can be monopolized by developed countries, which might refuse to offer know-how or might request to pay expensive royalty to developing countries. Actually, the extent of intellectual property protections and the type of the protection vary from country to country. The attitude toward imposition of penal sanction for infringement of intellectual property differs too. In Costa Rica there are no specific penal sanctions on record. In Tanzania penal sanctions are imposed only on the infringement of trademark, and in India and Kenya penal sanctions are not imposed on the infringement of patents.

These conflicts should be resolved through international organizations, such as WIPO (World Intellectual Property organization) or GATT.

In any case, the importance of enforcing criminal regulations is increasing in the countries where the infringement of intellectual property is a criminal offense. However there are many difficulties involved with investigating these cases. For instance, counterfeiting of video game products in Korea revealed the problems with protecting intellectual property.

(1) As almost all counterfeiting companies are home-industry type and work in small apartments, it is very difficult to identify counterfeiters.

(2) Although they counterfeit electronic circuits and memory chips, they camouflage the counterfeiting by changing the general features of printed circuit boards. Consequently it becomes very difficult to discriminate whether they are counterfeits or not.

(3) There remains the traditional notion that counterfeit is not a vice in society.

(4) National interest in nurturing industries in their infancy and the need to retain good relations with foreign countries often conflict in investigation stage of these cases.

(5) Some large-scale companies are trying to evade the punishment by producing counterfeited memory chips in foreign countries and by disguising the products as if produced

in these countries.

B. Countermeasures

To counter such problems, the following countermeasures are proposed:

(1) Arranging special squads which possess basic knowledge about intellectual property in charge of the detection and the investigation of these crimes;
(2) Prompt international cooperation for the investigation of these crimes. For example, if information about counterfeited products are not provided promptly from foreign companies to investigative agencies, the counterfeit activities will remain undetected;
(3) Heightening the punishments for these cases, e.g. lengthening the maximum term of imprisonment and raising the maximum amount of fine. Imposing a high amount for fines not only up on the individuals involved but also up on management collaborating in the illegal activities. For this purpose, the forfeiture of all equipment utilized for counterfeit activities should be considered;
(4) Publicly announcing the name of corporations which violated these laws;
(5) Enlightenment of people about the importance of intellectual property and the consequences of its infringement.

However, international consensus about intellectual property is indispensable to the resolution of this problem. To reach consensus, the balance must be met between the need to protect intellectual property and to support enterpreneurial efforts while supporting the essential technology transfer to developing countries. Any solution must satisfy both needs.

Smuggling (Economic Crimes—4)

A. Problem and Analysis

Commonly, smuggling is defined as the act of importing or exporting prohibited goods, or of importing or exporting goods without paying the duties imposed on them.

Smuggling clearly impairs the development process of developing countries as well as developed countries, because, the smuggling of prohibited goods, e.g. drugs, weapons, may hurt the health and the security of the public, and the smuggling of other goods deprives the national government of income from custom duties. Also it may hamper the industrial development of developing countries, if the same kind of commodities as domestic products are smuggled in from developed countries in large quantities and these commodities appear on the market with better quality and lower prices out-competing legitimate businesses and displacing labor. Regarding this point, it should be considered that recent technological progress tends to widen the technological disparity between developed countries and developing countries and such a tendency is increasing smuggling cases.

Smuggling similarly can occur because of the tight prohibition on importation or on exportation of some commodities to prevent domestic industries. It can also happen because of the huge price disparities among countries, and socio-economic imbalance within a single country where foreign "luxury" items are in demand. However it is clear that the causes or factors that contribute to the rise of smuggling, cannot be determined with any degree of certainty. The effect of one factor can be different from that of another, and that the effect of some factors differ over time.

All kinds of commodities can be the object of smuggling and the number and kind increase in accordance with economic development. Neither developing countries nor developed countries desire smuggling, because it ruins the basis of international commerce. In the case of developing countries, smuggling not only destabilizes the smooth functioning of their countries, but also adversely affects the financial and economic development.

B. Countermeasures

(1) As measures of smuggling cases become more sophisticated, investigative techniques must be upgraded to keep pace with the sophistication. Regarding commodities traded in the market without certificates of payment of custom duties, the routes of their trade should be continuously monitored with maximum effort toward utilization of this information. Coast guard services should be improved with the proper equipment and personnel.

(2) Heightening the punishment imposed for these cases should be examined. All equipment used for smuggling as well as smuggled commodities should be forfeited, and all profits which smugglers acquired before arrest should be forfeited too.

(3) International cooperation in training investigators and exchange of information about smuggling must be actively used for mutual benefit.

(4) Enlightenment of society about the adverse effects of smuggling should be encouraged.

Tax Evasion (Economic Crimes—5)

A. Problem and Analysis

Tax evasion is also one of crime categories which seriously affects development.

The most serious menace caused by violations of tax-law is that they cause black market transactions and create a black market economy. The black market siphons money from economic activities, so called "white money economy," and circulates it in the underground "black money economy," where legal controls are absent. These phenomena may cause serious effects to national socio-economic development.

(1) They may cause tremendous loss of national revenue, which may obstruct the sufficient functioning of government.

(2) They may result in inequitable taxation. As the result of honest taxpayer dissatisfaction, tax evasion may become rampant. As the motives for tax evasion can be seen only in the wealthy classes and the poor classes do not have anything to evade, they may widen the gap between both classes, which may become one cause of social disorder.

(3) Since the unaccounted for money cannot be invested through lawful channels, a good part of it is spent in lavish consumption and unproductive uses, contributing to inflation, which funds criminal activities. In other words, measures of tax evasion often utilize these underground funds and they function as a hotbed of crime. Crime most closely related with tax evasion must be corruption: money acquired by tax evasion sometimes is handed to governmental officers as bribes to evade the exposure or for personal gain.

(4) General moral fibre as a whole may be adversely affected.

In this sense, the prevention and the detection of tax evasion cases are serious concerns for both developing countries and developed countries. Ensuring sufficient national revenue is vital for development in countries in the former stage and for sustaining public welfare in the case of countries in latter stage. Whether they are mainly adopting the direct tax system or the indirect tax system, this problem remains an important one.

However, the detection and the investigation of tax evasion cases are practically very difficult. The factors which cause the difficulty can be cited as follows:

(1) Many people do not have a strong sense of civic pride and do not perceive that evading tax is a violation of citizens' duties for the nation. They tend to feel that the amount of money they could manage to evade paying shows their cleverness. Such problems of low morality can be seen in many countries;
(2) Corporate documents and activities have multiplied and increased in complexity in accordance with economic development. Consequently, it becomes very difficult to examine thoroughly the accounts of cor-

porations without special knowledge about corporate financial management;
(3) In the context of this labyrinth, the measures to evade paying taxes have become sophisticated and very difficult to detect. In some cases, companies evaded tax under the guidance of licenced tax accountants. And as managers are very keen to minimize the tax payments, ingenious measures are promptly imitated by many managers;
(4) As tax evasion is closely related to corruption, political pressure may obstruct the investigation of a tax evasion case. And when tax officers themselves are corrupted by black money, there is little hope that tax evasion cases will surface.

B. Countermeasures

(1) Needless to say, the most important countermeasure for improving the tax system is ensuring equitability, reducing complexity and preventing evasion. To prevent untrue reports about capital management and earnings, periodical audits by licensed accountants should be made obligatory.

(2) In many countries a special department in the tax office is in charge of the detection of tax evasion cases and they inform public prosecutors of the offenders after they detect the cases. Such an investigating system is appropriate considering the complexity and difficulty of pursuing unlawful income. As tax evasion cases are hotbeds of crime and the success of investigation of these cases are the entrance gate to the detection of other major crimes, investigative departments of tax evasion cases should be strengthened as soon as possible. These departments must possess these characteristics: high ability to detect hidden money by collecting and analyzing evidence; independence from political interference; integrity and high morality.

To attain these goals, careful recruitment of officers, high-level training, and strengthening the responsibility of public prosecutors to investigate these crimes should be proposed. Other countermeasures to corruption cases as discussed hereafter should be applied to prevent corruption of these investigators.

(3) Heightening of punishment for tax evasion cases should be examined, too. To the offenders of serious crimes, proper term of imprisonment should be imposed in addition to fines. Furthermore, confiscation of a large percentage of the evaded tax money, e.g. 5 times the amount of money evaded, should be imposed to deprive illegal profits and to recover national revenue.

(4) Morality of the public about payment of tax should be strengthened through public relations which teach that tax is used to sustain public life and tax evasion may reduce expenditures for welfare.

Corruption (Economic Crimes—6)

A. Problem and Analysis

Corruption is also one of crime categories which seriously affects development.

The concept of corruption includes all forms of dishonest gains in cash, kind or position by persons in government and those associated with public and political life, which is much wider than the concept of bribery.

Corruption is causing serious social problems in many countries including both developing countries and developed countries. In some developing countries, the corruption is prevalent among many governmental officers and politicians. Frequently the people cannot receive governmental services without offering bribes. Even in developed countries, corruption cases involving influential politicians have sometimes caused political changes. These situations may lead to the disorientation and stagnation of societies by such reasons as the following:

(1) Corruption in government is related to the inequitable execution of law. It may erode people's trust in the equity of government and the sincerity of governmental

officers and may generate a social consciousness that condones bribery and false notion that execution of law follows payment. Contempt, distrust and antipathy to government inevitably obstructs the proper execution of law, and may hinder governmental development plans;
(2) Corruption of politicians or influential governmental officers causes their coalitions with some entrepreneurs, which may change the national development plans partial to them. Such development plans would result in the distorted society which increases people's antipathy and social disorder;
(3) The government is deprived of a large amount of revenue or expenditure as a result of corruption cases. Consequently, they cause the loss of national revenue and obstruct the functioning of the government.

Social factors which are responsible for widespread corruption are extracted as follows:

(1) In some developing countries, the remnants of feudalism still exist, where heads of local governments continue to believe that it is within their authority to collect tributes;
(2) In some developing countries, the salaries of government employees have been kept at a low level, although they have vast powers in matters relating to the granting of licenses, permits and quotas. In combination with other factors such as inflation, they make good use of their position to earn money. These behaviors erode their sense of morality and obligation;
(3) In some countries, one major reason for political corruption is ascribed to the costly election system, which is thought to require enormous expenditures for an election campaign.

B. Countermeasures

(1) In order to weaken the prevalence of corruption, the responsible factors should be eliminated as much as possible. For example, such countermeasures as strengthening the morality of people, increasing the salaries of governmental officers, improving the election system and so on should be examined.

(2) Considering the serious menace caused by corruption cases, heightening the punishment of these cases should be examined. Not only longer-terms of imprisonment, but also heavy confiscation should be applied to these cases.

(3) Almost all corruption cases are committed secretly and they seldom have any witness. Consequently we usually have to detect them through the scrutiny of enormous documents, especially those of tax evasion cases as already described. Besides, investigative agencies often have to confront strong political interference.

To eliminate these difficulties, it is necessary to organize a special investigation team for these cases which possesses high investigative ability and political independence. Such an investigative team is realized in many countries, e.g. in Japan and Korea a special investigative section of the public prosecutors office usually takes the initiative for the investigation of these cases. In Indonesia the authority to investigate corruption cases is also allocated to the public prosecutor, while in the Philippines the Ombudsman named Tanodbayan has the independent authority to investigate and prosecute, and in Tanzania the special investigation team, Anti-Corruption Squad, is organized under direct presidential authority. In Nepal an anti-corruption department and another highly powerful constitutional body, namely the Commission to Prevent Abuse of Power, are organized to deal with corruption and other economic crime strictly.

(4) To inspect the honesty of governmental officers, they should be obligated to report their assets periodically. To make this system effective, such measures as follows should be implemented: widening the scope

to family members, relatives, related companies; examining the accuracy of reports, and arranging punishment for intentional and unintentional omissions.

Other Economic Crimes

Concerning problems relating to Economic Crimes, we also discussed recent activities of several gangster groups, and it was indicated that activities of gangster groups are multiplying and are spreading into the field of Economic Crime. For example in Japan they sometimes intervene into compensation problems of traffic accidents or conflicts between debtor and creditor by use of intimidation, or they sometimes manage financing companies or real estate companies and commit illegal activities such as compelling extremely high interest rates, pressing their requirement by use of intimidation, and the like. Against these tendencies, some countermeasures were suggested as follows:

(1) Strict investigation of these crimes and punishing the masterminds severely;
(2) Continuous collection of information about their activities;
(3) Providing various opportunities for counselling, e.g. telephone counsel network, by police and practicing attorneys for citizens being disturbed or threatened by gangster groups;
(4) Requiring licences from government or local government to manage financing or dealing of real estate, researching thoroughly applicant qualifications, and cancelling the licences when relationships between manager and gangster groups are uncovered;
(5) Creating organized citizens' activities to expel gangsters from society.

Drug Offences

A. Problem and Analysis

Drug offences are undoubtedly one of the most serious crimes which obstruct sound development of society. Needless to say, drug addiction causes serious mental and physical disorders in addicts and its spread throughout the society results in social degeneration as public health and safety is endangered, and crimes committed under the influence of drugs increase. It should be stressed that drugs very easily spread throughout the society because of their strong attraction and habit-forming qualities. In many countries drug abuse is showing the tendency to become widespread among younger generations including juveniles, and it is causing serious anxieties about the future of each country.

Every effort should be made to extinguish any drug abuse from society. However, efforts have been confronted with brutal resistance by gangster groups, because drug trafficking is their largest income source. They resort to violent measures to protect their profits and the tactics are escalating day by day. In many countries, governmental officials, jurists, policemen and others who challenge the drug trade have been assassinated. On the other hand, these gangsters corrupt many governmental officials to evade governmental restrictions. We must win this battle against these gangster groups engaged in trafficking of drugs by utilizing all possible measures.

Drug trafficking is committed on a worldwide scale, as drugs are skillfully smuggled and spread from producing countries to almost all countries by drug-traffickers. This means that efforts to prevent drug abuse in one country would not bear any fruit without international cooperation in fighting against drugs. In this sense, the recent situation can be described as a "World War waged against drugs."

Furthermore, the treatment of many drug addicts is also a serious concern for society. On one hand, it should be recognized that drug addicts are the source of demand for drugs and therefore cannot escape responsibility for the drug crisis. On the other hand, they must be guided back to society to resume life as an ordinary citizen. In order to

attain these goals it must be understood that addiction stems from such factors as fragmentation of the family unit, break down of traditional customs, declining aspirations and hope, and stress from social life.

B. Countermeasures

When considering countermeasures against drug offences, it should be recognized that drugs are subject to market principles; namely supply and demand. Even if minor battles are won against drug traffickers, we will not be able to expel drugs from society unless the demand for drugs subsides. Accordingly, in order to win a victory over drugs, appropriate countermeasures must be undertaken to decrease the demand.

(1) Countermeasures against Demand

1) Rehabilitation programmes for drug addicts should be positively carried out in all countries because reducing the number of drug addicts is the only measure to reduce the demand for drugs. In countries where the usage of drugs is criminalized, rehabilitation of the offenders should run parallel with punishment. The capacity of rehabilitative institutes, including governmental and volunteer ones, should be sufficient to cope with the number of addicts. All necessary services to rehabilitate drug addicts, e.g. medical treatment, counselling, moral education, vocational training, should be available as a comprehensive approach.

2) Considering the serious struggle against drug syndications, criminalization of drug abuse is worth examining. In some countries where the usage of drugs is criminalized, e.g. Korea and Japan, strict enforcement of severe penalties has rendered results evidenced by the arrest of drug addicts.

3) Enlighting people about the dangers of drug use and addiction is also important. As many drug addicts begin the use of drugs as a result of curiosity, informing them of the dangers of drugs may thwart the increase of drug addicts. Enlightenment programmes should include school education, nationwide campaigns through mass media, and any other useful measures.

(2) Countermeasures against Supply

1) Investigation of drug-related activities should be carried out strictly and thoroughly.

Drugs are transported from producing countries to consuming countries by air, sea or road and they are usually concealed skillfully. To detect these drug traffickings, effective inspections of persons and goods moving internationally should be performed regularly. To cope with the increase of persons and goods moving across borders and with skillful concealment, officers in charge of inspection should be equipped with technical devices such as X-ray detectors or trained drug-detecting dogs. These inspections should be done at all the transit points.

To detect drug manufacturers, special task forces in investigative agencies should be organized in accordance with necessity. Since drug syndications may resist severely, members of these forces should be trained and well equipped.

As a measure against cultivation of coca leaves, cannabis, and opium poppies, these plantations should be destroyed promptly, and if necessary, military forces should be utilized to attain this purpose. In some countries the planting of cannabis was traditionally permitted. However, the planting of cannabis should be subplanted, in these countries, with crops that are economically feasible.

2) Utilizing the banking system is necessary for drug syndications. Money is circulated through bank accounts under false names in order to ensure sufficient and liquid money for drug dealing while avoiding or minimizing taxation, to finance their illicit activities. In order to uncover these drug transactions, a system of identification is required for certain large currency transactions and these transactions should be reported automatically by banks to investigative agencies. By investigating these reports, investigative agencies could effectively identify these drug

syndications.

3) Punishment of drug-related activities, including possession, trafficking, importation, exportation, manufacturing or cultivation of drugs should incur harsher punishment including the death penalty which should by introduced and applied to dangerous trafficking cases. Also severe punishment should be applied to corruption cases related to drug syndication and to attacks upon criminal justice organizations.

4) All of the profits acquired through drug-related activities should be confiscated. However, drug lords may scatter their assets among various countries or may transfer their assets nominally to their near relatives to evade confiscation. As countermeasures against these evasions, the possibility of adopting the following measures should be examined: confiscating the offender's assets in other countries by the use of sentences decided in another country; confiscating another person's assets on the condition that he or she knew at the time of acquisition of said assets that they were originally purchased with the profits they were obtained from drug trafficking and that the nominal possessor did not pay a substantial price for them.

Illegal Immigrants

A. Problem and Analysis

As the measures of transportation improve and economic relationships between countries become intertwined, the number of migrants from developing countries to developed countries tends to increase. On the one hand, abundant information about developed countries offered by improved international communication stimulates people's desire for a higher standard of living, and on the other hand, the wide disparities in wage and exchange rates tempt them to migrate to developed countries. Although these phenomena can be commonly seen in many countries, developed countries' policies toward foreign laborers differ by country, and each situation of immigrants influences each crime situation.

The countries which opened their labor market to foreign laborers, e.g. F.R.G., are suffering from an increase in crime caused by social factors related to the increase of immigrants. On the other hand, countries which maintain strict restrictions on foreign laborers, e.g. Japan, are facing a rise in illegal activities involving the smuggling and exploitation of foreign laborers.

The latter phenomena involving those who illegally immigrate from East and South Asian countries to Japan for economic reasons are rapidly increasing. A number of these immigrants are women from Thailand, Korea, and the Philippines among others. Gangster groups are coordinating their transport to Japan. These gangster groups tempt women to work in Japan by playing on their desire to gain high incomes. Although all necessary procedures, including forged passports, to enter Japan are arranged by the gangster groups, the jobs promised them do not exist and they are compelled to pay back the charge of immigration after arriving in Japan. Consequently, they are forced to work as prostitutes under the supervision of members of the gangster groups and they are subject to exploitation by these groups.

Such gangster groups activities should be extinguished by strict investigation and punishment because of the following reasons: These gangster groups infringe upon the women's fundamental rights taking advantage of their powerless position and reluctance to complain to the police because they are in violation of immigration laws; these activities are one of the major income sources for these gangster groups which is extended to other activities.

However, the present posture of investigative agencies is insufficient. Even if such a prostitution ring is detected, the gangster groups in the countries from which the prostitutes originate are not exposed because of the lack of international cooperation. Investigation of these cases usually results in unsatisfactory termination and only the man-

ager of the prostitution club and a few members who supervised the prostitutes are prosecuted. In order to extinguish such human trades, effective international cooperation is necessary.

B. Countermeasures

(1) In countries where women are recruited, governmental license should be required to manage recruitment of women for employment in foreign countries. The applications of new companies and already licenced companies should be carefully examined. For effective control of these recruiting companies, interviews of these women in Japan should be carried out.

(2) Underground recruiting activities carried out without governmental license should be suppressed by strict investigation and punishment. In order for effective investigation to take place, international cooperation, e.g. exchange of information about gangster groups, and cooperation on securing evidence, should be promptly enhanced.

(3) Enlightenment of the people in countries from which women originate should be expanded to inform them of actual conditions and activities of gangster groups.

Terrorism

A. Problem and Analysis

Problems and countermeasures related with subversive activities motivated by ideologies were discussed under this topic. However, we did not to try to settle a definition of terrorism because even the United Nations has not been able to arrive at a universally agreed upon definition of terrorism. There was a strong opinion that all subversive activities including the ones committed by organized gangster groups should be included under this term. However, we excluded the ones not motivated by ideologies from our discussion, because crimes committed by gangster groups are discussed under other items and we want to clarify this point.

Terrorism is one of major obstructions to development. Terrorists are aware that by hindering development and causing malfunctions of society, they can access power. On the other hand, it should be noted that the frequency and lethal impact of their crimes have been increasing in recent years against the background of socio-economic development and internationalization. Their important features can be described as follows:

(1) Their activities have been becoming internationalized because travel between different countries has become easier. Their attacks may be decided on and prepared in a country other than one where they are actually carried out, and weapons and explosives necessary for the attacks may be transported across national boundaries before they are carried out. In recent years, closer ties have been established among different terrorist groups;
(2) The terrorist operations are either sponsored, organized, encouraged, directed or materially and logistically supported by a state for the purpose of intimidating another state, person or organization. These situations are known as "state terrorism";
(3) A global system of competitive arms sales makes modern weapons more easily available to terrorist groups;
(4) A high degree of cooperation between terrorist groups and organized crime groups seems to have occurred on certain occasions in recent years, for example, linking drug trafficking with arm smuggling;
(5) Mass communications assure instantaneous publicity for terrorist acts which is one of their main objectives.

B. Countermeasures

(1) The most basic and important point to consider about countermeasures against terrorism is to recognize that all acts of terrorism are crimes by nature, irrespective of their motivations, because they are committed by violent measures which cause lethal

consequences. Therefore, terrorists who commit those crimes must be strictly investigated, prosecuted, and convicted if found guilty, regardless of their motivations or objectives.

(2) In the context of recent activities of terrorists, international cooperation for effective prevention and investigation has become very important. International cooperation should be enhanced in the fields of information exchange, securing evidence, determining the jurisdiction, extradition of the offenders, and so on.

Regarding extradition, the political offence exception should not bar extradition for crimes of terrorist violence under existing international conventions.

The establishment of a uniform standard of penalties to be imposed on terrorists in different countries should be considered in order to eliminate inequalities.

(3) To counter the "state terrorism," countries who violate international law and resort to terrorist violence should be effectively curbed by the international community, and the United Nations should develop mechanisms for the control of such behavior.

(4) Contemporary societies rely on various technological and scientific means and their important faculties are centralized to several spots, e.g. nuclear plants communication cables, computer centers and the like. If these spots were destroyed by a terrorist attack, it would cause devastating consequences. These vulnerable targets should be secured and protected by appropriate measures.

(5) Weapons, ammunition and explosives should be effectively controlled by appropriate regulations in respective countries.

(6) Victims and witnesses of terrorism should be effectively protected from attacks or intimidations of terrorists.

(7) Governments should encourage the establishment of guildelines for the mass media to control the following: sensationalizing and justifying terrorist violence; dissemination of strategic information on potential targets; and dissemination of tactical information while terrorist acts are taking place. However, these guidelines should not be intended to restrict the basic human right of freedom of speech and information.

Conclusion and Recommendation

Through our discussion, it was reaffirmed that crimes have a very strong correspondence with development and that establishing efficient and appropriate countermeasures to crimes is a necessary condition for successful development. These countermeasures vary in response to the specific crimes. However, some common characteristics can be extracted from these countermeasures. They are as follows:

(1) Criminal justice systems must pay sufficient attention to the changes in the crime situation in terms of social development and it has to establish appropriate countermeasures, including legislation, and correct prediction of criminal situations;
(2) Collaboration of criminal justice and administration has become very necessary. Criminal justice systems cannot realize the prevention of crime without effective cooperation with administrative departments. This means that cooperation of both agencies has become important;
(3) Special knowledge about science, technology, economy, and the like become indispensable for proper investigation and trial. Securing officers who have special knowledge and cooperating with universities is becoming important. On the other hand, it is also important to upgrade the quality of ordinary officers who work in criminal justice organization;
(4) Enlightenment of people about new kinds of crime has become very important to uphold people's security;
(5) International cooperation has become very important.

These characteristics will occur common-

ly in countermeasures against other crimes interrelated with development, so we think that these characteristics are recommendable as general indices of countermeasures against these crimes.

Session 2: Search for a Comprehensive and Integrated Approach to Fair and Effective Crime Prevention Policies and Strategies with Special Emphasis on the Protection of the Rights of Victims and the Incorporation of Such Policies and Strategies into Overall National Development Plans

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Introduction

With the quickening pace of industrialization and urbanization and with significant improvements in communication and transportation, attendant changes are seen taking place in the socio-cultural, economic and political fabric of nations. The impact of development has been quite marked in some countries especially in the areas of societal norms and social behaviour and more significantly in the area of a rapidly expanding litigious conscious society.

Along with the general improvement in living standards and the quality of life of people, certain undesirable socio-economic trends have surfaced exposing the pitfalls, gaps and inadequacies of policy formulation, strategies, approaches, and direction in national development planning. This has left in its wake a depression in the cherished ideals and objectives of socio-economic development spelt out in development programmes.

With lopsided intersectoral development and rapid urbanisation, the rural-urban migration continues unabated. Differential value orientations and the value conflict arising there-from, social disorganisation has come to stay in major towns and cities.

The spectrum of this disorganisation, compounded with the problems of economic inequality and marginalisation, are influencing the growing phenomenon of social conflict and of decent living. Together these conditions are contributing to the current trend of increasing criminality, including that of juvenile criminality as seen in many countries. It is not only crimes of opportunity that are on the increase but also an uptrend is noted in commercial and corporate related crimes, computer crimes and in the threat posed by syndicated criminal activities. These crimes together with the growing trend of trans-national criminality can severely impair the orderly development of society and gravely jolt the foundations of democratic institutions.

Industrialization has brought in its wake issues of environmental concern. Air and water pollution and the indiscriminate and illicit discharge of industrial waste and noxious material into rivers and seas are endangering public health and essential marine life. This concern for environmental issues has grown in light of the inadequacy of administrative and legal instruments to effectively counter these situations at the expense of victims in particular and society in general.

In many countries the growth of crime is caused by deteriorating socio-economic conditions leading to poverty, unemployment, lack of proper housing, the absence of educational opportunities and health services. Dysfunctional development has become criminogenic in some countries resulting in individuals, groups and segments of the population becoming victims of this disturbing development.

In the discourse of contemporary criminology the protection of the rights of victims has become a matter of much attention and emphasis. Its manifestation is currently seen in international bodies urging and criminologist advocating that nations give due emphasis to take adequate measures to reflect the same in national development plans for the more effective protection of rights of victims and more so for the criminal justice systems to be sensitive and responsive to these rights.

Issues Identified

The discussion group, after much deliberation and review of existing literature on the subject and other related resource materials including the report of the "Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders" with special reference to the "Declaration of Basic Principles for Victims of Crime and Abuse of Power" and the country papers presented by participants, reached consensus and identified 3 central issues that were considered substantial enough to cover the subject and yet specific enough to be relevant indicators to practical action. These issues are:

(a) The significance of Inter-agency Coordinated Action;
(b) The adequacy of laws to protect victims; and
(c) Juvenile Delinquency and the protection of juvenile rights.

The group, referred to the definition of "Victims" contained in the Declaration of Basic Principles for Victims of Crime and Abuse of Power and cited it in the discussions that subsequently followed. A victim has been defined as "a person who individually or collectively has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through, acts or omissions that are in violation of all laws (and recognised international norms relating to human dignity and fundamental rights for which no penal provisions exist) operative within member states."

The issues enumerated above were so condensed as to concisely cover the many facts of the topic consistent with the above definition.

The Significance of Inter-Agency Coordinated Action

It has been very appropriately pointed out that crime should not be treated as an isolated problem to be dealt with by simplistic and fragmentary methods but rather as a complex and multidimensional phenomenon requiring systematic strategies and differentiated approaches by the criminal justice system.

Furthermore, the formulation of crime prevention policies within the overall framework of economic and social planning necessitates an integrated approach in which urbanization, population movement, education and social welfare programmes must be taken into account. Running parallel to this approach must therefore be the need for inter-agency coordinated action for the formulation of systematic and effective crime prevention policies and strategies in relation to national development planning.

Coordinated activity is not a new concept altogether and has been acknowledged as crucial to the development process and yet coordinated working relationships leaves much to be desired. Government agencies are noted for their lack of mutual consultation and the tendency to work in a disjointed manner. Even so, issues pertaining to the inter relationships of activities and functions in the "areas of legislation, law enforcement, the judicial process, the treatment of offenders and juvenile justice" have been treated in isolation. This inconsistency is seen as a sad reflection of the functional aspects of the criminal justice systems

prevailing in many countries. Ministries and agencies charged with these crucial responsibilities do not seem to be able to organize amongst themselves in a systematic and sustained manner. Even if they do relate, it is on an *ad-hoc* basis of limited utility and thus lacks conscious application to put into proper perspective the preventive element into development plans.

The Adequacy of Laws to Protect Victims

It has been acknowledged that the primary basis for the protection of the rights of victims is the existence of sufficient penal statutes and subsidiary legislation to effectively deal with offenders. It is within this legal framework that a victim is recognized as a victim and is so brought into the judicial process through which he shall have recourse to justice and the enforcement of his fundamental rights.

It was accepted that there are in existence sufficient laws in most countries to cover a wide spectrum of wrong doings and omissions. However the inadequacy of penal provisions and legislation were noted in 2 areas and they are:

(a) The absence of legal provisions for some form of restitution, benefit payment or compensations to victims of crime and other statutory violations; and
(b) The inadequacy of punishment in relation to the nature and gravity of offences.

Compensation and Restitution to Victims of Crime and Other Statutory Violations

It is seen that the "victim" turns to the criminal justice system for help. However the role of the criminal justice system vis-a-vis the victim appears especially in the formal setting to be restricted to view the victim as an active participant only in so far as it helps the system find the perpetrator of the crime without adequately providing for some form of restitution for the injury and sufficient protection from further violations. The only recourse the victim has in such circumstances is by way of civil proceedings, the process of which is time consuming and a financial burden to the victim.

Some countries have enacted compensation and other protection related laws to protect the rights of victims.

In Japan, the "Crime Victims Benefit Payment Law" was enacted in 1981. Under this system, if a person is killed or seriously incapacitated by the deliberate act of a second person, the government pays benefits to the surviving members of the victims family or to the physically incapacitated person.

In the Federal Republic of Germany, the "Victim Protection Act" came into force in 1987. This law provides for the victim to enforce restitutional claims against the offender under civil law within the scope of criminal procedure.

In the U.S.A., the "Federal Victim and Witness Protection Act" came into force in 1982. This act improves the position of victims in criminal procedure. The act makes it a requirement that a "Victim Impact Statement" be prepared and presented to the court. This statement contains information on the consequences of the offense for the crime victim taking into account the financial, social, physical and psychological damages suffered as a result of the violation of the law. This enactment provides for offender-restitution as a penal sanction.

Reference was also made to the provisions contained in the Criminal Procedure Code of Malaysia and Fiji. Section 426 of the Malaysian Criminal Procedure Code states, "the court before which a person is convicted of any crime may in its discretion make an order for the payment by him of a sum to be fixed by the court by way of compensation action to any person, or to the representatives of any person injured in respect of his person, character or property by the crime or offence for which the sentence is passed."

This provision has rarely been invoked.

Another victim protection related law in Malaysia is the "Abduction and Criminal Intimidation of Witnesses Act 1947 (revised 1977)". This Act provides for increased punishments for the offences of abduction and criminal intimidation in certain circumstances. Whoever abducts any person and whoever commits criminal intimidation, impeding the course of justice or with intent to impede the course of justice may be punished with imprisonment for not more than 14 years and 10 years respectively.

Sections 161 and 162 of the "Fijian Criminal Procedure Code" provides for compensation to the victim from the fines imposed on the offenders by a court of law. However, the courts exercise discretion on this matter.

Inadequacy of Punishment in Relation to the Nature and Gravity of Offences

Discussion on this aspect reflected the concern of participants as it was felt that existing punishment provided for certain sensitive offences not commensurate with the nature and gravity of these offences. It was observed that criminal justice systems do not respond fast enough to recommend new laws or amendments to existing laws for enhanced punishment in respect of certain offences that are generating bitter sentiments and public outcry.

Economic, commercial and syndicated crimes are in this category. Existing penal sanctions to counter effectively the rising incidence of these crimes are inadequate and are in need of review. These crimes can adversely affect the financial, social and political stability of countries if measures to counter this phenomenon are not attended to promptly.

Attention is also focused on environmental related laws. In view of the characteristics of growing industrialization, technology and scientific progress, special protection should be ensured in matters pertaining to public health, the environment and in defining the criminal responsibility of offenders. The urgency for this protection is a reality. The "Minamata Disease" outbreak in Japan was due to the contamination of water and marine life caused by the indiscriminate discharge of industrial waste into the sea. The second case in point is the "Bhopal Disaster" in India. These two cases should suffice to reinforce this urgency.

In Japan, national governmental organs acting in concert concentrate on preventing pollution before it occurs through measures such as maximum limits on industrial emissions and effluents and strict limits and regulations governing hazardous industrial waste disposal. Criminal sanctions are authorized against those responsible for environmental pollution hazardous to public health even though no deaths or injuries actually occur.

There is a concern also for the threat posed by computer fraud. Aware of this development, Japan amended its Penal Code in 1987 inserting relevant provisions to effectively deal with computer crimes. Some of the amendments include:

—the act of obstructing the business of another by the destruction of computer or electro-magnetic records or by inputting false information or wrong commands into the computer or by having the computer not work in accordance with its instructions by other means the maximum term of imprisonment was enhanced to five years and the maximum fine was raised to 400,000 yen; and

—the act of obtaining an economic advantage by making untrue electro-magnetic records by means of inputting false information or wrong commands into the computer or by submitting false electro-magnetic records about obtaining, losing or changing the right of property to the administration of the affairs of another.

Law Reform Commissions have been established in some countries as in Kenya,

Tanzania and Fiji to review existing laws and to recommend better laws and effective legal provisions and procedures compatible with current realities and in keeping with societal developments and changes.

For the criminal justice system to have any significant impact on the protection of victims' rights in relation to social development it must become more aware of its external environment for example: changing social trends and demographic patterns.

Juvenile Delinquency and the Protection of Juvenile Rights

It has been accepted by every authority as virtually self-evident that anti-social behaviour of youths, without positive and timely intervention and response from relevant authorities, will be carried over into adult activities. There appears to be a correlation between the victimization of children and their subsequent adult conduct as offenders victimizing others ("The Victimization Spiral"). There is considerable agreement to the fact that delinquents are not born as such but rather, are products of "Culture and Environment" and of "Sociological and Psychological Conditioning" that eventually gives way to adult criminality.

It was therefore seen as imperative that protecting juveniles and young persons from falling victims to criminogenic situations be the top most priority on the agenda of criminal justice agencies and the basis of crime prevention policies in relation to socio-economic planning. This priority was viewed not only from the stand point of neutralising the "Victimization Spiral" but also from the perspective that the survival of a culture is dependent on children and as a group, children represent the future. The future development of a strong and stable society would therefore require that children and youths be brought up in suitable circumstances and environment and to be accorded opportunities to actively participate in community life.

Factors Influencing Juvenile Criminality

Critical factors that were identified and unanimously agreed upon as seedbeds for juvenile criminality include:

(a) domestic violence and unstable homes;
(b) poverty and poor living conditions as observed in some developing nations;
(c) public apathy to the re-socialization of rehabilitated juveniles, seen both in developing and developed countries;
(d) the peculiarities of the criminal justice system: it was noted that in Kenya, children below the age of 4 years are admitted to prison accompanying their mothers convicted of crimes. Those being the formative years of a child this situation will undoubtedly have negative psychological effects in the latter years of the child. The child is indirectly criminalised and acquires the tendency to develop a prison sub-culture at an early stage of his life;
(e) unsatisfactory education strategies in the face of changing realities and societal sensitivities including the heavy pressure on students for scholary achievements: it was pointed out that in one country, many do not attend school because educational policies and school curriculum set by the central agency are not compatible with regional needs and realities. It was also indicated that frustrated and disappointed students, because of poor grades and the stigma associated with failure, have a tendency to resort to criminal behaviour;
(f) the influence of mass-communication giving rise to value conflicts conducive to juvenile criminality; and
(g) the rapid social-cultural changes: the problems of rural-urban migration is seen in this context and the erosion of family ties.

Suggestions—A Guide to Practical Action

Having considered the issues very broadly, we outline below the following suggestions to cover salient points of general interest and utility to serve as a guide to practical action. These suggestions are not so categorised as to run parallel to the issues because of the interrelationships and linkages of these suggestions to one another, and must, as such, be appreciated in their totality and as a whole, taking into account the multifarious facets of the subject matter. It must be mentioned that these suggestions should also be read in the context of a country's development priorities and public policy given the constraints and limitations of scarce economic and social resources.

a) Merging Similar Functions

To coordinate effectively the activities and programmes of the criminal justice system it is seen expedient that the components of the system performing similar and related functions come under one roof. This would avoid duplication of effort and prevent the waste of scarce managerial resources. It has been noted that in some countries, the treatment and rehabilitation of juvenile offenders are carried out by the Prisons Department and also the Social Welfare agencies working in isolation. This type of administrative arrangement requires an urgent review.

b) Improving Communication through Inter-Agency Transfers, Etc.

Another aspect for serious consideration in the area of better coordination within the criminal justice agencies and all other agencies within the administrative machinery of the government is in the matter related to inter-agency transfers, job rotation, and the exchange and attachment of personnel on a predetermined basis. This practice will aid in sensitizing personnel to exposing them to the needs of different organizations enabling them to relate better in the conduct of their working relationships. Furthermore, it will contribute to mutual appreciation and understanding of strategies and programmes and of departmental objectives in relation to national socio-economic development objectives thus providing for better unity in direction.

c) Establishing Working Relationships and Improving Rapport through Committees and Associations

Countries may also consider establishing, on a formal basis, a kind of forum to bring together the administrators of the components of the criminal justice system, on a regular basis, for consultations and for the mutual exchange of views.

It was mentioned that in Thailand there is a proposal to establish a Law Center in one of the leading universities. The functions of this proposal are: to provide guidelines for a more meaningful working relationship amongst components of the criminal justice system; to carry out research work in criminal justice administration; and to organise and conduct international seminars on matters incidental thereto.

d) Establishing Crime Prevention Councils

The formalisation of crime prevention councils either at the national level or regional level is not only seen as a significant forum that can bring criminal justice administrators together but also as a systematic organization bringing these administrators into formal contact with members of the public and private agencies including social and voluntary bodies and more importantly, the community to relate better in the fight against crime. The effectiveness of the crime prevention council is seen in the following areas:

—council members relating and cooperating with policy makers in evolving rational crime prevention policies and strategies;
—the effective coordination of preventive activities by the police and other related

crime prevention agencies;
—to make aware to the community, their role in crime prevention;
—initiating research on crime trends and evaluating them; and
—in the area of planning and implementation of prevention programmes.

In Singapore, The National Crime Prevention Council has been established and appears to be functioning well coordinating the efforts of the community, associations, the public and private sectors in the fight against crime.

e) Sensitizing the Components of the Criminal Justice System through Training

It is also seen as desirable that the components of the Criminal Justice Systems play a much more active role to sensitize its personnel to the functions of the System in connection with the protection of the inalienable rights of society in relation to national development goals and aspirations. The Malaysian delegate mentioned that the Royal Malaysia Police in conjunction with the National University of Malaysia, has initiated a diploma level Police Science training programme for senior police personnel. The core subjects of this programme include criminal justice administration, criminology, forensic science, law and research methodology. The objective of this programme is not only to provide specialized training in crime control but also to upgrade the level of professionalism of the police service in the context of national development. It was felt that this training programme should be extended to the other components of the criminal justice system in Malaysia and perhaps the future participation of foreign students be considered.

In Fiji, the Police Service Commission, with the cooperation of the University of the South Pacific, has made available a degree course on management to police personnel.

f) Proactive Response to Effective Crime Prevention Strategies and for Better Legal Provisions and Safeguards

It has been observed that the promulgation of new legal sanctions and the initiation of effective crime prevention strategies have always been an exercise after a tragic incident has occurred or wherein a situation has so developed as to threaten the peace and security of nations. Criminal justice response in this respect has traditionally been of the "Reactive Type." It is therefore deemed expedient that criminal justice administrators remain sensitive to global issues and occurrences, appreciating them and taking positive steps to initiate provisions to address such eventualities should they occur. They should be "Proactive" in their vision and actions to ensure the vitality of the criminal justice system.

g) Crime Impact Statement

Countries may consider, the incorporation of crime prevention strategies in development programmes by preparing "Crime Impact Statements" summarizing the criminogenic potential of new social and economic development plans and outlining the criminal justice system needs that the implementation of development programmes will generate.

It was indicated that Japan, in the initial stage of her industrialisation and development strategy, practiced a form of social defense system through which teams consisting of national planners and reseachers analysed crime trends correlatively with social changes and development. Strategic social programmes were then prepared and constituted a integral part of her national development.

h) The Creation of Legislative Packages

The increase in economic and commercial crimes, syndicated crimes and environmental violations and other new trends of criminality have been observed as running parallel to socio-economic development and change.

Arising from this change in phenomenon has been the need to criminalise acts and omissions which culpably expose the life or health of human beings or property to potential danger. The need for restitution provisions are matters of urgent criminal justice prudence. In this context, "Integrated Legislative Packages" combining socio-economic programmes with new legislation or with amendments to existing laws could be considered by countries for its potential utility in the development process.

i) Rights of Victims—Other Considerations

Countries should also examine the possibility of establishing ombudsmen, legal aid bureaus or public complaints bureaus through which genuine complaints against government agencies are investigated and for these bureaus to ensure that such complaints are entertained promptly and to protect victims from crime and malpractices.

Assistance should also include medical and psychological help and countries may also consider other forms of arbitration and mediation procedures in which the parties involved can resolve their own conflicts with the aid and mediation of the criminal justice system.

j) UNAFEI's Contribution

UNAFEI, since its establishment in 1962, has fully devoted itself to its main task of promoting international cooperation and understanding in crime prevention and the treatment of offenders. It has since conducted 83 related courses in which a total of about 1,900 persons representing 66 countries have participated.

UNAFEI has also initiated several joint regional seminars bringing together criminal justice administrators to examine and identify problematic issues confronting criminal justice administrations in respective countries and further sensitizing them to the integrated nature of solutions required to overcome related problems. UNAFEI further more encourages the establishment of alumni associations in member countries. This association may be looked upon as a useful informal branch of the criminal justice system to further promote understanding and cooperation amongst components of the system. UNAFEI was proud to note that in 1988 the UNAFEI alumni in Bangladesh on their own initiative organized a seminar on "Criminal Administration and Juvenile Justice in Bangladesh." A similar seminar was also held in Sri Lanka. Countries may wish to consider the same.

Protecting the Rights of Juveniles

It has been acknowledged that urbanization, industrialization, the erosion of traditional values, weakening of community support systems, the growing influence of the mass media and the inability of the education system to respond to new challenges in the socialization of young people are some of the socio-economic factors influencing the rising incidence of juvenile criminality. It has therefore been suggested that social policies addressing these issues should be based on "social reconstruction through planned development with an accent on the welfare of juveniles."

a) Compulsory Education

Compulsory education is one such major area that countries should consider seriously if social policies are to have any bearing on juvenile criminality and welfare. In Japan, compulsory education is enshrined in her constitution. Compulsory education is seen to upgrade the level of literacy making for an enlightened society and the development of a trained and knowledgeable work force so very essential for national development considerations. In a similar vein, vocational training for youths must also be considered.

b) Community Based and Non-Institutional Treatment

In the Rehabilitation and Correctional aspects of juvenile delinquency, there is a

need for countries to intensify community based and non-institutional treatment with emphasis placed on the potential value of young persons in society. In addition to public rehabilitation and treatment agencies, voluntary organisations and private concerns should be encouraged to come forward to supplement and complement the efforts of public agencies to eliminate environmental factors generating delinquency and to assist probation officers in the dissemination of information on ideas and policies regarding prevention and rehabilitation to the public. By actively involving volunteer workers, the criminal justice system can be successfully integrated into formal social control systems. Community Based rehabilitation schemes must include physical, mental, and psychological training, as well as academic rehabilitation including spiritual guidance. It has been accepted that effective community based treatment makes for improved youth relations within the community and that in the long run it influences the reversal of trends of juvenile criminality and recividism.

c) Expertise and Professionalism in Juvenile Delinquency Management

Another significant aspect is the expertise and professionalism of the personnel tasked to manage juvenile related matters. In Japan, full-time psychologists and sociologists are attached to all correctional and rehabilitation facilities. The professional approach adopted by these specialists in the appreciation of the psychological make-up of juveniles and the analysis of the causal factors of juvenile criminality, facilitates the formulation of comprehensive programmes for the treatment of juveniles.

d) The "Beijing Rules"

These rules should also be considered in the context of effective juvenile management. Some of the propositions that this instrument spells out are:

—sufficient attention should be given to positive measures involving mobilization of resources, such as the family, volunteers and community groups to promote the well-being of juveniles;
—juvenile justice should be an integral part of the national development processes of each country;
—efforts should be made to provide necessary assistance such as lodging, education, vocational training and employment to facilitate the rehabilitation process;
—with regard to institutional treatment, measures have to be taken to provide care, protection, education and vocational skills to assist offenders in assuming constructive and productive roles in society; and
—efforts are to be taken to provide semi-institutional arrangements such as halfway houses, educational homes and other centers to assist juveniles in their reintegration into society.

In Japan, fourteen government ministries and agencies share a concern and responsibility for proper guidance, nurture, protection and rehabilitation of juveniles. The formulation of fundamental policies and goals by these ministries and agencies, based on the recommendations of the Youth Problems Commission, are coordinated by the Youth Development Headquarters under the Management and Coordination Agency. The Youth Development H.Q. promotes consultations among ministries and agencies on important juvenile issues and the adjustment of budget items on juvenile matters.

In Malaysia, youth activities are aimed at fostering unity among youths of various ethnic groups as well as inculcating discipline and self-reliance. These activities include the provision of skill training for unemployed youths at the various youth training centers. Financial assistance is provided for youths who are trained to set up their own businesses and undertake agricultural activity. There are about 24 youth associations in Malaysia coordinated at the national level by the Malaysian Youth Council. A National Youth

Cooperative Movement was established in 1976. Its aim is to mobilise youths in economic activities which include housing and property development, import and export, distribution of products and activities such as advertising, brokerage and insurance.

It is imperative that integrated policies for the sound nurture of children and youth be developed and reflected in social plans encompassing the indispensable need to strengthen the spiritual, mental and physical attributes of children and youths.

Conclusion

Three major issues were discussed in relation to the multifaceted nature of the subject. The discussion of these issues were centered around 5 themes, namely:

—The integration of the criminal justice system into the development machinery of countries;
—The establishment of an efficient and effective system of criminal justice administration sensitive and responsive to contemporary socio-economic development, changes and societal needs;
—The adaptation of the criminal justice system to the concept of restitution to encompass victims and society;
—The question of what countries can do to prevent juveniles from not becoming victims of society; and
—The need to approach issues not merely from the standpoint of "protecting" juveniles and victims of crime but more significantly from the perspective of protecting the "rights" of juveniles and victims.

It must be understood that this subject is a complex jig-saw puzzle with no simple straight forward solutions, further complicated by different national perceptions, priorities and stages of development. This discussion and the suggestions afforded herein is yet another attempt to fit a piece into this incomplete puzzle and another effort in the continuous search for a comprehensive and an integrated approach to effective crime prevention policies emphasizing the rights of victims in relation to development goals.

Session 3: The Response of the Criminal Justice System to Development and Human Rights

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Introduction

Trends in criminality can be viewed as a response to social conditions or in the context of urbanisation and industrialisation seen in most developing countries. The transition from a primarily agricultural society to an industrially developed one is not easy.

Economic development means, among other things, social change. Population profiles, family patterns, income levels and other such indicators change with development. These changes together alter the value system, evolving "Anomie'.

The effect of "Anomie" on individuals and criminality in a developing country is visible and one can find empirical data in support thereof. Juvenile delinquency and female criminality are examples of changed values in a traditional society.

The effect of "Anomie" on the society as a whole in most third world countries is no better. Depending on the stage of development the degree may differ but the basic maladies remain the same. Bureaucratic corruption, inadequacy of housing, medical care, nutrition and education, mounting ex-

ternal debt and more importantly a criminal justice system that is unresponsive or slow to respond to the aspirations of the people, are but a few of the problems in a developing economy.

It is very difficult to understand the response of the Criminal Justice to development and to human rights, unless we take into consideration the situation of each country, its culture, history, and problems derived from the stage of its development.

It would then be possible to discuss the current action of the Criminal Justice System and how this action is affecting the possibilities of development of a country and human rights issues in each country. This discussion would be incomplete without the economic, political and societal approach.

The Response of the Criminal Justice System to Development

The concept of development cannot be viewed merely as economic development, because development does not consist of acquiring big factories or better highways. On the contrary, this concept is related to human beings, the final objective of any societal organisation.

It may be agreed that the term "development" refers to the dynamic process within the society which gives rise to improvements in the overall quality of life and circumstances of living of the entire community in the economic, social, political, technological, defense and security fields.

It may also further be agreed that development does not produce per se crime, but it is true that development, in terms of urbanisation, and industrialisation brings about a certain increase in the officially reported crime; because of social disorganisation and erosion of traditional and spiritual beliefs.

Every country is passing through different stages of development, and from this point of view, the effects of development are different in each country.

Sometimes the stages of development can be related with the increase in crime committed by people in high ranking positions affecting the Public Economy and the Environment. In other cases, certain stages of development can produce tendencies of crime unknown in previous stages of development. Generally speaking, the breakage of social institutions, a by-product of development, can produce and increase in crime, especially female criminality and "white collar" crime. The migration from rural areas to urban areas produces unemployment in some areas of development, affecting the future of large sectors of the population, who eventually take to a criminal career.

In discussing how the different agencies of the Criminal Justice System are responding to the dilemma of development, the Panel explored the activities of such agencies and examined better ways of solving the apparent inefficacy of the Criminal Justice System. The Judicial System is an instrument of social justice that establishes ways of solving conflicts. Nevertheless, social contradictions and conflicts generated by haphazard development may bring about a Judicial System that can be an agent of increasing inequality. To illustrate: social oppression is deepening as a result of the support given by the state to the most powerful. The result is increasing victimization of the most underprivileged sectors and groups, due to their social and cultural vulnerability.

Response of the Police to Development

The response of the Police to development varies from country to country depending on the stage of development and existing legal, social, political and cultural framework. The response of the police to development has not kept pace with overall development. Urbanization and industrialization led to the breakdown of family ties, resulting in various subcultures and increased criminality. The police response to eradicate the increase

in criminality is inadequate.

Other forms of criminality, namely "white collar" crimes and those associated with the environment, which are typical of the developmental process, need to be also dealt with by the police in ways other than traditional forms of crime. Special Investigating Bureaus need to be organized to tackle these crimes.

The use of the police by the political executive and the economically well-to-do persons in the country as tools of oppression needs to be checked.

The problem of the police today in most developing countries is that of its credibility. To improve credibility the police ought to become closer to the people and make themselves acceptable by their conduct and actions. In order to make the police effective and acceptable, there is a need for the government to formulate an overall strategy/policy regarding crime prevention with a clear enunciation of the role of the police, specifically as an instrument of social change which alone could facilitate development.

A vigilant cadre of senior officers is a definite safeguard against abuse of power by the subordinate staff at the cutting edge level. Police-community relations can improve if the latter is involved more actively in the affairs of the former more so in regards to crime prevention programmes. In order to improve the acceptability of the police and improve its credibility, the need for streamlining the existing formal and non-formal channels of grievance redress is immediate.

The Response of the Judiciary to Development

In developing countries, the Judiciary must be an instrument of social change and therefore it must respond to social change, in the context of development. This situation is very difficult in developing societies, where access to protection under the judicial system is not effective for the most underprivileged sectors. In fact their is a lack of knowledge about the judicial system. The resources of the system are often primarily centered in urban areas to the detriment of rural or remote areas, the language used in the Judicial system is different from the language used by the natives, there is difficulty in understanding the system because of lack of education and procedures are costly and difficult for low income people. In most cases, *justice delayed is justice denied*, because of the pendency of cases in courts, eroding the confidence of the public in the judiciary.

Another problem is the one which relates to the independence of the Judiciary and the accountability of the Judiciary. Special attention must be paid to the actions of the police in investigation of crimes committed by judges. This is necessary in view of the possibility of such investigation being affected by outside influences or by the very inhibition of the investigating agency, considering the higher status of the judiciary.

Necessary amendments to existing statutes may be needed to evaluate the action of the Judiciary. Also, it would be useful to involve the traditional institutions related with conflict-solving processes. This could solve the problem of pendency of petty cases in Courts, especially in rural areas. Village Courts could play a useful role on the model of those in Philippines, Thailand and India. In urban areas, People's Courts (Lok Adalats in India) or the Justice of the Peace System can be used to clear up pendency of cases.

For the investigation of transnational crimes, the implementation of Model Courts could be a good solution.

Regarding the problem of the independence of the Judiciary Vis-a-Vis the necessity of community participation, the institution of the jury is defined as the best way of having the community involved in the process of sentencing, although the jury has been found to be very difficult to use and to control. But this is not the only way. The public must take a leading role in the scrutiny of the actions of the Judiciary. But, this scrutiny must be part of the daily concern

of public opinion. It is not necessary to create new public institutions to overlook the Judiciary (this in fact could potentially violate the Constitution of a country). It means that community participation is understood as a more complex approach; that of conflict-solving with informal means and informal social controls.

The Response of the Prosecution to Development

Wherever prosecution is distinctly separate from police, there is a need for greater coordination between the two.

The action of the Prosecutor's Office is necessary for the protection of the poor and of the underprivileged sectors of the population. The actions of this office in dealing with this issue should be analyzed from the point of view of the Human Rights perspective. In some countries, like India, the Prosecutor works as a representative of the interests of the investigating agency, viz., the police. The action of the prosecutor has to do more than accomplish only those duties related to the activity of investigating and punishing crimes. In most countries, the duty of the prosecutor is understood in this perspective and it would follow that he has to protect the society from the most important problems such as: economic crimes, environmental crimes and the access of the poor to the criminal justice system.

The activities of the Prosecutor's Office should be checked by the community and the Judiciary. The Community Committees have shown their importance in countries like Thailand and such examples may be followed by other countries. It is better not to have ad hoc agencies working in this field because supervision has to be complete and is a matter of institutional concern. It would also be useful if a unit inside the prosecutor's office checks its day to day activity. In countries like Japan, in which the Prosecutor's Office exercises powers of dropping a case, this possibility must be fully explored.

The Response of the Correctional System to Development

The Penitentiary is facing a crisis from budget crunchs. There is no space for more people in prison. The institutions are overcrowded in most countries. The ministry concerned does not have an adequate budget to buy more beds, food, tools, etc. In fact, budget is reduced each year and there is little hope of a raise in the near future. Speaking in general terms, this situation is due to the absence of any clear criminal justice policies. It is necessary that there be a systematic approach to the crime problem. This approach must take into account the idea of management needed to cover various aspects and stages involved in the formulation of such policies. Management is not only an idea of planning, but is something more global referring to the environment, the problems, and the practices of the mechanisms of control of the criminal justice system.

The Problem of the Penitentiary is not going to be solved by merely building new prisons, since they are going to be filled with more prisoners anyway. The actions of the Police and the Judiciary have to be studied in relation to the Correctional Institutions. It is this reality which is causing the current problem.

Prisons in developed countries offer "soft" possibilities for the prisoners which are impossible for a common man in most developing societies. But this is not the only problem. A definition of correction is the basic problem in any coherent analysis of the current situation of the correctional institutions. If we have a definition of correction related with punishment as a retribution for society, the prison is going to be the monument committed to deterrence and control. But, if the concept of correction is well understood as a possibility of showing a person the reasons for being a victim of the action of the Criminal Justice System, we are going to view the prison as a means of rehabilitation.

The correctional institutions are not discharging their functions, they only receive the people detained by the police or sentenced by the judge. They are not developing a policy of open door to show the actual situation, their mistakes and their willingness to correct themselves.

The high number of recidivists indicates that the correctional institutions are not solving the problem of the deviant or the criminal behaviour. Here, we have another possibility for the participation of the community. The Japanese community-based treatment system is characterized by the extensive participation of volunteers. The National Service Scheme in India covering undergraduates could be utilised to supplement the efforts of the probation officer for the offenders to rehabilitate. The problem of employment, however, remains unsolved. In Saudi Arabia, the Social Welfare and Labour Ministry is in charge of helping people find a job after completing their sentences. The community contributes money to look after the family of the convict during his incarceration. The companies offer jobs to the convicts released not only on their own initiative but mainly on account of the overpowering influence of religion. For foreign nationals, after the punishment they are deported to their countries.

Other solutions include the possibility of self employment or rural employment programs and bank loans to promote economic activities. In countries with huge tracts of land, like Zambia, the Government has a program of settlers in order to give the released prisoners an opportunity of becoming land owners and leading a decent life.

It is felt to be important to develop new plans and programs for finding persons prepared for the work of probation and to increase the number of volunteers in these activities.

Regarding the diversification of community treatment, the experience in the United Kingdom is very interesting. Community service is used for those first offenders who have committed minor offenses. This program involves 100 to 600 hours of work by the offender for the community, and the program does not interfere with the daily routine of the person. The person must voluntarily do the work and any work must be related to the community like gardening, repair work etc. If the person willingly agrees with the program, the success rate is very high. The probation officers supervise this work. Under this program, the offenders live at home enabling them to lead a normal life. This program has the advantage of being less stigmatizing, cheaper and flexible than institutional methods. The system is also in vogue in Australia and in the U.S.

Regarding participation of the public in the resolution of correctional problems, it would be very useful to follow the U.N. Standard Minimum Rules for the Treatment of Prisoners. Important among these rules is the visit of public officers to the prison to check the prison conditions, which possibly can educate the public about Correctional Institutions and vice versa.

It is important to involve the public and to alert them about the problems facing Correctional Institutions. The public includes leading personalities, human rights activists, teachers, priests, housewives etc.

Development involves people and this means changes according to the necessities of the people. We have to open the doors of the Criminal Justice System to the public to promote its credibility.

The Response of the Criminal Justice System to Human Rights

By Human Rights, we mean not only political and civil rights but also economic, social and cultural rights. Political and civil rights protect a people by law against cruel, inhuman or degrading treatment, recognize the right of every person to life, liberty, privacy and security, prohibit slavery, guarantee the right to a fair trial and safeguard against arbitrary arrest or deten-

tion. They also uphold the freedoms of thought, conscience and religion, the freedom of opinion and expression, the right of peaceful assembly and of emigration, and freedom of association. Economic, social and cultural rights call for better living conditions for a people by acknowledging every person's right to work, to fair wages, to form and join trade unions, to social security, to adequate standards of living and freedom from hunger, and to health and education.

While these human rights are enshrined in the constitution or penal code of most countries, in reality they are violated in several ways, sometimes by the very agencies of the Criminal Justice system who uphold them. There is an "inner" wheel within the "official" wheel of the Criminal Justice System, which operates as a tool of intimidation and repression of the poor and weaker sections of the society. It is of serious concern to all right thinking people who value human rights.

The situation gets worse when a government justifies the acts of the "inner" wheel of the Criminal Justice System in the name of national security. Development is hollow if it is accompanied by a high coefficient of state violence as exemplified by "missing" people, murders and mayhem. Economic crimes, environmental crimes and crimes against human rights are increasingly noticed in developing countries, hampering equitable distribution of wealth.

The developing nations must recognize human rights as an integral relevance to development. This alone would facilitate the emergence of a New International Economic Order and the removal of economic injustice. However, even human rights cannot be considered absolute and are subject to "reasonable" restrictions by the state. The reasonability of these restrictions determine the credibility of the state in the context of human rights.

Human Rights are fundamental and interdependent. As such, equal attention should be given to the full implementation and protection of all these rights. The realization of political and civil rights is dependent on social and economic development in the following three ways:

a) The availability of human or material resources
b) The benefits of human rights to a people would improve with the social and economic progress made
c) Economic and social development promote political stability and relatively democratic forms of government, which support human rights.

The dilemma of human rights for the criminal justice system begins with the legal definitions of crimes as related to prevailing political, social and economic conditions of a country. Within the parameters of these definitions, the people (the poor and the weak), continue to go through the "revolving door" of the system again and again.

At times, the principle of legality viz., "Nullum crime sine praevia lege, nullum poena sine praevia lege" (there is no crime or punishment without previous law) is violated because the definition of the act prohibited is vague. It affords opportunity to the agencies of the Criminal Justice system to abuse their power.

There is no dearth of laws in any country. The need is not so much for new legislation as meaningful implementation of existing laws, with the scope of action of the Criminal Justice System clearly defined. New laws or amendments to law with a continued, wooden-headed approach of the agencies of the Criminal Justice System would prove counterproductive.

The difficulties of developing countries in terms of protection of human rights stem not only from the acts of the Criminal Justice System itself, but also other factors such as concentration of wealth and political power in the hands of a few. It leads to criminalisation and its resolution is effected by adopting a holistic or analytic approach. The

government might not shift its' responsibility to agencies of the Criminal Justice System but should bring about an overall improvement in the living standards of the people and social conditions facilitating change for the better.

The procedure regarding arrest without warrant has a direct bearing on the human rights of citizens. Police arrest without warrant in cases of flagrant offence, attempt to commit an offence or when one is found in suspicious circumstances indicating intention to commit an offence by possession of weapons, etc., likely to be used in the commission of an offence or when there are reasonable grounds to suspect that a person has committed an offence and is about to abscond or when a police officer is obstructed in discharge of his duty or a conditionally released offender commits any breach of conditions of release. Effective departmental supervision and an active press preclude any misuse of the above powers.

A special law entitled "National Security Act" in some countries provides for the arrest of a person by an administrative order of the district magistrate in those cases when the subject is considered a threat to the security of the state or to the maintenance of public order. Any excesses in the exercise of this power are checked by the statutory scrutiny of the detention order by the Advisory Board of the government and judicial review.

Some laws relating to hazardous criminals smack of authoritarianism and violate human rights. Further unauthorised detention of members of the public for questioning, giving evidence or use of third degree methods all need to be checked. Living conditions in correctional institutions also need to improve. More than anything else, the attitude of the functionaries of the Criminal Justice System must change.

Epilogue

It is time that the Criminal Justice System opened up to the public. Then and only then would it be accepted and trusted. Community involvement must overcome the red tape or status quo approach.

It is also seen that the agencies of the Criminal Justice System work in isolation. The police do not see beyond their own noses. The Prosecutor washes off his hands once the Judge takes over. The Judge does not know what happens to the offender after he is sentenced. The four walls of the prison have no doors and windows to let in fresh air. The probation functionary is more of a bureaucrat. It is therefore necessary to have inter-departmental coordination within the Criminal Justice System. To be useful, such coordination efforts should be institutionalised and then the response of the Criminal Justice System to the community could be positive.

Session 4: International Cooperation in Criminal Justice Administration

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Mr. Fumio Saitoh

Introduction

The members of the Group consist of two administrators, a District Judge, a Public Prosecutor, a Maritime Safety Officer, and a Police Director, from different countries having a kaleidoscope of legal systems, backgrounds, circumstances and national objectives. All the members are, however, involved in the administration of criminal justice and crime prevention, and each possesses, to some extent, working experience in international affairs.

The Group was invested with the task of examining international cooperation in crime prevention and criminal justice, and the role

of the United Nations in this field. Towards this end, the Group was required, in accordance with the discussion guide, to discuss the extent of implementation of the related articles of the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order set out in the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the impediments and the related problems in implementing those Guiding Principles.

The Group unanimously endorses the Guiding Principles, and has therefore elected to base this Report on the impediments involved in the implementation of those Principles. Accordingly, this Report will deal with topics which were selected by the Group for discussion on the basis of the information available to its members. In the first section, this Report will mention new forms of crime which have relevance in the context of development, and in the second section, the Group will go on to recommend modalities of international cooperation and measures which it feels might be useful in dealing with problems encountered in combating such crimes.

Section I: New Forms of Criminality

a) General

Almost all countries in the world today are confronted with new dimensions of crime of such magnitude and sophistication that lawlessness threatens to over-run humanity unless governments and heads of states start coordinating their efforts and pooling their resources to find new and equally sophisticated means of halting the advance of crime.

Due to vast and rapid improvements in science and technology, the once-formidable dimensions of the globe have been reduced to easily accessible proportions. This has in turn facilitated the formation of criminal associations and afforded greater opportunities for illegal activities to be carried out. Criminal syndicates now increasingly extend their nefarious operations overseas.

Such activities affect world commerce and threaten political stability. They restrict cultural and economic development. Hence, there is a driving need for action to be taken to put down crimes of this nature. However, the lines defining legal responsibility for and jurisdiction over these crimes are often blurred, especially where developing countries are concerned. There is therefore a need for a more vigorous campaign worldwide to emphasise the urgent requirement for greater cooperation between countries in order to counteract these new forms of crime.

b) Drugs

The abuse of addictive drugs is encountered around the world, and has been steadily increasing in intensity. The trade in drugs is frequently connected to the underworld, and complicated and sophisticated methods for smuggling and trafficking have been devised, enabling such trade to flourish.

Various types of drugs are favoured by consumers from country to country. In Japan, for example, stimulants and cannabis are most problematic, while Singapore has most of its problems with heroin, a narcotic drug. The main drugs abused in the Philippines are amphetamines (a stimulant drug commonly called "shabu") and cannabis; in Sudan opium and cannabis are predominant in the illegal drug trade.

In the Philippines, the major mode of trafficking is by foreign vessels which transport raw materials produced in the Philippines to other countries for processing. It is also suspected that drugs are being carried out of the country by airline staff. Amongst the countermeasures suggested for this are stricter surveillance on foreign vessels entering Philippine ports and thorough searches on airlines staff both on leaving the Philippines as well as upon arrival at their destinations.

In Singapore, while "ant traffickers" and couriers have been arrested, it has been

found that by and large, the masterminds of drug operations managed to escape detection mainly because they had taken precautions to conceal their identities from the pushers they employed. Therefore, while there were close ties between the Singapore and the Malaysian police, and while the Singapore police would be only too willing to cooperate in the investigation of drug offences with the police of other countries, such channels had not been utilized all that frequently in the past. Similarly, Sudan had direct police to police contacts with Saudi Arabia and Egypt, and with other countries through Interpol, but arrests of drug king-pins have been rare. This is in spite of the presence of a Saudi Arabian investigator stationed in Sudan when the occasion demands. However, Sudan is normally only used as a transit point on drug routes and is not one of the usual destinations for supplies of drugs.

There are three elements to be dealt with in the war against drugs: (1) producers, (2) traffickers, and (3) consumers. It is considered that there is at present, unnecessary delay and red tape involved in the obtaining of information on drug offences and offenders, and that insufficient effort is made on the part of countries which receive such information to follow up with prompt and effective investigations so as to arrest offenders who may be within their boundaries. The establishment of more lower level channels of communication for quicker and more effective transmission of investigation information and more concerted action by countries against the various elements involved in the drug trade are therefore called for.

In respect of law enforcement and rehabilitation of addicted consumers, it is considered that countries may benefit from an exchange of information on the methods used. In Singapore, Drug Rehabilitation Centres have been set up to handle rehabilitation. Here, the "cold turkey" form of treatment is the most frequently used method, and there is an aftercare service provided to integrate addicts back into society after being cured of their addiction. The vigour of the efforts on the part of this country in dealing with the drug problem is reflected in the establishment of a special agency, the Central Narcotics Bureau, to combat such crimes, the use of the death penalty to deter traffickers, stiff presumption clauses in the drug laws in respect to the possession of more than certain amounts of specified drugs, and the subjecting of addicts under rehabilitative treatment to regular urine tests for prolonged periods with the object of keeping them away from drugs until they have had a chance to rid themselves of their addictions.

In the Philippines, Drug Rehabilitation Centres are maintained separately by the Ministry of Justice and the Philippines Constabulary/Integrated National Police. Admission to such centres is by order of the Court made on a petition filed and supported by a determination by the Dangerous Drugs Board stating that the subject is addicted to drugs. Private rehabilitation centres also exist in the Philippines, and there is a Narcotics Command specially set up to handle drug offences, but sanctions are not as severe as in Singapore. The maximum penalty for trafficking, for example, is not death but life imprisonment, in view of the recent abolition of capital punishment.

In Japan, special rehabilitation is provided for drug addicts in prisons, but no drug centres exist separately for this purpose. Serious cases are referred to mental hospitals for treatment instead. Although there is, as in the case of Singapore, sophisticated equipment available for urine tests and drug analysis, there is no death penalty provided for trafficking, which is punishable by a maximum sentence of life imprisonment. Enforcement of drug laws is mainly the job of the police, and additionally, the Health and Welfare Ministry, the Maritime Safety Agency and other authorities.

There are two governmental Rehabilitation Centres under the Ministry of the Interi-

or in Sudan. These form part of the prison premises, and admission is by a court order made at the time when sentence is passed on a drug offender, or on a voluntary basis. When admission is by a court order, the length of stay is determined by the judge. Sudan law provides for trafficking to be punishable with death, but the equipment for drug tests is not sophisticated.

c) Illegal Immigrants

Because means of transportation are now highly developed, people are able to travel to other countries easily. This has caused an increasing incidence of illegal entry into certain countries. In Japan, for example, there has been an influx of unauthorized entries by nationals of certain Asian countries. Such immigrants may produce false or forged documents for the purpose of gaining entry. Male illegal immigrants mainly come to Japan to work as laborers and female immigrants are notably brought in by organised syndicates for the purpose of prostitution. To give another example, Sudan has been receiving large numbers of migrants from neighbouring countries. Up till now, Sudan has been treating such migrants as refugees and absorbing them, but this has taken a toll on the security and infra-structural services of the country and Sudan now intends to treat such migrants as illegal immigrants and, with the help of UNHCR, to repatriate or resettle all those who cannot be integrated locally. Local integration has often proven difficult in the case of Japan, where cultural and language differences almost always place obstacles in the path of integration. Singapore, on the other hand, is faced with the problem of illegal migrants from less developed countries who mainly go there to work in the construction industry. Because these illegal immigrants come from the same stock as foreign workers who work there legally, it is difficult to detect such offences.

To deal with this problem, Singapore had introduced mandatory minimum sentences which include caning for certain immigration offences. This appears to have been effective in deterring such crimes. Japan, however, is unable to utilise such penalties for the purpose of deterrence because of constitutional limitations, and the influx of illegal immigrants promises to be the biggest security problem faced by this country in about ten years' time. This is due in no small measure to the fact that the migrants who enter the country illegally are from the lower classes of society in their own countries. A similar threat confronts Sudan, where it has been found that such migrants have played active roles in smuggling activities, thus robbing the country of much-needed customs duties, as well as in the trafficking of arms which has had far-reaching effects on violent crime in the country.

It is therefore recommended that the UN should assist in this area by the encouraging countries of which such immigrants are nationals, to be more responsible in matters of repatriation, in preventing their nationals from leaving their shores illegally, and in stamping out "white slave trade" organizations which may exist within their territories. The UN may also wish to recommend the universal adoption of machine-readable passports which, it is felt, will greatly assist in the detection of illegal immigrants who pass through immigration check-points with false or forged passports.

d) Economic Crime

Fraud, insurance-related crimes (especially those connected with shipping insurance), computer crimes, copy-right and other intellectual property right infringements have become increasingly common, in both developed and developing countries. At present, channels for obtaining evidence and investigation information from foreign countries are fraught with delay, red tape and lack of communication; but such information and evidence may be essential to the successful prosecution of offenders. In addition, the very nature of economic crimes is such that foreign evidence and information is frequent-

ly involved.

There is thus a pressing need for international cooperation to facilitate the obtaining and transmission of information and evidence. This, it is suggested, may most effectively be done by simplifying diplomatic procedures for processing requests.

Section II: Modalities of International Cooperation

a) General

The continuing growth of crime cannot be efficiently controlled unless there is greater international cooperation toward this end. Combined efforts should not be limited to the exchange of information but should include honest compliance with existing international agreements as well as the adoption of more multilateral and bilateral treaties to achieve the same.

At present, it is felt that some countries treat their international obligations with indifference, and do not comply with the spirit of their international contracts, thus enabling criminals to escape apprehension and to propagate their illegal activities from their sanctuaries within those countries. There is therefore an urgent necessity to review existing mechanisms and if necessary to modify them or to replace them with more effective provisions or instruments to counteract the menace to society posed by such criminals.

b) Extradition

Legal systems concerning extradition can roughly be classified into two categories: the Anglo-American Law system and the Continental Law system. Those countries with common law systems will not extradite fugitives unless they have an extradition treaty with the requesting country, and will extradite even their own nationals in accordance with the territorial principle, if they have a treaty with the requesting country. On the other hand, those countries with civil law systems will extradite foreigners without any treaty, but will refuse to extradite their own nationals, emphasizing the protection of their nationals. Countries such as the United States, the United Kingdom, the Philippines, Singapore and Australia have the former system, while France, West Germany, Switzerland, Brazil, etc., have the latter system.

Although Japan belongs to the civil law system category, there is in existence one extradition treaty between this country and the United States of America. This treaty was entered into in order to enable the USA to reciprocate in matters of extradition. There have only been five cases of extradition to Japan so far: two were from the USA, another two from France, and the last one from Switzerland. There have been several fugitives who were extradited from Japan to other countries. Sudan, on the other hand, embraces the Anglo-American system, and has entered into treaties with Arab League countries as well as with Africa. Extradition of fugitives both to and from Sudan has been carried out. In the case of the Philippines, however, no extradition treaties have been adopted. Since this country utilises the common law system, it is accordingly unable at present to extradite any fugitives. However, criminals are often "deported" to the countries where they are wanted if they have violated the laws of the Philippines.

The difference between the two legal systems sometimes prevents extradition. There may be three obstacles concerning extradition.

Firstly, where a country adopts the latter system, unless it has appropriate extradition treaties, it cannot expect extradition from Anglo-American Law countries.

Secondly, every country with an extradition system will have a provisional detention system in order to prevent fugitives from escaping before requests can formally be made through diplomatic channels. Although the police in some countries can arrest fugitives provisionally for a short time without any warrant, a permit by the court is required in advance of the provisional detention in other countries like Japan. Some requested coun-

tries ask the requesting country to show probable cause for suspecting that the fugitive has committed the offence for which extradition is requested, and the requesting country has to lodge a formal request for extradition within a certain period after the commencement of the provisional detention. Such evidence, including any translations that may be necessary, is sometimes very difficult to obtain, and occasionally the request has to be abandoned after considering the gravity of the offence.

The third obstacle is that some countries like Japan retain capital punishment, while others have abolished it. Requested countries without the death penalty may refuse to extradite fugitives to requesting countries having capital punishment, unless the requesting countries undertake not to punish the fugitives with death. Since only the court can made such a judgement, the investigative authorities are not in a position to undertake such a decision. We are therefore caught in a dilemma in that the more serious the crime a fugitive commits, the more difficult it will be to have him extradited.

The United Nations could assist in this area by encouraging more extensive adoption of extradition treaties.

c) Investigation and Judicial Assistance

The channels of assistance in investigation can roughly be classified into diplomatic channels and inter-agency channels like the ICPO-Interpol channel. The latter are usually used because of their rapidity and simplicity. However, the former channel may sometimes be used if the investigation assistance involves the exercise of compulsory powers on the part of the authorities of the requested country.

Investigators are sometimes dispatched abroad with the permission of the foreign governments or authorities concerned. It is generally considered that an investigator cannot exercise authority abroad unless the foreign government concerned allows him. The extent to which each government will allow foreign investigators to exercise authority in local territory varies widely. Roughly speaking, common law countries are generous in this respect, while civil law countries like Japan deny the exercise of authority by foreign investigators. Unlike common law countries such as Singapore and the Philippines, however, Japan has domestic laws empowering local investigators to render investigation assistance to foreign countries, subject, of course, to the usual principles governing extradition matters.

Where evidence is required from foreign witnesses who are unable or unwilling to come to court to testify, judicial assistance may be requested from the courts of the country in which those foreign witnesses reside. This procedure could sometimes be useful to obtain information or evidence where the police of the foreign country are unable to assist. The courts of the foreign countries may be requested to record evidence from the witnesses there and to transmit such evidence to the court of the requesting country for use in criminal proceedings. Evidence recorded abroad can and has been used in Japan, but Singapore, the Philippines and Sudan do not have domestic laws enabling such evidence to be utilised.

While procedures for obtaining such evidence are available, they have only been used infrequently. While, for example, Japan, Singapore and the Philippines all possess the necessary legal machinery to render judicial assistance, the experience of Singapore and Japan has shown that not all that many requests have been received from other countries for such assistance. This points to the fact that the UN could play a major role in making countries more aware of the availability and benefits of such evidence, in encouraging more extensive and universal usage, and in coordinating and regulating such usage so that the evidence thus obtained can be put to practical use.

There may be many obstacles in using

such evidence. Under the constitutions of many countries, a person accused of a crime is given a right to be present at the trial and to be defended by a legal practitioner of his own choice. If the accused person is not present or is undefended while such evidence is recorded, the evidence may have to be rejected. Problems as to jurisdiction may also arise. The recording court may not have the jurisdiction to record such evidence, as was held to be the case in Singapore when a request was received from Australia, a Commonwealth country. There may also be differences in laws, rules of evidence and criminal procedure, the forms of oaths administered, methods of enforcing the attendance of witnesses, and the sanctions for giving false evidence or refusing to give evidence.

It is suggested that in addition to publicising a scheme for international cooperation in the recording of evidence and urging countries to participate in it on the basis of reciprocity, the UN could formulate a draft code to propose appropriate domestic legislation to give effect to such a scheme so as to take care of the technical difficulties which may arise when countries try to extend such cooperation to one another.

Recommendations and Conclusion

It would appear that at present, crime prevention and criminal justice tend to lag behind the other more visible aspects of economic and social development. This failure on the part of developing countries to respond to the challenge of criminality will, if left unrectified, adversely affect the progress of development and could undo or undermine many of the benefits which development brings.

The Group is of the view that international cooperation in the undermentioned areas could play a major role in reversing the upward trend of crime witnessed worldwide. Firstly, countries need to collaborate to suppress the profits of crime. Methods have to be devised whereby countries can act together in order to confiscate funds derived from criminal activities as well as to prevent the laundering of such funds. It is foreseeable that on its own, a solitary country would be powerless to suppress such profits, as the criminals would be in a position to send their ill-gotten gains abroad for disposal or disguise. Secondly, close ties between countries would always be welcome in the concerted fight against crime. Further extradition treaties and conventions are the obvious indication in this regard. Thirdly, more comprehensive mutual investigation and judicial assistance would be called for. Advice from international bodies such as those set up by the UN would obviously prove invaluable in achieving this, as countries may not be able to foresee obstacles if left on their own.

It would appear that the Council of Europe has already taken what might be considered to be the first step in this direction. A European Convention on Mutual Assistance for the Seizure and Confiscation of Proceeds of Crime is now in the stage of preparation, and other conventions such as the European Convention of Extradition (1959), the European Convention on Mutual Assistance in Criminal Matters (1959), the European Convention on the Transfer of Proceedings in Criminal Matters (1972), and the European Convention on the Validity of Criminal Judgements (1970) have since been ratified by many countries in Europe. While many of the measures contained in these conventions may not be capable of being applied among Asian countries which do not enjoy the mutual trust and similarity of legal systems which exist in and among European nations, it is considered that these conventions may serve a useful purpose as models for similar arrangements in Asia. It is also understood that the UN is in the process of preparing a model extradition treaty and a draft convention for mutual assistance in investigation and judicial matters.

It is not within the scope of the terms of reference for this Group to examine in de-

tail whether the various European Conventions and the draft UN agreements are capable of fully achieving what they have set out to do. However, this Group is of the opinion that the mere fact that the United Nations bodies have started to recognise that crime prevention and criminal justice must be linked to overall socio-economic development is a giant step forward in the right direction. This needs to be followed by close cooperation between states, of which honest compliance with international obligations undertaken must be an essential ingredient. For unless the problems of the international community as a whole are treated as inseverably intertwined, there may be reluctance on the part of some states to support such schemes, a state of affairs that will undermine the infrastructure of international cooperation in this area and inevitably lead to failure.

PART II

Materials Produced during Other UNAFEI Activities (Papers Produced during the International Workshop on Victimology and Victim's Rights)

The Role of the Victim in the American Criminal Justice Process

by LeRoy L. Lamborn *

Although the juristic conception is that a crime is an offense against the state,[1] and the state generally bears the responsibility for the criminal justice process and usually may proceed with or dismiss a case regardless of the wishes of the victim,[2] this is not the whole story. As one victim put it, "Why didn't anyone consult me? I was the one who was kidnapped, not the State of Virginia."[3] The victim, as the person directly affected by the crime, is not merely curious about the case, as a member of the general public might be if it receives sufficient publicity. Nor, in contrast to the ordinary citizen, is the victim merely interested in seeing that in general, justice is done to defendants, victims, and society. Although some victims want to put the crime entirely behind them and therefore have no interest in participation in the criminal justice process,[4] others have a strong desire to be involved—to be informed, to be present, and to be heard.[5] Their interests are several.[6]

The Victim's Need for Involvement

First, the victim may have an interest in ensuring his safety by informing the judge considering the pretrial release of the accused[7] or the sentence for the convicted offender[8] of his threats against the victim. Second, the victim may have an interest in obtaining restitution from the offender by informing the sentencing judge of the impact of the crime.[9] Third, the victim may have an interest in seeing that the person responsible for his victimization is found guilty and that an appropriate sentence is imposed.[10] He may want to feel involved in "his" case and ensure that the full story of the crime is told. Fourth, the victim who was not present during the commission of the crime—such as a parent of a murdered child[11]—may have an interest in learning as much as possible about it by personal observation during the criminal justice process.[12] Fifth, the victim may have an interest in preserving his privacy and protecting his reputation.[13] Finally, the victim may have an interest in providing moral support during the testimony of a friend or relative who is also a victim.[14] Fulfillment of these interests of the victim may require that he be informed, be present, and be heard.

The participation of the victim in the criminal justice process may aid his recovery.[15] It may also increase his satisfaction with the criminal justice system and provide an incentive for continued cooperation with it.[16] Moreover, the victim's participation may result in the receipt by the prosecutor, the jury, and the judge of important information that is otherwise unavailable. The interests of the victim in participation in the criminal justice process must, however, be balanced against the constitutional right of the accused to a fair trial and the societal interest in the efficient operation of the system. Thus, the potential for disruption,[17] delay,[18] prejudice,[19] and expense involved in victim participation must be assessed.

The Victim's Right to Be Informed

Societal recognition of the legitimacy of the victim's interests is evidenced by the recent legislation in virtually all states of the United States that grants him rights to be informed, to be present, and to be heard that are more extensive than those of a member

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of the general public.[20] Statutes in many states recognize the interests of the victim in being informed[21] by requiring that the police or the prosecutor inform him of the availability of emergency and medical services,[22] the extent of available police protection,[23] the right to seek restitution from the offender,[24] the availability of compensation from the state,[25] the stages of the criminal justice process,[26] his role therein,[27] any right to legal counsel,[28] and the source of further information about his rights.[29] Statutes also require that the victim who so requests be informed of significant events in the criminal justice process, such as the status of the investigation,[30] the apprehension of the accused,[31] his pretrial release,[32] the prosecutor's decision not to prosecute,[33] the conviction,[34] sentence,[35] transfer to a community residential facility,[36] parole,[37] release from a mental institution,[38] and escape[39] of the offender and the reversal of his conviction.[40]

The Victim's Right to Be Present

Legislation in many states of the United States also requires that the victim who so requests receive advance notice of judicial proceedings,[41] their cancellation,[42] appellate review,[43] parole board hearings,[44] the offender's application for a pardon,[45] and even his execution.[46] This information facilitates the exercise of the victim's right as a victim or as a member of the general public to be present. Moreover, legislation in some states abolishes or modifies the traditional rule that bars the victim who is a witness from the criminal trial except when he is testifying.[47] In some of these states the victim may be present at the trial after his testimony;[48] in some, the judge is granted the discretion to allow him to be present,[49] and in some, the victim is given an absolute right to be present.[50]

The Victim's Right to Be Heard

Recognition of the interests of the victim in being informed and present during the criminal justice process is accompanied by a concern that his views be heard.[51] Thus, recent legislation in some states of the United States requires that the prosecutor consult with the victim regarding the pretrial release of the accused[52] and plea negotiations,[53] and Department of Justice guidelines call for officials to consult the victim regarding several steps in the criminal justice process.[54] Moreover, in some states the judge is required to hear and consider the victim's views regarding the defendant's pretrial release[55] and the acceptance of a plea agreement.[56] These statutes do not imply that the victim's wishes are automatically to prevail. They must, however, be heard. The victim's views must also be heard at later stages of the criminal justice process. The vast majority of states provide for a "victim impact statement"—a special report to the sentencing judge or a portion of the regular presentence investigation report that indicates the physical, psychological, and financial impact of the crime on the victim.[57] This statement, which may be written by the victim, the probation officer, the prosecutor, or the victim advocate, is helpful in the determination of an appropriate order of restitution. Many states also provide for a "victim statement of opinion"—a report to the judge of the victim's views regarding the appropriate sentence.[58] In most of these states the statement of opinion may be made by the victim in person at the sentencing hearing.[59] Finally, many states grant the victim the right to present a written statement to the parole board regarding the release of the offender, and several states allow the victim to make an oral statement at parole board hearings.[60]

Thus, in recent years many states have recognized the legitimacy of the victim's participation in the criminal justice process by enacting legislation that grants him the right to be informed of certain matters, facilitates his presence at certain proceedings, and grants him the right to be heard on certain issues.

Legislative Nullification of Victims' Rights

Although the typical victims bill of rights asserts that the victim has certain "rights,"[61] it virtually nullifies them by the vagueness of its language,[62] by extending them only "to the extent reasonably possible and subject to available resources,"[63] by providing no enforcement mechanisms,[64] or by specifying that no cause of action arises for violations thereof.[65] Use of the term "right" in this context is deceptive. This deception is evidenced by studies that indicate that many officials responsible for the implementation of these "rights" routinely ignore them. For example, although a New York statute requires that the police inform victims of their right to apply for compensation from the state, one study indicates that only twenty-five percent of the claimants learn of the program from the police, and another found that only three percent of the victims who are aware of the compensation program were informed of it by the police.[66] A third study indicates that the requirement of form letters to inform victims of their rights is also ineffective, with fifty-seven percent of the felony victims not remembering receiving such a letter.[67] Moreover, a study of the compliance of Texas officials with statutory requirements concerning victim impact statements indicates that some prosecutors were unaware of or unresponsive to their duty to distribute impact statement forms to victims, that only a small percentage of judges considered the statements in determining sentences, and that the parole board received only thirty-six percent of the statements that were completed.[68] Finally, a study of official compliance with the victims bill of rights in South Carolina indicates that fifty-one percent of crime victims had never heard of the state compensation fund, that only fifteen percent of the victims received prior notice of plea agreements, that of the victims who knew about sentencing hearings only sixty-two percent were given the opportunity to make an impact statement, and that only fifty percent of the victims who knew that their assailant was eligible for parole were notified in advance about parole hearings.[69]

Judicial Nullification of Victims' Rights

Victims and their advocates are frustrated not only by the failure of many officials to implement the victims bill of rights but also by determinations by the United States Supreme Court that some of the legislation enacted in their behalf is unconstitutional because it interferes with the rights of the accused. For example, in *Booth v. Maryland* the Court invalidated the use of victim impact statements at jury sentencing in capital cases, finding that they raise issues that are irrelevant to the offender's sentence and thus violate the Constitution's prohibition against cruel and unusual punishments.[70] Moreover, in *Cov v. Iowa* the Court found that the placement of a screen between the accused and the child witness during her testimony in a sexual abuse trial violated his constitutional right to confront the witnesses against him "face to face."[71] This ruling casts doubt on the constitutionality of the statutes in most states that allow the use of videotaped depositions and closed-circuit television in such cases in order to minimize the trauma of the victim.[72] Finally, in *Young v. United States ex rel. Vuitton* the Court exercised its supervisory authority to hold that "counsel for a party that is the beneficiary of a court order may not be appointed as prosecutor in a [criminal] contempt action alleging a violation of that order."[73] Although the Court relied on its supervisory authority to avoid reaching any constitutional issues,[74] Justice Blackmun would hold that the practice condemned is a violation of due process[75] and Justice Scalia raises the issue of "whether the Constitution's vesting of the executive power in the President forbids Congress from conferring prosecutory authority on private persons."[76]

In *Young,* the Court reiterated its long-standing concern for the impartiality of the prosecutor:

> In *Berger v. United States,* this Court declared:
>
> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer."
>
> This distinctive role of the prosecutor is expressed in Ethical Consideration (EC) 7-13 of Canon 7 of the American Bar Association (ABA) Model Code of Professional Responsibility (1982): "The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict."[77]

Young therefore raises the issue of whether the proposals to extend the role of the victim in the prosecution of criminal cases[78] would constitute a violation of the constitutional right of the accused to an impartial prosecutor.

The Constitutionalization of Victims' Rights

The frustration of victims and their advocates with official noncompliance with the victims bills of rights and with the Supreme Court's rulings invalidating legislation enacted in their behalf, coupled with a desire for a symbolic recognition of victims' rights at least on a par with those of the accused, has led to a movement for the amendment of the United States Constitution and the constitutions of the individual states.[79] In 1982 the President's Task Force on Victims of Crime proposed that the Sixth Amendment to the United States Constitution be amended by the addition of the following phrase: "Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings."[80]

Although this proposal has not been adopted, the interest engendered by it has prompted the amendment of the constitutions of several states and movements to amend those of several more.[81] These constitutional amendments vary considerably from state to state, with some emphasizing a diminution of the rights of the accused rather than the enhancement of the rights of the victim,[82] some granting no rights to victims but merely authorizing the legislature to act,[83] and some apparently having only symbolic value.[84] Yet some of the constitutional amendments address the issue of victim participation in the criminal justice process, with Florida, for example, providing the following:

> Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, to the extent that these rights do not interfere with the rights of the accused.[85]

These amendments raise more issues than they resolve,[86] and are too recent for assessment of their impact. Their adoption does, however, show a frustration with the current state of the law and a concerted effort to improve systemic response to the victim's need for involvement.

Notes

1. P. Brett, An Inquiry into Criminal Guilt 6-11 (1963); see also Kelly v. Robinson, 479 U.S. 36, 52 (1986) ("The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a

whole.").

2. See Lamborn, Victim Participation in the Criminal Justice Process: The Proposals for a Constitutional Amendment, 34 Wayne L. Rev. 125, 137-40 (1987).
3. President's Task Force on Victims of Crime, Final Report 9 (1982): see also Christie, Conflicts as Property, 17 Brit. J. Criminology 1 (1978).
4. See M. Bard & D. Sangrey, The Crime Victim's Book 106-11 (2d ed. 1986). Nationwide government surveys to ascertain the extent of victimization reveal that approximately half of all crimes are not reported to the police. U.S. Dep't of Justice, Report to the Nation on Crime and Justice: The Data 24-25 (1983). Moreover, many victims who report the crime do not want to participate in later proceedings. R. Elias, The Politics of Victimization: Victims, Victimology, and Human Rights 153 (1986); E. Villmoare & V. Neto, Victim Appearances at Sentencing Under California's Victims' Bill of Rights 2 (National Institute of Justice, Research in Brief 1987) (finding that although 80% of felony victims consider right of allocution at sentencing to be important, only 3% appear before judge, in part because of high percentage of cases plea bargained, determinant sentencing laws, and lack of awareness of right). Further, the victim with a desire to be heard may be dissuaded by his awareness of the defendant's right of cross-examination and the public's right of access to the victim's statements. The victim is, however, subject to subpoena as a witness and even to incarceration under the material witness laws. See, e.g., Cal. Penal Code §1332 (West Supp. 1990). The adverse consequences of participation may be substantial. R. Elias, supra, at 160-61, 168-69; President's Task Force Report, supra note 3, at 5-10. The trauma of participation by the child victim, especially the young victim of a sex offense, may be substantial, justifying special efforts toward its minimization. See Avery, The Child Abuse Witness: Potential for Secondary Victimization, 7 Crim. Just. J. 1 (1983).
5. J. Shapland, J. Willmore & P. Duff, Victims in the Criminal Justice System 176-78 (1985) hereinafter Victims; Kelly, Victims' Perceptions of Criminal Justice, 11 Pepperdine L. Rev. 15, 18-19 (1984).
6. See Gittler, Expanding the Role of the Victim in a Criminal Action: An Overview of Issues and Problems, 11 Pepperdine L. Rev. 117, 135-49 (1984); Ziegenhagen, Toward a Theory of Victim-Criminal Justice System Interactions, in Criminal Justice and the Victim 261 (W. McDonald ed. 1976).
7. See American Bar Association, Reducing Victim/Witness Intimidation: A Package (1981); American Bar Association, Standards for Criminal Justice: Pretrial Release §10-5.2 (2d ed. 1979); M. Graham, Witness Intimidation: The Law's Response 1-8 (1985); President's Task Force Report, supra note 3, at 65. The Bail Reform Act of 1984 allows a federal court to detain the accused if the prosecutor demonstrates by clear and convincing evidence that no release conditions "will reasonably assure. . . the safety of any other person and the community." 18 U.S.C.A. §3142(e) (West Supp. 1989); see United States v. Salerno, 481 U.S. 739 (1987).
8. See Jurek v. Texas, 428 U.S. 262 (1976); Victims of Crime Act of 1984, 18 U.S.C.A. §3553(a)(C) (West 1985); Model Penal Code §7.01(1) (1985); American Bar Association, Standards for Criminal Justice: Sentencing Alternatives and Procedures §18-2.5(c)(i)(2d ed. 1979).
9. President's Task Force Report, supra note 3, at 78-80; Victims, supra note 5, at 135-36; Hudson, The Crime Victim and the Criminal Justice System: Time for a Change, 11 Pepperdine L. Rev. 23, 37-38 (1984); see Victim and Witness Protection Act of 1982, 18 U.S.C.A. §3579 (West 1985); Mich. Comp. Laws Ann. §780.766(3) (West Supp. 1990) (requiring that judge who does not order restitution from offender state reasons on record); Victims, Offenders, and Alternative Sanctions (J. Hudson & B. Galaway eds. 1980); Harland, Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts, 30 UCLA L. Rev. 52 (1982); Note, Victim Impact Statements and Restitution: Making the Punishment Fit the Victim, 50 Brooklyn L. Rev. 301 (1984).
10. See M. Bard & D. Sangrey, supra note 4, at 106-11; President's Task Force Report, supra note 3, at 8-9, 76-78; Davis, Kunreuther & Connick, Expanding the Victim's Role in the Criminal Court Dispositional Process: The Re-

sults of an Experiment, 75 J. Crim. L. & Criminology 491, 500 (1984) [hereinafter Victim's Role] ("Failure of the court to punish defendants severely enough was the most frequently cited reason for dissatisfaction with case outcomes, mentioned by 70% of victims."); Note, Factors Affecting the Plea-Bargaining Process in Erie County: Some Tentative Findings, 26 Buffalo L. Rev. 693, 704 (1977) (reporting that victims present during plea negotiations agree with disposition in 86% of cases); see also S. Jacoby, Wild Justice: The Evolution of Revenge (1983); A. Kaminsky, The Victim's Song (1985); cf. Schulhofer, Harm and Punishment: A Critique of Emphasis on the Result of Conduct in the Criminal Law, 122 U. Pa. L. Rev. 1497, 1508-14 (1974); Victim's Role, supra, at 492-93 ("Victims may become frustrated and angry when they see that an assault against them may be treated only as disorderly conduct, that prosecutor and defense attorney appear to collaborate rather than act as adversaries, that their cases receive only a few minutes of the court's time, or that after pleading guilty, the defendant may be home before they are.").

The victim may also have an interest in mediation with the accused. See B. Alper & L. Nichols, Beyond the Courtroom: Programs in Community Justice and Conflict Resolution (1981); Mediation and Criminal Justice: Victims, Offenders and Community (M. Wright and B. Galaway eds. 1989); Rice, Mediation and Arbitration as a Civil Alternative to the Criminal Justice System—An Overview and Legal Analysis, 29 Am. U.L. Rev. 17 (1979).

The survivor of a homicide victim may want to be involved in the criminal justice process on behalf of the direct victim. See J. Lord, No Time for Goodbyes: Coping with Grief, Anger, and Injustice after a Tragic Death 99 (1987). Roberta Roper, whose daughter was murdered, commented: "Stephanie never let me down. I had to be there to be sure the court didn't let *her* down." Louise Gilbert, whose son and daughter-in-law were murdered, commented: "I had to go. It was my responsibility to Andy and Pam. It would be evidence of their having been alive and loved." Id.

11. Dorothea Morefield, whose son was murdered, commented:

> I can accept a great deal of ignorance and a great deal of lack of awareness—but to be told that I am not a real victim when I have lost something that is more precious to me than my own life, I will not tolerate. If you feel you are not dealing with real victims when you deal with homicide survivors, just call me.
>
> J. Lord, supra note 10, at 90.

12. See J. Amernic, Victims: The Orphans of Justice (1984); President's Task Force Report, supra note 3, at 80. Such an interest is not satisfied by seeing a brief portion of a trial on a television newscast, reading the incomplete newspaper accounts, or even studying the two-dimensional and delayed trial transcript.
13. See Gittler, supra note 6, at 142-43; see also S.C. Code Ann. §16-3-1530(F)(2) (Law. Co-op. 1985) ("A victim or witness has the right to retain counsel with standing in court to represent him in cases involving the victim's reputation.").
14. See President's Task Force Report, supra note 3, at 80; J. Stark & H. Goldstein, The Rights of Crime Victims 67 (1985); see also, e.g., Cal. Penal Code §868.5 (West Supp. 1990) (allowing child victim of sex offense to choose two family members, one of whom may be witness, to be present for moral support during child's testimony unless attendance would pose substantial risk of affecting testimony; testimony of family member who is witness must precede that of child, who must be excluded from courtroom at that time); cf. Nev. Rev. Stat. Ann. §178.571 (1986) (allowing prosecuting witness in sex offense prosecution to "designate an attendant who must be allowed to attend the preliminary hearing and the trial during the witness' testimony to provide support. The person so designated must not himself be a witness in the proceedings.").
15. Otto & Kilpatrick, Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning, 34 Wayne L. Rev. 7 (1987).
16. Id.; see also Victims, supra note 5, at 176-78; Hudson, supra note 9, at 29-30. But see Davis, Victim/Witness Noncooperation: A Second Look at a Persistent Phenomenon, 11 J. Crim. Just. 287 (1983); Gittler, supra note 6, at 145-49.
17. See Annotation, Exclusion of Public from

State Criminal Trial in Order to Prevent Disturbance by Spectators or Defendant, 55 A.L.R. 4th 1170, 1174 (1987) ("The exclusion from the courtroom of particular spectators or the public generally has been held in a number of cases not to violate the right to a public trial, where such action was taken to restrain or prevent prejudicial comments, laughter, demonstrations, applause, crying, shaking of the head during a witness' testimony, and unspecified disturbances by spectators.") (citations omitted); see also Illinois v. Allen, 397 U.S. 337 (1970); American Bar Association, Standards for Criminal Justice: Special Functions of the Trial Judge §6-3.10 (2d ed. 1978): Annotation, Emotional Manifestations by Victim or Family of Victim During Criminal Trial as Ground for Reversal, New Trial, or Mistrial, 31 A.L.R. 4th 229 (1984); Annotation, Disruptive Conduct of Spectators in Presence of Jury During Criminal Trial as Basis for Reversal, New Trial or Mistrial, 29 A.L.R. 4th (1984).

18. See Heinz & Kerstetter, Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining, 13 Law & Soc. Rev. 349, 365 (1979) (finding decrease in time required for closing of case when victim is involved in pretrial settlement conference).
19. See Lamborn, supra note 2, at 157-60.
20. See National Organization for Victim Assistance, Victim Rights and Services: A Legislative Directory 1988 (1989); see also Morris v. Slappy, 461 U.S. 1, 14 (1983) ("In the administration of criminal justice, courts may not ignore the concerns of victims."); S.C. Code Ann. §16-3-1530(F)(1) (Law. Co-op. 1985) ("A victim has the right to participate in the criminal justice process directly or through representation.").
21. See Victim and Witness Protection Act of 1982, 18 U.S.C.A. §1512 note at 198 (West 1984); President's Task Force Report, supra note 3, at 60; see also B. Forst & J. Hernon, The Criminal Justice Response to Victim Harm 4-5 (National Institute of Justice, Research in Brief 1985) (indicating that victim's interest in being informed exceeds interest in participation).
22. E.g., Mich. Comp. Laws Ann. §780.753(a) (West Supp. 1990); see also Minn. Stat Ann. §611A.02 (West 1987).
23. E.g., Utah Code Ann. §77-37-3(1)(a) (1990).
24. E.g., Mich. Comp. Laws Ann. §§780.756 (1)(b), 780.766(2) (West Supp. 1989).
25. E.g., id. §780.753(b).
26. E.g., id. §780.756(1)(a).
27. E.g., Utah Code Ann. §77-37-3(1)(b) (1990).
28. E.g., S.C. Code Ann. §16-3-1530(c)(9) (Law. Co-op. 1985).
29. E.g., Mich. Comp. Laws Ann. §§780.753(c), 756(1)(e) (West Supp. 1990).
30. E.g., R.I. Gen. Laws §12-28-3(1) (Supp. 1988).
31. E.g., id. §§12-28-3(1), (2).
32. E.g., N.D. Cent. Code §12.1-34-02(3) (1990).
33. E.g., Utah Code Ann. §77-36-7 (1990).
34. E.g., Mich. Comp. Laws Ann. §780.763(1)(a) (West Supp. 1990).
35. E.g., id. §780.769(1)(a).
36. E.g., id. §780.769(1)(c).
37. E.g., id. §780.771(3).
38. E.g., Minn. Stat Ann. §611A.06 (West 1989); see also Ariz. Rev. Stat. Ann. §36-541.01(B) (West 1986).
39. E.g., Mich. Comp. Laws Ann. §780.770 (West Supp. 1990).
40. E.g., N.Y. Exec. Law §646(3)(d) (McKinney Supp. 1990).
41. E.g., Mich. Comp. Laws Ann. §780.756(2) (West Supp. 1990).
42. E.g., R.I. Gen. Laws §12-28-3(4) (Supp. 1988).
43. E.g., Fla. Stat. Ann §960.001 (1)(d)(3) (West 1985).
44. E.g., Mich. Comp. Laws Ann. §780.771 (West Supp. 1990).
45. E.g., Wis. Stat Ann. §950.04 (West Supp. 1989).
46. E.g., La. Rev. Stat Ann. §46: 1844(A)(11) (West Supp. 1990) ("In cases where the sentence is the death penalty, the victim's family shall have the right to be notified of the time, date, and place of the execution, and a representative of the family shall have the right to be present.")
47. Lamborn, supra note 2, at 160-71.
48. E.g., Mich. Comp. Laws Ann. §780.761 (West Supp. 1990); Wash. Rev. Code Ann. §7.69.030 (Supp. 1990).
49. E.g., Cal. Penal Code §1102.6 (West Supp. 1990); Ga. Code Ann. §38-1703.1 (Supp. 1989); Md. Ann. Code art. 27, §620 (1987).
50. E.g., Ala, Code §§15-14-50 to -57 (Supp. 1990); Ark. R. Evid. 616; Or. Rev. Stat. §40.385 (1987).

51. See President's Task Force Report, supra note 3, at 65-66. Although some of the statutes concerning the victim require only that he be allowed to make a statement, e.g., Mich. Comp. Laws Ann. §780.765 (West Supp. 1990), others specify that the victim's views are to be considered by the decision maker, e.g., Cal. Penal Code §3043 (West 1982) (requiring parole board to consider victim statement of opinion); Ohio Rev. Code Ann. §§2929.12(A), 2929.14(A), 2947.051(A) (1987) (requiring judge to consider victim impact statement in sentencing).
52. See, e.g., Fla. Stat. Ann. §960.001 (1)(e) (West Supp. 1990); id. §903.047(2) (West 1985).
53. See NOVA Legislative Directory, supra note 20, at 12 (1989); e.g., Victim and Witness Protection Act of 1982, 18 U.S.C.A. §1512 note at 198 (West 1984); Mich. Comp. Laws Ann. §780.756(3) (West Supp. 1990). South Carolina requires that the prosecutor solicit and consider the views of the victim regarding whether an accused should be admitted to a pretrial diversion program. S.C. Code Ann. §17-22-80 (Law. Co-op. 1985); see also Minn. Stat. Ann. §611A.031 (Supp. 1990).
54. The Attorney General's Guidelines for Victim and Witness Assistance state:

    Consistent with the interests of justice, Department officials should consult victims of serious crimes to obtain their views and provide explanations regarding the following:

    1) The release of the accused pending judicial proceedings and the conditions thereof;

    2) The decision not to seek an indictment or otherwise commence a prosecution;

    3) The proposed dismissal of any or all charges, including dismissal in favor of State prosecution;

    4) Any continuance of a judicial proceeding;

    5) The proposed terms of any negotiated plea including any sentencing recommendation to be made by the prosecutor;

    6) The proposed placement of the accused in a pretrial diversion program;

    7) The proposed proceeding against the accused as a juvenile defendant;

    8) Restitution as described in Part IV; and

    9) Presentation to the court of the victim's views regarding sentencing.

    It is recognized that consultation services must be limited in some cases to avoid endangering the life or safety of a witness, jeopardizing an ongoing investigation or official proceeding or disclosing classified or privileged information.

    48 Fed. Reg. 33, 774 (1983).
55. E.g., N.Y. Exec. Law §647(1) (McKinney Supp. 1990).
56. E.g., Ind. Code Ann. §35-35-3-2 (West 1986); Minn. Stat. Ann. §611A.03(1) (West 1987); R.I. Gen. Laws §12-28-4.1 (Supp. 1988); see Kan. Stat. Ann. §19-717 (1981) (providing that if prosecuting witness employs attorney to assist prosecutor, judge may not dismiss prosecution over objection of private attorney without hearing).
57. NOVA Legislative Directory, supra note 20, at 9-10 (1989); McLeod, Victim Participation at Sentencing, 22 Crim. L. Bull. 501 (1986); see, e.g., Fed. R. Crim. P. 32 (c)(2)(C); Mich. Comp. Laws Ann. §780.763(3) (West Supp. 1990); Uniform Law Commissioners, Model Sentencing and Corrections Act §3-204 (1978); see also President's Task Force Report, supra note 3, at 33, 76-78; U.S. Dept. of Justice, Victims of Crime: Proposed Model Legislation ch. II (1986) hereinafter Model Legislation; E. Villmoare & V. Neto, supra note 4; Rubel, Victim Participation in Sentencing Proceedings, 28 Crim. L.Q. 226 (1985-86).

    The Alaska Supreme Court has held that even in the absence of legislation providing for a victim impact statement "the presentence report should contain basic information pertaining to the victim or victims of the crime." Sandvik v. State, 564 P. 2d 20, 23 (Alaska 1977). The Maryland Court of Appeals has held that even in the absence of legislation the judge has the discretion to allow an oral impact statement by the victim. Lodowski v. Sate, 302 Md. 691, 490 A. 2d 1228 (1985).
58. NOVA Legislative Directory, supra note 20, at 10 (1989); see, e.g., Mich. Comp. Laws Ann. §§780.763(3)(d), 780.765 (West Supp. 1990).
59. NOVA Legislative Directory, supra note 20, at 10 (1989); see, e.g., Mich. Comp. Laws Ann. §780.765 (West Supp. 1990).
60. NOVA Legislative Directory, supra note 20, at 12 (1989); see, e.g., Mich. Comp. Laws

Ann. §780.771 (West Supp. 1990); see also President's Task Force Report, supra note 3, at 83-48; Model Legislation, supra note 57, ch. III.

61. See, e.g., Mich. Comp. Laws Ann. §§780.751 to .911 (West Supp. 1990).
62. See, e.g., S.C. Code Ann. §16-3-1530(A)(2) (Law. Co-op. 1985) ("A victim or witness has a right to be treated with dignity by human service professionals who provide basic assistance.").
63. S.C. Code Ann. §16-3 1530 (Law. Co-op. 1985).
64. See, e.g., Mich. Comp. Laws Ann. §§780.751 to .911 (West Supp. 1990). But see Minn. Stat. Ann. §§611A.72 to .74 (West 1987 & Supp. 1989) (establishing "crime victim ombudsman"); Miss. Code Ann §99-36-7 (Supp. 1988) (establishing a "victim assistance coordinator," whose duty is "to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted" by the victims bill of rights).
65. See, e.g., Mass. Gen. Laws Ann. ch. 258B, §10 (West Supp. 1989) ("Nothing in this chapter shall be construed as creating a cause of action on behalf of any person against any public employee, public agency, the commonwealth or any agency responsible for the enforcement of rights and provision of services set forth in this chapter."); cf. Utah Code Ann. §77-37-5(4) (Supp. 1990):

    If a person acting under color of state law willfully or wantonly fails to perform duties so that the rights in this chapter are not provided, an action for injunctive relief may be brought against the individual and the government entity that employs the individual. Failure to provide the rights enumerated above does not constitute cause for a judgment for monetary damage or an attorney's fee.

    See generally P. Schuck, Suing Government: Citizen Remedies for Official Wrongs (1983).
66. Hudson, supra note 9, at 57.
67. E. Villmoare & V. Neto, supra note 4, at 3.
68. Texas Crime Victim Clearinghouse, The Report of the Crime Victim Clearinghouse to the 71st Legislature 19, 21, 24 (c. 1988).
69. Tidwell, Victims' Rights and Services in South Carolina: The Dream, the Law, the Reality, 4 Networks 6-7 (June 1989); see also S.C. Code Ann. §§16-3-1530—16-3-1540 (Law. Co-op. 1985).
70. 482 U.S. 496 (1987); see also South Carolina v. Gathers 109 S. Ct. 2207 (1989).
71. 487 U.S. 1012 (1988).
72. See Note, The Use of Videotaped Testimony of Victims in Cases Involving Child Sexual Abuse: A Constitutional Dilemma, 14 Hofstra L. Rev. 26 (1985). But see Maryland v. Craig, 110 S. Ct. 3557 (1990).
73. 481 U.S. 787, 809 (1987).
74. Id. at 809 n. 21.
75. Id. at 814-15.
76. Id. at 816 n. 2 (citation omitted).
77. Id. at 802-03 (citation omitted).
78. See, e.g., Welling, Victims in the Criminal Process: A Utilitarian Analysis of Victim Participation in the Charging Decision, 30 Ariz. L. Rev. 85 (1988).
79. See generally Lamborn, supra note 2.
80. President's Task Force Report, supra note 3, at 114.
81. See, e.g., Cal. Const. art. I, §28(d), (e), (f) ("Right to Truth-in-Evidence"; "Public Safety Bail"; "Use of Prior Convictions").
82. See Cal. Const. art. I, §28; Fla. Const. art. I, §16(b); Ga. Const. §2-1106(f); Mich. Const. art. I, §24; R.I. Const. §23; Tex. Const. art. I, §30; Wash. Const. art. 3, §35.
83. See, e.g., Mich. Const. art. I, §24 ("Crime victims, as defined by law, shall have the following rights, as provided by law:. . . .").
84. See, e.g., Cal. Const. art. I, §28(c) ("All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful."); R.I. Const. §23 ("A victim of crime shall, as a matter of right, be treated by agents of the state with dignity, respect and sensitivity during all phases of the criminal justice process. . . .").
85. Fla. Const. art. I, §16(b); see also R.I. Const. §23 ("Before sentencing, a victim shall have the right to address the court regarding the impact which the perpetrator's conduct has had upon the victim.").
86. See Lamborn, supra note 2, at 172-220.

Victimology: Basic Theoretical Concepts and Practical Implications

*by Hans Joachim Schneider**

1. Victimological Concepts and Victim Definition

Victimology is an academic discipline, but at the same time, it is a modern social movement (victim movement). There are two fundamentally different theoretical approaches to victimology as a science:

—One approach—based on the work of *Beniamin Mendelsohn* (1956) —sees victimology as an independent academic discipline, concerned equally with victims of crime, of accidents and of natural catastrophes.
—A different approach—first developed by *Hans von Hentig* (1941, 1948)—considers victimology to be a subdiscipline of criminology, whose aim it is to study victim-offender interaction in crime causation as well as within crime control processes.

Not only do the two approaches contain different research areas, but they also start from different theoretical assumptions and, in some cases, lead to different practical implications. Since victims of rape, mining disasters, traffic accidents, earthquakes and racial prejudice differ essentially with respect to the conditions of their victimizations—however similar the psychological damages suffered may occasionally be—the approach which defines victimology within the scope of criminology seems more acceptable (*Heike Jung* 1985; *Thomas Hillenkamp* 1987, 941). After all, it is an altogether different matter, whether one falls victim to an unintentional accident or whether one is injured by a culpable offense (*Gilbert Geis, Duncan Chappell, Michael W Agopian* 1986, 224). The victimological concepts and typologies postulated by a victimology defining itself as an independent academic discipline are so varied that the conclusions reached become too general and meaningless.

The development of victimology as a science is accompanied by the world-wide spread of a social movement aiming to reduce human suffering and to improve the situation of crime victims. Not infrequently, this movement uses the tragic nature of victimization to arouse peoples' emotions. The aim of victimological research is also to improve the victim's legal position and to prevent criminal victimization, which constitutes an emotionally charged experience and thus can hardly be considered exclusively in rational terms. Victimologists are, however, anxious to distinguish themselves from the popular victim movement (e.g. "National Organization for Victim Assistance" in the USA, "Weisser Ring" in the Federal Republic of Germany), since these movements' emotionality sometimes leads to their advocating regressive criminal policies with the sole aim of controlling criminality by means of repressive measures. Indignation about victims being allegedly discriminated against by victimologists and concepts such as hostility against victims (*Kurt Weis* 1982; *Wiebke Steffen* 1987) are not helpful in academic discussions, since victimology is as much a factual science as criminology, and not a normative discipline.

Victims are persons who are afflicted by social deviance or criminal acts. There is no crime without a victim (*Stephen Schafer*

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1977, 95; contrary to *Edwin Schur* 1965). Although doubt may exist as to whether drug addicts, alcoholics and prostitutes are offenders or victims (see contributions in *Donal E. J. MacNamara, Andrew Karmen* 1983), in any case it is all too easy to forget the possibility of self-victimization. Relatives of victims may be co-victims. Types of victims include individual victims, collective victims, organizations, the state, the legal community, and international order. Organizations are victimized more frequently than individuals (*Albert J. Reiss* 1981). Although victims of corporate crime, being collective victims, are often anonymous and less socially visible, there is no "volatilization of victim quality" (different opinion: *Günther Kaiser* 1988, 471). After all, victimizations do not only occur among individuals, but also between individuals and organizations, between organizations (e.g. computer crime), between individuals or organizations and the state or the legal community or the international order (*Hans Joachim Schneider* 1987, 754-558).

2. The Development of Victimology

Criminology is a child of the Enlightenment ("Aufklärung") and of Rationalism, and emerged with *Cesare Beccaria's* treatise entitled "On Crime and Punishments" (1764). Key concepts of note were the principle of individual culpability, the commitment of criminal procedure to constitutional principles, the causation of crime as a result of rational considerations and of the free will of the offender. The classical school's crime-oriented approach of the eighteenth century was challenged by the offender-orientation of the positivist theory at the end of the nineteenth century and the beginning of the twentieth century. One of the most influential proponents of this new approach was *Cesare Lombroso,* who attempted to apply the research methods and findings of both the natural and social sciences of the nineteenth century to criminology in his book "The Delinquent Man," first published in 1876. The positivist school taught that the criminal's behavior was determined by his physical, mental and social characteristics and that the most important task was to assess a criminal's dangerousness and to assign the appropriate treatment.

The modern school of criminology, which emerged after the Second World War, sees both crime causation and crime control as social and interactional processes involving offender, victim and society. The process of crime causation consists of a social and of an individual process. The social process determines the contextual framework. The individual process involved in crime causation occurs to a large extent between the offender and people in his immediate social vicinity, particularly between him and his victim. The process of reaction to or control of crime is partly a social process (penal legislation) which precedes the individual causation process, and partly an individual process (enforcement of penal legislation) which follows the individual causation process. Modern criminology is not a static but a dynamic discipline. Criminology discovered the reaction to crime and deviant behavior (*Edwin M. Lemert* 1951), but refrained from overemphasizing this reaction, as, for example, the labeling approach does. Following the work of *George Herbert Mead* (1863-1931), the modern socio-psychological school of criminology rather emphasized interaction, including the action, the reaction and the reaction to the reaction. It was in the same tenor that *Hans von Hentig* wrote his "Remarks on the Interaction of Perpetrator and Victim" in 1941, which introduced victimology as a field of research. The modern socio-psychological school of criminology is concerned with relationships, roles, attitudes and interactions. This approach differs fundamentally from that of the multiple factor approach, which focuses on the offender. According to the latter approach, all causal factors become operative only after they have passed through the "transformer" of psychological factors,

of offender motives (*Hermann Mannheim* 1965, 202). Instead of exploring the offender's motives, victimological research investigates the interaction between the criminal and the victim. This is clearly expressed by *Hans von Hentig* (1948, 384, 436): "In a sense victims shape and mould their criminals.... The collusion between perpetrator and victim is a fundamental fact of criminology. Of course there is no understanding or conscious participation, but there is interaction and an interchange of causative elements."

The international symposia in Jerusalem (1973), Boston (1976), Münster (1979), Tokyo/Kyoto (1982), Zagreb (1985) and Jerusalem (1988) have promoted victimology considerably. In 1979 the "World Society of Victimology" was founded in Münster, where it still maintains its headquarters today. In the years from 1981 to 1987 the Council of Europe in Strasbourg sponsored the drafting of the following three documents by a Select Committee of Experts, aiming to apply the victimological theories and research findings to the enforcement of penal legislation in practice:

—A European Convention for the Compensation of Victims of Violent Crimes,
—Recommendations of the Council of Ministers concerning the Position of the Victim in the Framework of Criminal Law and Procedure,
—Recommendations of the Council of Ministers concerning Assistance to Victims and the Prevention of Victimization.

At the "7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders" held in Milan in 1985, the United Nations turned its attention to the problem of crime victims. The General Assembly issued a declaration concerning the position of crime victims and victims of power abuse. Many countries have recently enacted victim protection laws, two of which are noted here. In the United States the President's Task Force on Crime Victims presented a series of legislation recommendations in 1982. In the very same year the Federal Victim and Witness Protection Act was passed. In the Federal Republic of Germany the first law to include victim interests was the *Opferentschaedi-gungsgesetz* (Victim Compensation Act) passed in 1976. At the 55th Annual Meeting of the *Deutscher Juristentag* (German Legal Association) held in Hamburg in 1984, the legal position of the victim in criminal proceedings was discussed. On 1 April 1987 the first victim protection act came into force, improving the position of crime victims in criminal proceedings. Victim assistance programs are currently being developed world-wide (see *Leo Schuster* 1985 for a summary of the situation in the Federal Republic of Germany; see also *Edwin Kube* 1986).

3. Victimological Theory and Methodology

The basic theoretical concepts employed by victimologists are identical to those used in criminological research. Only a combination of middle-range theories can explain criminal victimization. One of these theories is the theory of social disorganization, which attributes increased victimization to societal disintegration and to the destruction of social relationships. One particular variant of this theory applied to child abuse is the theory of social deprivation, of social isolation, which regards the disturbed emotional and social atmosphere within the abusive family as the central problem of child abuse. This atmosphere is determined largely by the quality and quantity of personal interaction within the family, as well as by the long-standing social relationships and contacts to persons outside the family, for example, to neighbors and friends. The theory of social isolation has been tested and proven empirically (*James Garbarino, Gwen Gilliam* 1980). Another theory of value to victimologists is the theory of social learning, which considers human learning to be an active, cogni-

tive process of mental digestion of previous experiences. A victim learns victimogenous behavior from a model. The victim learns the appropriate attitude and how to play his/her role. This can be seen, for example, in the case of marital violence. The higher the level of violence the partners noticed between their parents as children, the higher the level of violence in their own marriage situation (*Murray A. Straus, Richard J. Gelles, Suzanne K. Steinmetz* 1980, 101-109). A girl who was beaten by her parents is all the more likely to accept to be beaten by her husband (*Richard J. Gelles* 1979, 101). The subculture theory is also important for victimology. Victim behavior, roles, attitudes and neutralization techniques are learned from the verbalizations, models and value notions of the victimogenous subculture to which one belongs (*Donald R. Cressey* 1983). People learn to endure violent behavior, for example, with the support of a group within a violent subculture (*Marvin E. Wolfgang, Franco Ferracuti* 1967). The final theories of relevance to victimology are the theory of symbolic interaction and the theory of victim careers. Victimization is the result of an interactional process between offender and victim. The victim violates social preconceptions of appropriate behavior. As a result of his failure to comprehend the situation, the offender misinterprets the victim's behavior. The crime is committed. The victim is defined as such by reactions to the criminal victimization and during his interaction with the criminal justice system. Repeated victimization with the ensuing reaction to it can increase the probability of a repeated victimization (recidivist victim, victim career).

Victimological research employs empirical methods to study the process of victimization and to carry out victim surveys. Representative household samples may be made whereby family members are interviewed as to whether the household or any of its members have suffered damage resulting from a criminal act (victimization surveys, see *Michael J. Hindelang* 1982). Such victimization surveys (dark field studies) have been carried out in many countries in recent years (see the summary in *Hans Joachim Schneider* 1987, 203-207). In the Federal Republic of Germany, for example, surveys have been effected in Göttingen (Hans-Dieter Schwind 1975), Bochum (*Hans-Dieter Schwind, Wilfried Ahlborn, Rüdiger Weiß* 1978) and Stuttgart (*Egon Stephan* 1976). Victims whose victimizations are known to the criminal justice system can be questioned about their victimizations and their reactions to it (*Joanna Shapland* 1986; *Shapland, Jon Willmore, Peter Duff* 1985). Studies of the above kind are all designed to investigate the frequency, development and distribution as well as the extent of damage and the risk of criminal victimization. They attempt to examine the spatial and temporal factors related to victimization and the behavior pattern of victims. They seek to uncover the relationship between offender and victim, to answer questions such as whether the fear of crime is a victimogenous factor or the result of victimization, and they examine the reactions experienced by the victim in his intimate social sphere and in his dealings with the criminal justice system as a consequence of his victimization.

We can quote some of the findings of such empirical studies here as examples: The victim is the "gatekeeper" to the criminal justice system. It is his report to the police which usually initiates criminal procedure. Although the victim's cooperation is vitally necessary in order to produce evidence during the criminal procedure, he is often treated with indifference. Victims complain that they are treated without consideration toward their emotions and that they are not informed about the development or outcome of the criminal procedure. Victims do not wish to make decisions affecting the criminal justice system but they would appreciate being approached as partners and asked for advice. They do not want the offender to be punished as severely as possible but they would like to receive restitution for the

damage they suffered. The offender should assume his responsibility toward them and not resort to excuses. The victim wishes the court to acknowledge the fact that he has been victimized and is entitled to restitution. Victims of violent crime often suffer considerable psychological and social damage. Such injuries are often aggravated by the response to their victimization (secondary victimization). If the victim is unable to cope mentally with his criminal victimization, this can later contribute to the development of psychosomatic and neurotic disorders or to the development of socially deviant, delinquent or criminal behavior. A large number of offenses committed by friends or relatives of the victim within his social vicinity (e.g. sexual abuse of children), resulting in severe psychological damage, are never reported and remain undetected.

4. The Victim during the Stages of Victimization

4.1 The Victim Prior to the Victimization Process

The focus here is on discovering the victimogenous risk factors which promote victimization, with the aim of preventing such situations occurring. We can differentiate between three major factor groupings:

—Spatial and social factors stress the aspect of opportunity. Unlike criminal geographers, criminal ecologists examine the interaction between environmental space and architectural construction on the one hand, and human experience (victimization, fear of crime) on the other. Human behavior shapes the environment; it affects the landscape and influences construction, which, in turn, influences, changes, intensifies and motivates human behavior. Architectural design and urban planning can promote the formation of interpersonal relationships conforming to social norms. But they can also result in residents not developing any territorial sense, in their failing to recognize and use their residential environment as a communal area, and in their failing to be interested in what happens in their community environment. The environmental design approach ("defensible space" approach) emphasizes the importance of segmentation and of opportunities for visual surveillance, so that residents perceive their houses and residential neighborhoods as their own and identify with them. Gigantic, neglected and impersonally designed buildings cannot be defined as one's own. It is also for this reason that they are increasingly subject to vandalism.

—Person-oriented factors are used to examine the possibility of the existence of victim proneness and victim disposition. There are no "born victims." Still, acquired physical, psychological and social characteristics (e.g. weaknesses, handicaps or injuries) can influence the victim-offender interaction considerably. Victims are often socially or psychologically damaged prior to their victimization and have come to adopt a victim attitude and a reduced desire to defend themselves. The attention of a potential offender is drawn to a potential victim by the latter's extreme physical, psychological or financial attractiveness.

—The most important victimogenous factors are those related to behavior which increases the risk (lifestyle, exposure model). The potential victim neglects, either consciously or unconsciously, safety precautions and exposes himself repeatedly, consciously or unconsciously, to victimogenous risk situations. A house or an apartment, for example, is particularly likely to be burglarized if residents are frequently away for extended periods of time, either working, engaging in leisure activities or taking a vacation, and do not arrange for it to be guarded or watched over, and if they do not even try to give the impression of the house or apartment being lived in (see, for example, *Irwin Waller*

1982).

The discovery of victimogenous risk factors cannot mean that victimologists support an ideology purporting self-defense or advocating a regression to a fortress mentality, vigilantism and self-help. Victimologists are far more interested in strengthening interpersonal relationships and making potential victims aware of the risk of victimogenous situations, so that they take at least some of the precautionary measures they can reasonably be expected to meet.

4.2 The Victim in the Situation of Primary Victimization

A victimological analysis of the injurious situation is designed to provide potential victims with advice regarding appropriate behavior in an immanent victimogenic situation. Criminal offenses develop in interaction processes between offender and victim. During these processes potential victims and offenders are not only acting and reacting, but also defining and interpreting their behavior, their attitudes and their roles. They explore the "meaning" of their own behavior and that of their interactional counterparts. They develop an image of themselves and of the other person. In order to define the contributory causation (not the contributory guilt) of the criminal victim for the criminal offense two concepts have been developed:

—The concept of victim precipitation (i.e. a crime that was facilitated, caused and precipitated by the victim) concentrates on the extent to which the potential victim contributes to his own victimization by provoking, inducing or facilitating the criminal offense. This approach was developed by *Marvin E. Wolfgang* (1958) on the basis of an empirical study involving 588 homicides. *Wolfgang* discovered that in 20% of the cases analyzed, two potential offenders found themselves together in a homicidal situation and that it was only chance which determined who became the victim and who the offender.

—In the concept of neutralization techniques, of anticipated rationalizations, the victim's "cooperation" only exists in the mind of the offender, only in his motivation process. He pretends not to perceive his victim, who is, for him, the actual felon; the victim deserves his victimization.

By utilizing the concepts of victim precipitation and functional responsibility under criminal law (*Stephan Schafer* 1977, 160/161), an attempt was made to incorporate the conclusions into the victim-oriented aspects of criminal law dogmatics (see, for example, *Thomas Hillenkamp* 1986; *Bernd Schunemann* 1986). The concept of functional responsibility under criminal law stresses the fact that the potential victim is obliged not to promote his own victimization. Especially in preventing and controlling petty crime, e.g. shoplifting, the following possibilities are being considered:

—If a victim contributes to his own victimization, then he can be denied protection under criminal law so that he refrains from doing this. If, for example, a store owner facilitates shop-lifting considerably by advertising and failing to provide the necessary supervision of his merchandise, then he should not be allowed to pass on to the criminal justice system the expenses he saved by refusing to provide informal control.

—Victim responsibility can be taken into account in the selection of the kind and severity of the penal sanction.

4.3 The Victim and the Reaction to His Victimization

In reacting to primary victimization the victim must cope with the event psychologically and socially. It is also important that the victim should take part in the social control process to an appropriate extent and that he is not subjected to secondary victimization (*Bernhard Villmow* 1985). As a result of

the criminal offense the victim can suffer short-term as well as long-term psychological and social damage which must be prevented by implementing victim treatment programs. Crisis intervention methods serve to help the victim cope with the trauma of his victimization mentally and integrate it into his personality (*Mike Maquire, Claire Corbett* 1987).

Victim assistance programs prevent secondary victimization, which can occur as a result of people in the victim's close social vicinity and large institutions (e.g. hospitals, mass media and the criminal justice system) reacting in an inappropriate manner to the primary victimization. The crime victim is emotionally affected by the offense. He is sometimes confronted with insensitive and unreasonable questions. He is often made to feel a lack of sympathy and human warmth. In large organizations the victim is sometimes treated anew as an object due to the impersonal atmosphere and the anonymity. Victim support schemes help to avoid secondary victimization in that they sensitize the public and those people who come in contact with the victim following his primary victimization by making them aware of the mental and social damage suffered by the victim as the result of the offense. At the same time information and counseling services prepare the victim for the criminal proceedings, which tend to be very distressing, both socially and mentally.

The crime victim needs to be adequately involved in the criminal justice system to ensure that he is not discouraged from fulfilling his task in crime control, and to aid the resocialization of both victim and offender by bringing them together in an attempt at conciliation. Ever since Kaiser Karl V issued his Criminal Code in 1532 it has been increasingly the state and society only who have presented the claim to inflict punishments. The victim's role in crime control has almost completely disappeared from social consciousness. This role must be reintroduced by implementing the following reforms:

—The crime victim must be assigned a particular legal status in the criminal proceedings. He must be met with respect, and not merely be made the object required to establish the truth of the matter. Moreover, he must be given a say. This will make criminal proceedings more humane and at the same time more effective. While, on the one hand, the constitutional or procedural rights of the defendant must not be unduly curtailed, the defendant is on the other hand not entitled to have the victim turned merely into an object needed for establishing the truth—as has been the case in the past. Rather, criminal proceedings should be concerned with settling the offender-victim conflict.

—Formal criminal proceedings should be preceded by an informal procedure designed to mediate, conciliate and compensate. Such a procedure is especially suitable in those situations where there is no doubt as to the offender's guilt and where all those involved in the proceedings agree to use the informal procedure. Such procedures serve to motivate not only the victim, but society as a whole to participate in the process of formal crime control. Today's formal criminal proceedings "steal" the conflict from those involved, that is, from the victim and the offender (*Nils Christie* 1977, 1981, 1986). The offender is denied the possibility of being forgiven by his victim. Victim and offender are not permitted to meet on a personal basis. This can be altered by a mediation, arbitration and compensation procedure ending with an arbitral award or settlement which is binding on all parties. Such a procedure is also particularly suitable for economic crimes, as the culpable company's restitution constitutes an extremely effective criminal sanction (*John Braithwaite* 1984).

—Creative restitution made by the offender must become a sanction in its own rights. Making reparations is more than compensating for the damage—it makes the offender assume responsibility for his of-

fense. The victim's pain and suffering are acknowledged by the offender—and also by the court. Both offender and court acknowledge the victim's value as a human being, a value which the offender had denied him. The American Victim Protection Act of 1982 charges the court to give priority to examining and delivering reparatory sanctions. If it does not avail itself of this possibility, the reason must be clearly stated in the verdict.

—Finally, the material settlement covering damages and the immaterial victim-offender reconciliation are necessary for the imprisoned offender to comprehend and cope with his criminal act in the correctional institution (*Rüdiger Weiß* 1985). One of the reasons for the present crisis in and the public unpopularity of correctional treatment is that it only focuses its attention on the prisoner's rehabilitation and fails to consider the victim's interests altogether. We shall never regress to the inhumane and ineffective methods of retaliatory punishment; more imperative is the further development of the current system of correctional treatment, something which can be achieved if this system contributes to reconciling the victim-offender conflict. The convicted prisoner faces up to his social obligations by means of the restitution. He is sensitized to his victim's situation. By making reparations to the victim and by entering into reconciliation with him the offender can on his own free himself of his guilt and at the same time he learns peaceful conflict settlement strategies. Such a victim-oriented penal approach obviously requires changes in the system of correctional treatment and a reorientation in the thinking of the correctional staff. They would no longer just help and advise prisoners but would act more as mediators between offender and victim. To assume such a mediating role requires a great deal of tact and caution. All the same, experiments are already being conducted with offender-victim conciliation programs within the system of corrections (*Heinz Müller-Dietz* 1985; *Paul Brenzikofer* 1982) and as an alternative to incarceration (*Mark D. Yantzi* 1985). Young burglars are brought together with their victims under the supervision of social workers, who organize the communicative meetings. A change in attitude has been documented for both, victims and offenders, following their conversations. The victims' trauma resulting from the victimization was eliminated and their fear of crime disappeared. They no longer perceived the offenders as "monsters" but as young people with problems. The juvenile offenders came to realize the extent of damage they had inflicted. They had never imagined how traumatic the victimization was for their victims. By meeting their victims personally and seeing the pain they had inflicted they were resocialized.

5. Opportunities and Dangers for and Resulting from Victimological Research

Victimological research can be of assistance in recording and understanding criminal offenses. This leads to an expansion in the body of knowledge in this field. It facilitates a more civilized and humane interaction with the victim of crime, with the offender, and between the two. It serves to increase the effectiveness of social control in general.

An "overemphasis on the victim" can, however, lead to criminality being dramatized and emotionalized, which in turn could endanger the success of resocializing the offender. It would run counter to victimological research findings if they were employed to support a retaliatory penal system, which is both ineffective and inhumane. Victimology does not accuse victims. Victimology is a factual science. When the expression "victim precipitation" (not victim culpability) is used, the intention is simply to develop victim-oriented prevention programs. Under

criminal law "victim precipitation" is usually of hardly any importance at all, and when it is of some relevance than only to determine the sanction. An unlimited extension of the concept of "victim" does not enrich the body of knowledge. The insight that offenders are victims of the society is one-sided and leads nowhere. The distinction between pro-victim and anti-victim victimologists (*Kurt Weis* 1982, *Wiebke Steffen* 1987) should be discarded. At least, I have no knowledge of any anti-victim victimologists. Hostile attitudes should be abandoned, not reinforced, in order to create a more peaceful society.

Bibliography

Anttila, Inkeri: From Crime Policy to Victim Policy? Ezzat A. Fattah (Ed.): From Crime Policy to Victim Policy. Houndmills-Basingstoke-Hampshire-London 1986, 237-245.

Bassiouni, M. Cherif (Ed.): International Protection of Victims. Siracusa 1988.

Braithwaite, John: Corporate Crime in the Pharmaceutical Industry. London-Boston-Melbourne-Henley 1984.

Brenzikofer, Paul: Bemühungen um Opfer von Verbrechen in der Schweiz. Hans Joachim Schneider (Ed.): Das Verbrechensopfer in der Strafrechtspflege. Berlin-New York 1982, 367-373.

Chockalingam, K.: Readings in Victimology. Madras 1985.

Canadian Federal-Provincial Task Force on Justice for Victims of Crime (Ed.): Report Highlights. Ottawa 1983.

Christie, Nils: Conflicts as Property. British Journal of Criminology. 17 (1977), 1-15.

Christie, Nils: Limits to Pain. Oxford 1981.

Christie, Nils: The Ideal Victim. Ezzat A. Fattah (Ed.): From Crime Policy to Victim Policy. Houndmills-Basingstoke-Hampshire-London 1986, 17-30.

Council of Europe (Ed.): Collected Studies in Criminological Research. Volume XXIII: Research of Victimization. Strasbourg 1985.

Council of Europe (Ed.): Explanatory Report on the European Convention on the Compensation of Victims of Violent Crimes. Strasbourg 1984.

Council of Europe (Ed.): The Position of the Victim in the Framework of Criminal Law and Procedure. Strasbourg 1985.

Council of Europe (Ed.): Assistance to Victims and Prevention of Victimization. Strasbourg 1988.

Cressey, Donald R.: Delinquent and Criminal Subcultures. Sanford H. Kadish (Ed.): Encyclopedia of Crime and Justice. Vol. 2, New York-London 1983, 590-684.

Deutscher Juristentag (Ed.): Die Rechtsstellung des Verletzten im Strafverfahren. Munich 1984.

Elias, Robert: The Politics of Victimization. New York-Oxford 1986.

Fattah, Ezzat A. (Ed.): From Crime Policy to Victim Policy. Houndmills-Basingstoke-Hampshire-London 1986.

Frehsee, Detlev: Schadenswiedergutmachung als Instrument strafrechtlicher Sozialkontrolle. Ein kriminologischer Beitrag zur Suche nach alternativen Sanktionsformen. Berlin 1987.

Garbarino, James/Gwen Gilliam: Understanding Abusive Families. Lexington-Toronto 1980.

Geis, Gilbert/Duncan Chappell/Michael W. Agopian: Menschliches Leiden lindern. Bericht über das fünfte internationale Symposium über Viktimologie, Zagreb 1985. Monatsschrift für Kriminologie und Strafrechtsreform. 69 (1986), 221-236.

Gelles, Richard J.: Family Violence. Beverly Hills-London 1979.

Haesler, Walter T. (Ed.): Viktimologie. Grüsch 1986.

Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (Ed.): Towards a Victim Policy in Europe. Helsinki 1984.

Hentig, Hans von: Remarks on the Interaction of Perpetrator and Victim. Journal of Criminal Law and Criminology. 31 (1941), 303-309.

Hentig, Hans von: The Criminal and his Victim. New Haven 1948.

Hillenkamp, Thomas: The Influence of Victim Behaviour on the Dogmatic Judgement of the Offense: Some Remarks on the Relationship between Victimology and the Dogmatics of Penal Law. Koichi Miyazawa/Minoru Ohya (Eds.): Victimology in Comparative Perspective. Tokyo 1986, 111-124.

Hillenkamp, Thomas: Zur Einführung: Viktimologie. Juristische Schulung. 27 (1987), 940-943.

Hindelang, Michael: Opferbefragungen in The-

orie und Forschung. Hans Joachim Schneider (Ed.): Das Verbrechensopfer in der Strafrechtspflege. Berlin-New York 1982, 115-131.
Hinrichs, Reimer: Chronische Verbrechensopfer. Stuttgart-New York 1987.
Janssen, Helmut/Hans-Jürgen Kerner (Eds.): Verbrechensopfer, Sozialarbeit und Justiz. Bonn 1985.
Joutsen, Matti: The Role of the Victim of Crime in European Criminal Justice Systems. Helsinki 1987.
Jung, Heike: Viktimologie. Günther Kaiser/Hans-Jürgen Kerner/Fritz Sack/Hartmut Schellhoss (Eds.): Kleines kriminologisches Worterbuch, Heidelberg 1985, 518-525.
Kaiser, Günther: Kriminologie. 2nd Edition. Heidelberg-Karlsruhe 1988.
Karmen, Andrew: Crime Victims. An Introduction to Victimology. Monterey/Kalif. 1984.
Kube, Edwin: Täter-Opfer-Ausgleich. Deutsche Richterzeitung. 64 (1986), 121-128.
Lemert, Edwin M.: Social Pathology. New York-Toronto-London 1951.
MacNamara, Donal E. J./Andrew Karmen (Eds.): Deviants—Victims or Victimizers? Beverly Hills-London-New Delhi 1983.
Maguire, Mike/Claire Corbett: The Effects of Crime and the Work of Victims Support Schemes. Aldershot-Hants-Brockfield 1987.
Mannheim, Hermann: Comparative Criminology. Vols. 1 and 2, London 1965.
Manzanera, Luis Rodriguez: Victimologia. Mexico 1988.
Mawby, R. J./M. L. Gill: Crime Victims. London-New York 1987.
Mead, George Herbert: Sozialpsychologie. Darmstadt 1976.
Mendelsohn, Beniamin: Une Nouvelle Branche de la Science biopsycho-sociale—la Victimologie. Revue Internationale de Criminologie et de Police Technique. 10 (1956), 95-109.
Miyazawa, Koichi/Minoru Ohya (Eds.): Victimology in Comparative Perspective. Tokyo 1986.
Müller-Dietz, Heinz: Resozialisierung durch Strafvollzugsprogramme und Entlassenenhilfe unter Einbeziehung der Opfer. Helmut Janssen/Hans-Jürgen Kerner (Eds.): Verbrechensopfer, Sozialarbeit und Justiz. Bonn 1985, 247-269.
President's Task Force on Victims of Crime (Ed.): Final Report. Washington, D.C. 1982.
Reiss, Albert J.: Toward a Revitalization of Theory and Research on Victimization by Crime. Journal of Criminal Law and Criminology. 72 (1981), 704-713.
Rieß, Peter: Die Rechtsstellung des Verletzten im Strafverfahren. Munich 1984.
Schafer, Stephen: Victimology: The Victim and his Criminal. Reston 1977.
Schneider, Hans Joachim: Viktimologie-Wissenschaft vom Verbrechensopfer. Tübingen 1975.
Schneider, Hans Joachim (Ed.): The Victim in International Perspective. Berlin-New York 1982.
Schneider, Hans Joachim: Kriminologie. Berlin-New York 1987.
Schünemann, Bernd: The Future of the Victimological Approach to the Interpretation of Criminal Law: The Use of Victimological Considerations as a Comprehensive, Regulative Principle for Limiting the Scope of Certain Crimes. Koichi Miyazawa/Minoru Ohya (Eds.): Victimology in Comparative Perspective. Tokyo 1986, 150-159.
Schur, Edwin M.: Crimes without Victims. Englewood Cliffs/N. J. 1965.
Schuster, Leo: Opferschutz und Opferberatung-eine Bestandsaufnahme. Wiesbaden 1985.
Schwind, Hans-Dieter/Wilfried Ahlborn/Hans Jürgen Eger/Ulrich Jany/Volker Pudel/Rüdiger Weiß: Dunkelfeldforschung in Göttingen 1973/74. Wiesbaden 1975.
Schwind, Hans-Dieter/Wilfried Ahlborn/Rüdiger Weiß: Empirische Kriminalgeographie. Wiesbaden 1978.
Separovic, Zvonimir Paul (Ed.): Victimology. International Action and Study of Victims. 2 Volumes. Zagreb 1988, 1989.
Shapland, Joanna: Victims and the Criminal Justice System. Ezzat a. Fattah (Ed.): From Crime Policy to Victim Policy. Houndmills-Basingstoke-Hampshire-London 1986, 210-217.
Shapland, Joanna/Jon Willmore/Peter Duff: Victims in the Criminal Justice System. Aldershot-Hants-Brookfield 1985.
Steffen, Wiebke: Gewalt von Männern gegenüber Frauen. Munich 1987.
Stephan, Egon: Die Stuttgarter Opferbefragung. Wiesbaden 1976.
Straus, Murray A./Richard J. Gelles/Suzanne K. Steinmetz: Behind Closed Doors. Violence in the American Family. Garden City/N.Y. 1980.
Villmow, Bernhard: Implications of Research on Victimisation for Criminal and Social Policy. Council of Europe (Ed.): Collected Studies in

Criminological Research. Vol. XXIII: Research on Victimisation. Strasbourg 1985, 107-142.

Waller, Irvin: What Reduces Residential Burglary: Action and Research in Seattle and Toronto. Hans Joachim Schneider (Ed.): The Victim in International Perspective. Berlin-New York 1982, 479-492.

Weis, Kurt: Die Vergewaltigung und ihre Opfer. Stuttgart 1982.

Wolfgang, Marvin E.: Patterns in Criminal Homicide. New York 1958.

Wolfgang, Marvin E./Franco Ferracuti: The Subculture of Violence. London-New York-Sydney-Toronto-Wellington 1967.

Wulf, Rüdiger: Opferbezogene Vollzugsgestaltung-Gründzuge eines Behandlungsansatzes. Zeitschrift für Strafvollzug. 1985, 67-77.

Yantzi, Mark D.: Das Täter-Opfer-Aussöhnungsprojekt in Kitchener (Ontrario), Kanada. Helmut Janssen/HansJürgen Kerner (Eds.): Verbrechensopfer, Sozialarbeit und Justiz. Bonn 1985, 329-343.

From Criminal Policy to Victim Policy—New Tendencies in the Reform of Criminal Law, Criminal Procedure and Corrections

*by Hans Joachim Schneider**

I. Victimologically Significant Theoretical Developments and Empirical Research Findings

1. Victimological Theory

In the 18th century the classical school of criminology, extensively influenced by the enlightenment (Aufklärung), was particularly concerned with the rational cause of criminal offenses and the constitutionality of criminal procedure; the stress was placed on the offender's culpability. This approach was challenged toward the end of the 19th century by the positivist school of criminal law, which, in attempting to apply research findings from the natural and social sciences at the time to criminal justice, emphasized the criminal etiological aspect of the offender and his "personality disorder"; in criminal political terms, the positivists underlined the particular importance of the felon's dangerousness and his treatment. Inner-psychological conflicts were crucial to the psycho-analytical understanding of crime causation. During and following the Second World War there was a radical change in the criminological approach to crime causation: The causation of mass crime was ascribed to social and interpersonal processes; criminal law and procedure came to be seen merely as instruments for comprehensive social control. Crime is the result of interpersonal conflicts and the destruction of social bonds. Criminalizatios and victimization are learned in processes of social and interpersonal interaction, with people not only learning modes of behavior, but also acquiring attitudes and rationalizations for their behavior; offenders learn offender behavior, offender attitudes, offender roles; victims learn victim behavior, victim attitudes, victim roles. Victimological theory is based on a socio-psychological concept of crime causation. The offender-victim relationship is by no means always merely a relationship between a perpetrator and a sufferer. Hans von Hentig[1] spoke of a "real mutuality in the connection between perpetrator and victim," whereby often "the relationship is not entirely unilateral," in many cases "the victim shapes and moulds his criminal. The collusion between perpetrator and victim is a fundamental fact of criminology. Of course there is no understanding or conscious participation, but there is interaction and an interchange of causative elements."[2]

2. Victimological Research Findings

Since the 1960s, world-wide victimological research[3] has produced the following three major findings of importance to criminal policy:[4]

—The crime victim is the "gate-keeper" to the criminal justice system. It is not the police, but rather the victim, who, by reporting the crime, initiates criminal proceedings in most cases. Criminal victimization is, of course, much more widespread than was previously generally assumed. Only a fraction of offenses committed comes to the attention of the criminal justice system. Many crimes are not reported by victims. The reasons for this failure to report are complex: the victim

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gains nothing by reporting the crime (for example, stolen goods are not returned, there is no restitution); he fears the offender's revenge; he has no faith in the criminal justice system; he is himself involved in the offense (victim precipitation). Victims with a personal relationship to the offender (i.e., for example, friends, relatives, intimate partners) tend to report their victimization less frequently than victims who do not know their offender.

—Victims of violent crimes often suffer severe psychological and social damage as a result.[5] Such damage is often intensified by the response to their victimization (secondary victimization). When victims fail to cope with their criminal victimization psychologically, this can lead to the development of psychosomatic or neurotic disorders or can contribute to the causation of social deviation, juvenile delinquency or adult criminality. Many offenses involving persons in close social relationships (for example, the sexual abuse and maltreatment of children), which can produce severe psychological damage, are not reported and remain—untreated—in the dark field.

—Although the victim's cooperation is crucial for the realization of evidence during the criminal proceedings, he is treated with indifference.[6] Victims complain that they are met with insensitivity and that they are not informed about the course and outcome of the criminal proceedings. Victims do not want to be involved in decision-making within the criminal justice system. They do, however, want to be treated as partners and asked for advice. Victims are not intent on seeing offenders punished as severely as possible. They do, however, wish to receive restitution for the harm or injury they suffered. Offenders should admit their responsibility toward victims and should not resort to excuses. The court should acknowledge the fact that victims have been victimized and that they have done a special service for society in terms of social control.

3. Criminological Research Findings on Careers, Treatment and Deterrence

At the same time as attention was directed to crime victims, the following three empirical criminological research findings were established, which in terms of criminal policy point in the same direction as those indicated by victimological studies:

—Recent criminological birth cohort studies[7] and prospective longitudinal research studies[8] have led to the conclusion that the great majority of crimes, and especially of violent crimes, are committed by comparatively few people with a record of repeated criminality and violence. Offenders who regularly committed serious criminal offenses had themselves usually been victims of previous violations of the law (victim-offender sequence). The likelihood of recidivism grows with every arrest and conviction. People come to assimilate how to be offenders and victims. The most reliable predictor of juvenile delinquency and adult crime has been shown to be parental harshness and brusqueness toward a son. Fathers with a record of convictions for violence were more likely to have sons who committed violent crimes. The likelihood of recidivism increased with every subsequent conviction for a violent offense.

—Research into recidivism after imprisonment[9] came to the conclusion that the treatment of prisoners in correctional institutions does not prevent or exclude recidivism to a higher degree than mere custody does. This can be traced to a number of causes: If crime is the culmination of 15-20 years of misguided and defective socialization, criminal attitudes will not be unlearned overnight in the social isolation of a prison. In a penal institution, which has to be run on the principles of security and order, it is extremely difficult for correctional staff to create a social at-

mosphere that is not dominated by criminal models and values and in which a socially acceptable normative lifestyle and behavior can be practiced. Prisoners victimize each other socially, psychologically, sexually and physically (through the use of violence). The main reason for the failure of the treatment practice in penal institutions so far has been the fact that the correctional system has failed to involve crime victims and society in this treatment process.

—Empirical research into deterrence[10] has shown that the direct deterrent effect of criminal legislation and enforcement (negative general prevention) is of lesser importance in crime prevention than the indirect influence on the population by means of a life-long process of socialization (positive general prevention) oriented also to criminal law norms. Empirical criminological research has shown clearly that the direct deterrent effect of penal legislation and enforcement cannot be estimated to be as high as originally assumed. As a general rule, successful citizens can easily be deterred because they have too much to lose and tend to be bound by their success to the social system in which they live. On the other hand, offenders are usually unsuccessful in their socially conformed careers and therefore difficult to deter, since they have lost all hope and believe that by committing criminal offenses they can only gain.

A positive function of criminal legislation and enforcement is to aim at evoking and strengthening the population's faith in the law and their willingness to adhere to legal norms.[11] The criminal law fulfills its value-creating and value-maintaining role by providing the everyday interactive socialization process with value judgments. How parents and other important identification figures react to norm violations is crucial for the development of a sense of justice in the psyche of children and adolescents. Child-rearing methods characterized primarily by the use of punishment and power, employing harsh and frequent corporal punishment, produce, at best, a superficial, outward willingness to conform to the norms; they can also lead to aggressive modes of behavior toward weaker persons. "Laissezfaire" methods of child rearing do not generate any sense of justice at all. Rather than orienting itself to professed abstract norms and rules, the development of an independent, internally controlled sense of justice presupposes the presence of an actively law-abiding model. Rather than being satisfied with simply exercising their superior authority and power in the event of a dispute and providing possible, prefabricated conflict solutions, parents and teachers, having established a relationship with their children or pupils based on emotional warmth and acceptance, are obliged to discuss seriously and sincerely with their children or pupils on an intellectual and emotional level. This presupposes the following three points:

—Firstly, they must make clear to their children or pupils why it is necessary to observe the norm violated.

—Furthermore, they must point out to their children or pupils the extent of suffering and anguish experienced by the injured party, i.e. by the victim, as a result of the norm violation.

—Finally, parents and teachers must themselves observe those generally binding norms, and show their children or pupils that they can conduct and resolve their own conflicts among themselves openly and peacefully.

4. Results from Comparative Criminology

Comparative criminological studies[12] have made clear the great importance of the informal social control exercised by families, schools, neighbors, professional and recreational groups in the prevention and control of crime. The ten nations with the lowest

crime rate in the world, although including countries with distinctly different economic and social structures such as Nepal, Japan, the German Democratic Republic, Switzerland and Saudi Arabia, exhibit three common characteristics:

—Community consciousness and the citizens' willingness to accept responsibility facilitate the peaceful regulation of conflicts in the community. Mutually accepted regulation of conflicts in turn produces value agreement and social cohesion.
—The decay of communities and the deterioration of social relationships are minimal. Juvenile subcultures and socially disorganized areas, for example, in industrial conurbations, have not developed. Social relationships within social groups and be tween social groups are more or less undamaged.
—The criminal justice system is well integrated into the community. The community is involved in defining and solving crime, and in charging, sentencing and punishing offenders. The community supports *its* criminal justice system; the criminal justice system seeks to be integrated into *its* community.

Many people assist the police in an honorary capacity, for example, as probation assistants or in correctional institutions. Police officers live in the suburb or neighborhood where they work, and seek contact with the citizens. Police information and counselling offices in schools attempt to develop a trust relationship between the pupils and police officers.

5. Implications for Criminal Policy

All these empirical research results provide the following principles for the reform of criminal law and procedure:

—It is imperative that crime victims are accorded their own legal position within criminal procedure. Victim support and assistance schemes must prevent crime victims from suffering socially and psychologically a second time—suffering caused by the formal reaction of the criminal justice system or by the informal reactions of social groups, such as their family or neighborhood. Victim treatment programs must be designed to therapeutically treat the victim's social and psychological damage suffered as a result of the criminal offense itself.
—Resolving interpersonal conflicts must be practiced right from childhood. This can be done daily by learning how to reach mutually acceptable conflict solutions in a peaceful manner, by using democratic child-rearing methods and democratic "punishment." Criminal justice practices can provide a model for such a democratic child-rearing and educational approach by focusing on the restitution of victim damages and by facilitating the implementation of an informal pre-trial arbitration and mediation procedure. In this way accord can be established between the two conflicting parties. The use of restitution as an independent penal sanction together with arbitration and mediation procedures can contribute considerably to the development of an internally controlled, independent sense of justice. For constitutional reasons, however, formal criminal procedure must remain the final instance for conflict resolution.
—Using punishment to clarify one's authoritative position is just as ineffective in everyday child-rearing as it is in criminal procedure and corrections. Offender-oriented treatment in correctional institutions is inadequate and is increasingly losing the support of the general public. The approach must be developed to include creative restitution. The rational and emotional coming to terms of the offender with his criminalization and of the victim with his victimization, helped and advised by criminal justice, is indispensable for the development of a sense of justice in the two

parties involved and in society. By actively involving honorary volunteer workers the criminal justice system can be successfully integrated into informal social control systems.

II. Criminal Policy Development on International and National Levels

Continuous theoretical and empirical developments in criminology over the last forty years have moved the Council of Europe and the United Nations to take an interest in victimological activities, which constitutes initial steps in the right direction. At the same time, some nations have passed victim protection acts, thereby ushering in a reorientation in criminal policy. The victim protection laws enacted in the USA and in the Federal Republic of Germany shall serve here as examples.

1. Victimological Activities of the Council of Europe

In March 1981, the Council of Europe's European Commission on Crime Problems in Strasbourg passed a motion to establish a Select Committee of Experts on Victims of Crime and on Criminal and Social Policy. The task of this expert board was to formulate recommendations for the improvement of the protection for victims of crime. The Select Committee set to work at the beginning of 1982, after the motion of the European Commission on Crime Problems had been approved by the Council of Ministers. Initially, it drew up the *European Convention on the Compensation of Victims of Violent Crimes.*[13] Then it compiled the *Recommendations for the Improvement of the Position of the Victim in the Framework of Criminal Law and Procedure.*[14] Finally, the Select Committee developed proposals—this work was completed in the spring of 1987—concerning the improvement and extension of victim support and treatment programs currently operating in the various member states. *The Recommendations for the Improvement of the Position of the Victim in the Framework of Criminal Law and Procedure* were approved by the Council of Ministers of the Council of Europe on 28 June 1985.

The Select Committee had, during its five years of consultations, attached particular importance to ensuring that victims receive reparations for the physical, material and social damages suffered as a result of criminal offenses and that they are not subject to further damage as a result of either the formal or the informal reaction to their victimization. They wanted to encourage the victim's faith in the criminal justice system and motivate him to participate in criminal justice. The following five major findings of the Select Committee were accepted by the Council of Ministers of the Council of Europe, which subsequently formulated them as recommendations and passed them on to the member states. The five major findings were as follows:

- —The Select Committee advocates state compensation for victims of violent crimes, and also restitution of victim damages by the offender in the form of an independent and individual penal sanction.
- —Secondary victimization of crime victims should be minimized by conducting police and court interviews as sensitively and as tactfully as possible. The victim's special personal and social situation must be taken into account. His human rights must not be violated nor his human dignity offended.
- —The Select Committee concedes victims' modest rights regarding access to information during criminal proceedings. They are to be informed, for example, whether and in what manner they can receive compensation from the state or restitution from the offender.
- —Crime victims and their dependents are to be protected from excessive publicity, harassment and acts of revenge.
- —Finally, the Select Committee strongly supports the collection of data and the idea

of informing the population about its criminal victimization. It also encourages state and private victim support and treatment programs.

The Select Committee could not see its way free to granting victims participation, decision-making, control or intervention rights (right of appeal and right of admission to evidence) in criminal proceedings. Victims should by all means have been accorded at least the right to be heard. The support for arbitration and mediation procedures was only very half-hearted. Member states are to examine the advantages of such a procedure. The European experts were against more far-reaching recommendations as they feared the victim's "vengeance instinct" (the need for satisfaction) and a curtailing of defendants' rights through the dismantling of constitutional safeguards, and because they did not want to burden criminal justice agencies excessively or even overload them. The crime victim's supposed "vengeance instinct" is a prejudice of society, which is invalidated by empirical victimological research. Many of the proposals for improving the legal position of crime victims in criminal procedure contained nothing to justify the fears that defendants' rights could be curtailed. The real issued was the hindering effect of victim protection for the defense, an issue which is not welcomed by defense lawyers. Criminal prosecution agents must not be unburdened at the expense of crime victims; otherwise in the end it will be crime control which suffers as a result.

2. Victimological Activities of the United Nations

In recent years the United Nations has also been concerned with the issue of how to improve the situation of crime victims. The 7th United Nations Conference on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, recommended to the General Assembly of the United Nations that it pass a *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*[15] The substance of the document is largely attributable to the activities of the World Society of Victimology with its headquarters in Münster (Federal Republic of Germany). The efforts of this society concerning the adoption of a declaration concerning victims' rights by the United Nations had begun back in 1982 during the 4th International Symposium on Victimology in Tokyo and Kyoto,[16] and had been continued in Dubrovnik Yugoslavia, in 1984 and 1985 at the international workshops on victims' rights, and in Zagreb[17] at the 5th International Symposium on Victimology. The declaration binds the member nations of the United Nations to unconditionally recognize the rights of victims of traditional crime and of crimes constituting the abuse of political and economic power, and to introduce measures guaranteeing victims' protection, the reparation of damages suffered, and humane treatment. The declaration was adopted by the General Assembly of the United Nations on 29 November 1985.[18]

The resolution of the General Assembly of the United Nations comes to the same conclusions as the document presented by the Council of Europe in terms of state compensation for victims of violent crimes, restitution of victim damages by the offender, the prevention of secondary victimization, the protection of victims from excessive publicity and acts of vengeance, the collection of victimological data and the population's information on the risks of criminal victimization, and lastly in terms of the promotion of victim support and treatment services. Yet, in the following four important points it surpasses the recommendations of the Council of Europe:

—Under the influence of the developing countries the resolution places more emphasis on the introduction of arbitration and mediation procedures.

—The rights of crime victims to receive information relating to, and especially their right to be involved in, court proceedings have been extended considerably. Victims are to be given orientation as to their role in proceedings and regarding the extent, the schedule, the course and the judgments in proceedings. They are to be given the opportunity to express their opinions and concerns at points in time during proceedings set aside specifically for this purpose. Their opinions are to be weighed and their concerns taken into consideration by the court.
—Environmental crimes are to be penalized by the court issuing restitution orders stipulating reparation of damages by way of restoration of the environment to its original state, the reconstruction of the infrastructure, and the replacement of the communal facilities destroyed.
—Victims of power abuse are to receive compensation from the state whose representatives caused the damage suffered by the victim. The onus of proof that the civil servants concerned were not acting in the performance of their duties rests with the state in whose name they acted. Successor states are to be liable for abuses of power by their representatives in the predecessor state.

3. Victim Protection Act in the United States of America

On October 1982, a federal law was passed in the United States protecting victims and witnesses,[19] which improved the position of victims in criminal procedure.[20] It is based largely on the recommendations of an expert committee[21] set up by the President of the United States in April 1982. The act contains five noteworthy innovations:

—Investigation reports presented to the court must contain information on the consequences of the offense for the crime victim, especially the financial, social, physical and psychological damages suffered as a result of the violation of the law (Victim Impact Statement).
—Penal provisions for acts constituting acts of intimidation or vengeance against the victim have been extended and tightened. Furthermore, the court can, during penal proceedings, issue restraining and protection orders to prevent possible intimidation and harassment to which crime victims may be exposed.
—The most important improvement is the provision of offender restitution as a penal sanction in its own right. Should the court fail to make use of this sanction, its reasons for doing so must be presented in written form. Before this provision was introduced, offender restitution could only be ordered as a condition of probation for a suspended sentence. Consequently it had up to then remained the exception rather than the rule that the victim's restitution interests were considered in North American trials. Judicial restitution orders are executed by either the state itself or by the victim designated and this is effected in the same manner as in the case of judgments made in civil proceedings. For the victim this provision constitutes an improvement over the "condition of probation" provision insofar as in the event of the offender violating the conditions of the restitution order, previously the victim had to rely on the court to revoke probation, which did him little good and was only seldom pronounced, as the courts and probation officers feared that such a revocation would endanger the offender's rehabilitation.
—The act includes the rights of crime victims to obtain access to information and counseling. Guidelines concerning these rights were issued by the Attorney General of the United States.[22] Of particular note are the rights of participation for victims of serious crimes. They stipulate that a prosecuting attorney's office must consult the victim if the defendant is to be released during criminal proceedings.

—The problem of what should happen with the financial gains accrued by an offender from the sale of his story to the mass media is mentioned in the act but not resolved. The Attorney General has to report to Congress solely on judicial possibilities. New York State and other U.S. states have laws[23] stipulating that such gains must be deposited at the Department of Justice. Under certain conditions the laws allow for crime victims to be granted access to such deposited gains.

4. The Victim Protection Act (Opferschutzgesetz) in the Federal Republic of Germany

On 1 April 1987, the First Law for the Improvement of the Position of the Injured Party in Criminal Procedure (Victim Protection Act), which was enacted on 18 December 1986[24], came into force in the Federal Republic of Germany. The way was paved for this legislation during discussions at the "55th Conference of German Lawyers'[25] held in Hamburg on 26-27 September 1984; discussions were launched by a detailed report[26] and a debate conducted in academic literature.[27] The act in general lacks a basic victimological concept. Although a few isolated points have improved the legal position of the victim in the Code of Criminal Procedure, these "improvements" are, however, largely ineffective and inadequate. They only demonstrate that the legislator wanted to do "something" for crime victims without abandoning the conventional, one-sided, ineffective concept of crime prevention and control with its orientation toward offense and offender. Of the changes to the law, the following four exemplify this fact:

In order to protect the victim more effectively than was previously the case, from discriminative questioning during criminal proceedings, witnesses may, during cross examinations, only be asked about details concerning their "private life" when this is indispensable for establishing the truth. According to the old law, these limitations were valid only for facts which could "bring discredit upon" the victim or one of his relatives. The legislator was unable to push through further limitations of the victim's obligation to give evidence, such as the introduction of provisions prohibiting the presentation of evidence concerning particular subject matters (as exist in some U.S. and Australian states)[28], as the legislator claimed that these would curtail the rights of the defendants.[29] This view is inappropriate. In rape trials, for example, it is not unusual for the defense to adopt a "victim-blaming strategy," a strategy designed to incriminate the victim, a strategy with which the victim cannot cope, neither emotionally nor socially. It is true that false evidence may sometimes be given in rape cases, but no more frequently so than concerning other criminal offenses.[30] Although it is almost a routine matter for the sexual past of the victim in rape trials to be publicly discussed, this cannot be justified from any point of view. Victims with a sexual history can also be raped and can also tell the truth during criminal proceedings. It is, therefore, unnecessary for the defense to adopt an incriminating, victim-blaming strategy in order to establish the truth in court; its only aim is to prejudice the court and the public against the victim emotionally, and it often causes injury to the victim in an unjustified manner. The proper way of establishing the credibility of a witness's evidence in case of doubt is to obtain the expert opinion of a psychologist. Introducing a restriction on the admission of evidence concerning the past sexual conduct of a raped witness thus in no way limits the rights of the defendant; it simply protects the victim from unnecessary injury and makes it more difficult for the defense counsel to give his case the appearance of irrefutability to the public at the expense of the victim. Finally, by restricting the evidential subject matter, the general public's sensationalism would fail to be catered to—and rightly so.

The Federal German Victim Protection Act has also extended the group of potential

joint plaintiffs. Persons whose inalienable rights have been violated as a result of particular criminal acts may now appear in criminal procedure as joint plaintiffs in conjunction with the prosecuting attorney; this applies, for example, to persons who were raped, were held hostage or whose lives were threatened by a homicide attempt. The new legislation is of questionable value,[31] as it misinterprets the victimological concept—a concept which does not emphasize strengthening the victim's case in contentious criminal proceedings, which would, so to speak, only heighten the offender-victim conflict. It would have been better, therefore, if the Federal German legislator had decided to introduce a procedure of arbitration and mediation, which would allow the parties involved to work their interactional disturbance through, supported and administered by the court, the prosecuting attorney and the defense.

Furthermore, in order to exercise his rights, the victim may, under the Victim Protection Act, avail himself of an adviser to protect him better against encroachments by the court or the prosecuting attorney. Although the introduction of such a "victim attorney" in the interest of victim protection is a great step forward, it would nevertheless have been better to anchor more extensive and precise provisions against secondary victimization in the Code of Criminal Procedure itself. The restriction of evidential subject matter during the examination of witnesses as mentioned above is such a provision. Further injury to the victim in criminal proceedings can best be avoided by treating him not just as an object instrumental to establishing the truth, but rather by listening to his concerns, by noting his anxieties and by considering his concerns and anxieties when passing judgments.

Lastly, the Victim Protection Act also contains a number of alterations to the so-called "adhesion procedure" (*Adhäsionsverfahren*), which enables the victim to enforce restitutional claims against the offender under civil law within the scope of the criminal procedure. The aim of these alterations is to facilitate the practical application of this procedure; a procedure which has so far gained close to no practical acceptance in Federal German criminal justice.[32] The new provisions are, however, too limited and will consequently fail to stimulate the planned use of offender restitution in criminal procedure practices. The petitioning litigant is, for example, entitled to apply for legal aid; furthermore, basic and part judgments (*Grund- und Teilurteile*) are to be permissible in the future. The legislators have foregone the opportunity of obliging courts to inform potential litigants about the option of the adhesion procedure. Furthermore, they did not delete the provision in the Federal German Code of Criminal Procedure, according to which criminal courts can dispense with a decision on the petition of a crime victim if they are of the opinion that "settlement could not be reached within the scope of criminal procedure." As legislators have left courts with this loophole, offender restitution in criminal procedure will remain the exception rather than the rule. Such a restitution hearing and judgment is advantageous for the crime victim, as this relieves him of the psychological and financial burden of filing a complaint in a court of civil law. Of course, the crime victim would have been served best if offender restitution had been introduced as a penal sanction in its own right.

Federal German criminal law and procedure have detached themselves from the reality of the offender-victim conflict resolution to such an extent that they permit not even modifications to their own offense- and offender-oriented sanctioning principles, and are, therefore, partly responsible for their own overloading.

5. Results of Criminal Policy Developments

New theoretical and empirical criminological findings have precipitated a movement in the area of criminal policy-making. This involves not only compensating victim

damages by way of victim support and treatment programs, thereby preventing further victimization, but includes not treating the crime victim simply as a piece of evidence of instrumental utility in criminal procedure, by obliging the court to listen to and consider his concerns and opinions, and take into account and acknowledge the injury suffered by him. Only when the criminal justice system takes the victim's restitution needs into consideration will it be able to count on his trust and cooperation. The conflict must not be "stolen"[33] from those involved in the conflict, that is, the offender, the victim and those persons in their immediate social vicinity; the formal criminal procedure—constitutionally necessary as it may be in many cases—creates distance[34] and thus hampers the resolution of conflicts. It contributes to the stigmatization of both offender and victim. It is necessary, therefore, to provide for an informal arbitration and mediation procedure as an intermediate pre-trial procedure in which the parties involved can resolve their own conflict with the aid and mediation of the criminal justice system. Such a procedure can form an important learning experience and can have a modelling effect on the peaceful resolution of everyday conflicts. It can be instrumental in improving the integration of the formal social control, i.e. the criminal justice system, into the informal social control exercised in social groups such as the family, school, neighborhood, and professional and recreational groups.

III. Possible Future Reorganization of Criminal Procedure, of Legal Reactions to Criminal Offenses, and of Corrections from a Victimological Viewpoint

1. Restitution as a Creative Personal and Social Achievement

The entire criminal justice system must be adapted to the concept of restitution, which extends the offender-oriented treatment approach to encompass victims and society. Restitution must be seen as an interactional process between offender, victim and society which resolves criminal conflicts and creates harmony between the parties involved. This does not simply involve a monetary payment and a few perfunctory apologetic remarks. Restitution is a creative process, a personal and social achievement, requiring a considerable psychological and social effort on the part of the offender toward confession and remorse and toward assuming his responsibility for his offense to society and his victim. From this process—if it reaches a successful conclusion—the offender, the victim and society will emerge changed and matured as a result. The offender repents his action by facing up to its harmful consequences and by being forgiven by his victim; he is absolved without personal humiliation. He loses his criminal stigma and can take again his place in society as a member enjoying equal status. The victim receives—as far as possible—restitution. Having successfully made the personal effort of forgiveness he is able to overcome the psychological and social damages suffered as a result of the offense, which allow him to come to terms with the trauma of his victimization.

The use of restitution, the solution of the criminal conflict and the reconciliation process involving the offender, the victim and society create a sense of justice in society, something far more important for crime control than deterring the population in general with penal legislation and enforcement. Restitution calls for an alteration in the goals of the criminal justice system in its entirety. The police, district attorneys and courts no longer solely concentrate their activities around the offender. Probation officers and corrections personnel no longer just help and give guidance to offenders in their charge but also have to assume the role of mediator between the offender, the victim and society. The concept of restitution thus demands not only an increased effort on the part of the offender, but also of the vic-

tim and of society, especially with regard to their social control function.

On the one hand, restitution is objected to on the grounds that it is an additional sanction and, on the other, that it is no sanction at all, as the offender is obliged under civil law to make restitution payments anyway. Both mutually contradictory objections, which are at times presented simultaneously, fail to recognize the essential nature of restitution, which in fact does not just consist of making monetary payments, but is essentially concerned with giving both the offender and the victim an opportunity to come to terms with the offense in the manner described above. The argument that restitution is utopian, as the offender is not prepared to make amends and the victim unwilling to forgive, is also unfounded. Empirical research has shown that crime victims have a less punitive, often even a more conciliatory, attitude than non-victims.[35] Offenders can be more easily persuaded to accept and acknowledge burdens aimed at redressing the victim damages they have caused, than to endure cuts in their quality of life, cuts, the sense of which, for instance, in the case of fines and prison sentences, is of an abstract nature and thus difficult to appreciate. Finally, the argument that most offenders are incapable of making full payments is not convincing, because restitution is not concerned with full financial compensation but rather with the demonstration of the offender's reparatory will, for which symbolic restitution in the form of personal services or deeds and clarifying conversations are sufficient.

2. Arbitration and Mediation Procedure

This procedure, first proposed by the Law Reform Commission of Canada[36] and conceived as a pre-trial diversion procedure, involves the offender and victim coming face to face and attempting to resolve their conflict themselves in an informal procedure under the supervision and mediation of a judge and with the assistance of a district attorney, a defense lawyer and, in some cases, an expert. This procedure can only be made use of if there is not doubt as to the guilt of the offender and if all parties involved have given their consent to it. This arbitration and mediation procedure, which concludes with an award or settlement binding on all parties, has been recommended, because it strengthens the informal control by training conflict resolution among those involved themselves, supported by the criminal justice system. Such a procedure has been proposed for various categories of offenses, which have in common the fact that they cannot be effectively controlled by the formal criminal procedure. It is therefore imperative to provide not only for basic provisions but also for special procedural norms for particular categories of offenses when implementing the regulations for conducting this procedure.

Offenses such as spouse and child abuse, marital rape, and the sexual abuse of children, i.e. offenses involving persons in immediate social contact, are so seldom reported for a number of reasons: The victims are dependent on the offender, they want or have to show consideration for the offender, the offender will be extremely stigmatized as a result of the criminal proceedings, and a trial ending in a conviction usually results in the family's dissolution. In view of the fact that the victim can suffer severe psychological damage, which can produce a criminogenic effect, it is unacceptable to socially suppress such offenses in the community by simply ignoring them. The arbitration and mediation procedure lends itself here, as it is designed to restore interpersonal relationships and concludes with an award or settlement which provides for the control of the criminal conflict by social workers who offer guidance to, and monitor developments among, family members and among persons in immediate social contact.[37] In the Netherlands another course has been taken to control child abuse:[38] Social workers involved within the framework of a

system of medical referees have been successful in their attempts to treat abused children. In Israel they have adopted yet another approach for controlling sexual abuse of children:[39] Young victims of sexual abuse are questioned in their accustomed environment by youth interrogation officers who then appear as substitute witnesses for the children before the court. Both these methods are inferior to the arbitration and mediation procedure from a constitutional standpoint, as the medical referees are active outside the criminal justice system and the youth interrogation officers cannot provide direct evidence.

So-called petty offenses, such as shoplifting, theft from cars, bicycle theft and light property damage (vandalism) often remain in the dark field of unreported and undetected crime. Attempts to control petty crime in the Federal Republic of Germany by means of punishment orders* or by having the district attorney suspend criminal proceedings —with or without conditions—on the grounds of insignificance have been largely unsuccessful. These approaches are designed to prevent petty crime from becoming the first step on the road to juvenile delinquency as a result of its stigmatizing effect. This termination practice has been criticized on the grounds that it violates the principle according to which prosecution of an offense is mandatory for the district attorney (*Legalitätsprinzip*), that the attorney's office exercises judicial power, and that rather than having a general or specific preventive effect it has a negative influence on the population's sense of justice and can give rise to vigilantism.[40] Such petty crime can also be controlled better by way of an arbitration and mediation procedure, as it takes the above mentioned objections into account, and does not brand the offender. It does, however, leave petty crime within the jurisdiction of criminal law and contributes to the development of norm consciousness.

Finally, the arbitration and mediation procedure can be applied to corporate and environmental crime when committed by companies whose offenses cause damage to a large number of crime victims (victim dilution), as formal criminal procedure is too slow, too time-consuming and too inflexible for the sanctioning of such offenses. In the case of corporate crime the offense and the offender, namely the company, are easily identified. What is difficult to identify is the individual criminal liability within the company. Punishing corporate executives who have committed economic and environmental crimes with fines and short-term prison sentences has no specific or general preventive effect. Therefore, it is much more effective to hold corporations themselves liable and to oblige them to undertake restitution.[41]Damage reparation is usually so expensive for corporate offenses that it alone serves as a deterrent. Establishing the individual liability of single offenders within a company is, in comparison, a blunt sword in the fight against environmental and economic crime committed at corporate level; the innumerable victims of such crimes do not benefit at all from it.

3. Offender-Victim Restitution Projects

The criminal justice system represents only one—albeit important—area of social control. Formal criminal legislation and procedure can have a negative effect on offenders and victims (labeling). In order to avoid these disadvantages, attempts are being made in many countries to deal with criminal conflicts outside the criminal justice system (diversion) and with the aid of voluntary officers, since juvenile delinquency and adult criminality manifest themselves increasingly the further the offender becomes entangled in the net of the criminal justice system. Originating in North America,[42] the informal diversion procedure has been wide-

* *Strafbefehl*: order imposing punishment (fine or imprisonment up to three months) issued by the *Amtsrichter* (municipal judge) at the request of the district attorney without previous trial.

ly adopted in the practice of criminal justice relating to juvenile offenders in the Federal Republic of Germany. It has also gained importance in the sanctioning of adult crime. Offender-victim restitution projects[43] are a from of diversion model experiments. The juvenile court support scheme attempts, for example, to mediate meetings between offenders and victims, allowing them to come together personally in a dignified manner and to reach an agreement concerning the restitution of damages, which often results in the suspension of criminal proceedings.[44] An example of this type of project is the Canadian offender-victim restitution experiment in Kitchener (Ontario):[45] Juvenile burglars on probation meet their burglary victims under the mediation and supervision of probation officers who proceed with sensitivity and psychological skill. By bringing offenders and victims together, not just for one meeting but for several meetings in an extended process, the offender realizes the full extent of the material, social and psychological damage he has caused. No longer is his victim an abstract person, fading in his memory. He can no longer suppress and rationalize his offense. Having met his offender, the victim has "humanized" his offender image. The offender is no longer an abstract "monster" for the victim, but a young man in tangible form with problems shared by many young people. Rather than being excused, the offender must be prepared to take full responsibility for his offense and to make material restitution. Criminological research accompanying restitution experiments with juvenile offenders in the United States has been very successful.[46]

4. Restitution in Correctional Institutions

The Code of Corrections (*Strafvollzugsgesetz*[47]) in the Federal Republic of Germany has almost completely excluded the victim perspective. The belief was that the prisoners' socialization deficits can be remedied by subjecting them to offender-oriented treatment, obviously without realizing that the development of a sense of justice on the part of the offender and the general population depends on the prisoner coming to terms with his offense intellectually and emotionally. It has become clear from many interviews with prison inmates in Germany and abroad that they know next to nothing about their victims and that they consider the retribution for their offense as completed following their term of imprisonment. Their recollection of the offense had faded over time.

Prison inmates in correctional institutions must not be subject to personal degradation in the guise of "guilt compensation" or "penitence," such degradation being internalized and weakening the already reduced feeling of one's own value, and leading to the hardening of the criminal self-conception. They must rather learn normative acceptable behavior, attitudes and roles. Such treatment can only be successful in the sense of the formation of an internalized sense of justice, if the reasons for the necessity of abiding by the norms are made clear to the prisoner and if he faces his offense and the victimization of his victim honestly and self-critically. By gaining an insight into the consequences of the offense perpetrated on his victim, the offender learns how to come to terms with the offender-victim conflict and to deal with it emotionally. The sensitization of the prisoner to the damages suffered by the victim resulting from his action must not, however, be confused with a return to retaliatory correctional forms.

Prospective meetings between prisoners and their victims must be prepared as carefully and cautiously as possible in order not to be wrongly interpreted as a confrontational experience, as during criminal procedure.[48] The special situation of the victim, namely his psychological stress, must be taken into account. A face-to-face encounter between the victim and the offender is a highly delicate emotional experience for both. Extreme care must be exercised in this situation. The open correctional institution

Saxerriet-Salez in Switzerland has been running an offender-victim restitution program for years.[49] Of course, face-to-face encounters between both parties are not always necessary for successful offender-victim restitution. In order for prisoners to be able to affect material reparation, the long-term aim must be to pay them acceptable wages for their work, allowing them to organize their debts and make restitution payments in full. Yet, even full material restitution is not always and absolutely indispensable. Often the victim's only concern is that the prisoner demonstrates his good will. The immaterial reconciliation between offender and victim is more important and at the same time more difficult. Not every crime victim is prepared to engage in discussions or is capable of talking to the offender. In this case symbolic restitution, that is symbolic reconciliation, is acceptable and can be achieved, for example, not by having prisoners meet their own victims, but by letting them become acquainted with crime and its consequences from the standpoint of victims in prisoner discussion groups attended by crime victims willing to converse. By engaging in victim-oriented role plays within the framework of social training, offenders could also develop a lasting sensitivity for the concerns of crime victims.

5. Criminal Policy and Considerations of the Role of the Victim in Crime Causation

Offenses are committed in interpersonal processes in which the victim is by no means always inactive and passive. Two victimological concepts have given rise to current penological discussions concerning the evaluation of the role of the victim in crime causation:

—According to the concept of victim precipitation,[50] in numerous cases the victim is directly involved with the commission of the offense, that is, a "direct, positive accelerator of the crime." The victim facilitates the offense; he triggers off the offense; he precipitates the offense; he provokes the offense.

—According to the model of functional responsibility,[51] the offender and the victim are interactively and complementarily responsible for their behavior. Victims should prevent their own victimization. They must avoid victimolgenic situations in which they can easily be victimized.

On the basis of these two concepts, attempts have been made to draw the following criminal law conclusions:

—By using administrative orders and the threat of administrative and criminal penalties, potential victims are to be compelled to prevent their own victimization. In order to cut shoplifting opportunities to a minimum, it has been suggested, for instance, that potential victims, that is, retail and department stores, be obliged to organize their displays, sales areas and sales staff so that it is easy to monitor all activity, and to always keep at least a minimum number of sales and security personnel on duty.[52]

—Potential victims are, in particular cases, to assume the social control themselves. It has been proposed, for instance, that in the event of shoplifting with damages not exceeding DM 500 in value, the injured party can, in addition to regaining the stolen goods and receiving a restitutive monetary payment, demand a fine of not less than DM 50.[53] Formal social control exercised by police, district attorneys and courts shall be ruled out in such cases.

—The victim shall not be accorded criminal protection if he has failed to take appropriate protective measures himself.[54] Victim protection restriction, however, should not apply to offenses involving violence.[55]

Finally, in selecting the kind of penal sanction, or at the very least in setting its severity, the court should take the victim's culpability into ccount.[56] Only this final so-

lution to the problem of assessing the role of the victim in crime causation under criminal law deserves support.[57] Combating crime by punishing victims must be rejected.

Notes

1. "Remarks on the Interaction of Perpetrator and Victim," *Journal of Criminal Law, Criminology and Police Science,* 31 (1941), 303-309.
2. Hans von Hentig, *The Criminal and His Victim,* New Haven 1948, 384/5, 436.
3. Cf. the overviews in Hans Joachim Schneider, *Kriminologie,* Berlin-New York 1987, 203-207, 774-777; see also Konrad Schima, "Das Verbrechensopfer und seine Erforschung, "*Öffentliche Sicherheit,* 1 (1981), 36-42.
4. The criminal political relevance of victimology was recognized at a very early stage. Cf. Heinz Zipf, "Die Bedeutung der Viktimologie für die Strafrechtspflege," *Monatsschrift für Kriminologie und Strafrechtsreform,* 53 (1970), 1-13.
5. Hans Joachim Schneider, *Viktimologie,* Tubingen 1975, 147-154; Hans Joachim Schneider, *Das Opfer und sein Täter-Partner im Verbrechen,* Munich 1979, 103-107.
6. Joanna Shapland/Jon Willmore/Peter Duff, *Victims in the Criminal Justice System,* Aldershot-Brookfield 1985; Joanna Shapland, "Victims in the Criminal Justice System," Ezzat A. Fattah (ed.), *From Crime Policy to Victim Policy,* Houndsmill-London 1986, 210-17.
7. Marvin E. Wolfgang/Robert M. Figlio/Thorsten Sellin, *Delinquency in a Birth Cohort,* Chicago-London 1972; Marvin E. Wolfgang/Terence P. Thornberry/Robert M. Figlio, *From Boy to Man, from Delinquency to Crime,* Chicago-London 1987; Stuart J. Miller/Simon Dinitz/John P. Conrad, *Careers of the Violent. The Dangerous Offender and Criminal Justice,* Lexington-Toronto 1982; Donna Martin Hamparian/Richard Schuster/Simon Dinitz/John P. Conrad, *The Violent Few. A Study of Dangerous Juvenile Offenders,* Lexington-Toronto 1978.
8. Cf. the overviews in David P. Farrington, "Longitudinal Research on Crime and Delinquency," Norval Morris/Michael Tonry (eds.), *Crime and Justice,* Vol. 1, Chicago-London 1979, 289-348; David P. Farrington, "Longitudinal Analysis of Criminal Violence." Marvin E. Wolfgang/Neil Alan Weiner (eds), *Criminal Violence,* Beverly Hills-London-New Delhi 1982, 171-200.
9. Hans Joachim Schneider, *Kriminologie,* Berlin-New York 1987, 847.
10. Cf. overviews in Hans Joachim Schneider (supra, note 9), 801-803.
11. Reinhart Maurach/Heinz Zipf, *Strafrecht. Allgemeiner Teil,* half-vol. 1, 7th ed., Heidelberg 1987, 66; cf. also Walter Hauptmann, "Sozialpsychologische Aspekte der Generalprävention," *Österreichische Richterzeitung,* 55 (1977), 113-119.
12. Marshall B. Clinard, *Cities with Little Crime. The Case of Switzerland,* Cambridge-London-New York-Mel-bourne 1978; Freda Adler, *Nations not Obsessed with Crime,* Littleton/Colorado 1983.
13. Council of Europe, *Explanatory Report on the European Convention on the Compensation of Victims of Violent Crimes,* Strasbourg 1984.
14. Council of Europe, *The Position of the Victim in the Framework of Criminal Law and Procedure,* Strasbourg 1985.
15. United Nations, *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,* New York 1986, 43-48.
16. Koichi Miyazawa/Minoru Ohya (eds.), *Victimology in Comparative Perspective,* Tokyo 1986.
17. Zvonimir Paul Separovič (ed.), *Victimology. International Action and Study of Victims,* 2 Volumes, Zagreb 1988, 1989.
18. *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,* U.N. Document A/Res/40/34; cf. also M Cherif Bassiouni (ed.), International Protection of Victims, Syracuse 1988, and LeRoy Lamborn, "The United Nations Declaration on Victims: Incorporating 'Abuse of Power'," *Rutgers Law Journal,* 19 (1987), 59-95.
19. *Victim and Witness Protection Act,* Public Law 97-291.
20. LeRoy Lamborn, "The Impact of Victimology on the Criminal Law in the United States," *Canadian Community Law Journal,* 8 (1985), 23-43.
21. President's Task Force on Victims of Crime, *Final Report,* Washington, D.C. 1982.

22. "Attorney General's Guidelines for Victim and Witness Assistance," *The Criminal Law Reporter*, 33 (1983), 3329-3332.
23. Cf. U.S. Senate, *Report on the Committee on the Judiciary United States Senate to Accompany S 2420 to Protect Victims of Crime*, Washington D.C. 1982, Calendar no 769, 42-44.
24. *BGBl.* I, 2496-2500.
25. Deutscher Juristentag (ed.), *Verhandlungen*, vol. 2 (proceedings): "Die Rechtsstellung des Verletzten im Strafverfahren," Munich 1984.
26. Peter Rieß, *Die Rechtsstellung des Verletzten im Strafverfahren*, Munich 1984.
27. Cf., for example, Friedrich Geerds, "Die Rechtsstellung des Verletzten im Strafprozeß," *Juristenzeitung*, 1984, 786-795; Heinz Schöch, "Die Rechtsstellung des Verletzten im Strafverfahren," *Neue Zeitschrift für Strafrecht*, 4 (1984), 385-391; Thomas Weigned, "Viktimologische und kriminalpolitische Überlegungen zur Stellung des Verletzten im Strafverfahren," *Zeitschrift für die gesamte Strafrechtswissenschaft*, 1984, 761-793; cf. also Walter T. Haesler (ed.), *Viktimologie*, Grüsch 1986; Hans Joachim Schneider (ed.), *The Victim in International Perspective*, Berlin-New York 1982; Gerd Ferdinand Kirchhoff/Klaus Sessar (eds), *Das Verbrechensopfer*, Bochum 1979.
28. Louis Waller: Victims of Crime: Some Australian Developments. Hans Joachim Schenider (ed.): *The Victim in International Perspective*. Berlin-New York 1982, 279-297, particularly 287-293.
29. Peter Rieß 1984 (supra, note 26), C 108/109 (margin no 160); Thomas Weigand 1984 (supra, note 27), 784.
30. Hans Joachim Schneider 1987 (supra, note 3), 593.
31. Cf. also the objections raised by Bernd Schünemann, "Zur Stellung des Opfers im System der Strafrechtspflege," *Neue Zeitschrift für Strafrecht*, 6 (1986), 193-200, 439-443, particularly 198.
32. Reinhard Granderath, "Opferschutz-Totes Recht?" *Neue Zeitschrift für Strafrecht*, 4 (1984), 399-401.
33. Nils Christie, "Conflicts as Property," *British Journal of Criminology*, 17 (1977), 1-15.
34. Detlev Frehsee, *Schadenswiedergutmachung als Instrument der Sozialkontrolle*, Berlin 1987, 129.
35. Cf., for example, Bernd Villmow, "Die Einstellung des Opfers zu Tat und Täter," Gerd Ferdinand Kirchhoff/Klaus Sessar (eds), *Das Verbrechensopfer*, Bochum 1979, 199-218.
36. Law Reform Commission of Canada, *Diversion*, Ottawa 1975.
37. Ursula Schneider, *Körperliche Gewaltanwendung in der Familie*, Berlin 1987.
38. Jack E. Doek, "Child Abuse in the Netherlands: The Medical Referee," *Chicago Kent Law Review*, 54 (1978), 785-826.
39. David Reifen, *The Juvenile Court in a Changing Society*, London-Jerusalem 1973, 72-81.
40. Hans Joachim Hirsch, "Zur Behandlung der Bagatellkriminalität in der Bundesrepublik Deutschland," *Zeitschrift für die gesamte Strafrechtswissenschaft*, 92 (1980), 218-254.
41. John Braithwaite, *Corporate Crime in the Pharmaceutical Industry*, London-Boston-Melbourne-Henley 1984, 292, 318, 380; cf. also Marshall B. Clinard, *Corporate Crime*, New York-London 1980.
42. Cf. the description in Hans Joachim Schneider, *Jugendkriminalität im Sozialprozeß*, Göttingen 1974.
43. Cf. the overview in Edwin Kube, "Täter-Opfer-Ausgleich," *Deutsche Richterzeitung*, 64 (1986), 121-128.
44. Cf. (for Austria) Udo Jesionek, "Jugendgerichtsbarkeit in Österreich," Hans-Jürgen Kerner/Burt Galaway/Helmut Janssen (eds.), *Jugendgerichtsbarkeit in Europa und Nordamerika*, Munich 1986, 434-441.
45. Mark D. Yantzi, "Das Täter-Opfer-Aussöhnungsprojekt in Kitchener (Ontario), Kanada," Helmut Janssen/Hans-Jürgen Kerner (eds.), *Verbrechensopfer, Sozialarbeit und Justiz*, Bonn 1985, 329-343.
46. Anne L. Schneider, "Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies," *Criminology*, 24 (1986), 533-552.
47. "Gesetz über den Vollzug der Freiheitsstrafe und der freiheitsentziehenden Maßregeln der Besserung und Sicherung vom 16. März 1976," *BGBl.* I. 581-612.
48. Rüdiger Wulf, "Opferbezogene Vollzugsgestaltung -Grundzüge eines Behandlungsansatzes," *Zeitschrift für Strafvollzug und Straffälligenhilfe*, 34 (1985), 67-77.

49. Paul Brenzikofer, "Bemühungen um Opfer von Verbrechen in der Schweiz," Hans Joachim Schneider (ed.), *Das Verbrechensopfer in der Strafrechtspflege*, Berlin-New York 1982, 367-373.
50. Marvin E. Wolfgang, *Patterns in Criminal Homicide*, New York 1958, 245-252.
51. Stephen Schafer, *Victimology: the Victim and his Criminal*, Reston/Virginia 1977, 160/161.
52. Armin Schoreit, "Der im Zusammenhang mit dem Alternativentwurf eines Strafgesetzbuches vorgelegte Entwurf eines Gesetzes gegen Ladendiebstahl im Lichte der Kriminalstatistik 1974 und moderner Opferforschung," Juristenzeitung, 1976, 49-59, particularly 53.
53. Gunther Arzt/Albin Eser/Gerald Grünwald/Armin Kaufmann/Ernst-Joachim Lampe/Theodor Lenckner/Peter Noll/Wolfgang Schöne/Walter Stree/ Klaus Tiedemann, *Entwurf eines Gesetzes gegen Ladendiebstahl*, Tübingen 1974.
54. Bernd Schünemann 1986 (supra, note 31), 439-443.
55. Bernd Schünemann 1986 (supra, note 31), 442.
56. Thomas Hillenkamp, "The Influence of Victim Behaviour on the Dogmatic Judgement of the Offence—Some Remarks on the Relationship between Victimology and the Dogmatics of Penal Law," Koichi Miyazawa/Minoru Ohya (eds.), *Victimology in Comparative Perspective*, Tokyo 1986, 111-124.
57. Udo Ebert, "Verbrechensbekämpfung durch Opferbestrafung?" *Juristenzeitung*, 38 (1983), 633-643.

Victims' Rights in European Penal Procedure Laws

*by Hans Heiner Kühne**

After its scientific adoption by Mendelsohn and v. Hentig the general victimology actually started with a 50-year delay, but then, however, rapidly led to many world-wide successes. In the meantime, the criminological paradigm has been changed from the offender-oriented to a victim-oriented view. The victim has now achieved adequate scientific attention. Comparatively new in the victimological discussion, however, is the problem of victimization by procedure. Up to now the victim with his or her damages caused by the offense has been the focus of discussion. The visible results of violent offenses like rape, robbery, and bodily injury made the necessity of additional help evident. Victimology always has been trying to compensate this deficiency.

On the other hand, the so-called secondary victimization by procedural law is less sensational, occurs much more hidden, and moreover effects totally different objects of legal protection. While primary victimization is characterized as violation of the objects of legal protection described in criminal statutes, victimization by procedure relates to things hard to comprehend, like human dignity, psychology of fear and realization of satisfactionary needs. It is not a question of violation of law, but of the withholding of positions which might be legal positions. This is difficult because there is a lack of description and verification in law and in fact, pertaining to the withheld positions. Which procedural duties of participation for example can be expected of the victim? Which rights to participate should be granted in order to enable the criminal procedure to fulfill its appeasement-function not just by convicting the offender but above all by compensating and satisfying the victim?

In the Western tradition, procedural rules are focused on the clarification of circumstances (facts). Only passing reference is made to victims' interests. Criminal procedure has been monopolized governmentally to avoid endless reciprocal acts of revenge, and to protect those victims being too weak for revenge or for asking for indemnification. The substitutional activities of justice in Europe have thereby for centuries being assumed to sufficiently guarantee the victims' rights. With the beginning 80's of our century we started asking if this assumption was true.

In the Federal Republic of Germany the discussion started with the paper of Jung[1] on the Criminal Law Teachers' Convention in 1981. In 1983 the parliamentary group of the Social Democratic Party already introduced a "Bill for a Better Protection of Sexual Assault Victims" into the Federal Parliament. In 1984 the 55th German Jurists Convention in Hamburg discussed the legal status of victims in the criminal procedure, in May 1985 the Federal Attorney General (Minister of Justice) presented the "Outline of a First Statute Pertaining to the Victims' Rights in Criminal Procedure," in 1986 (on January 31st) the chancellor of the Federal Republic of Germany sent a draft of a new law concerning the "Improvement of the Victims' Position in the Criminal Procedure" to the President of the Federal Council which was confronted by a bill from July 1985 about the same subject submitted by the parliamentary group of the Social Democrat-

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ic Party. On April 1st 1987 the so-called "Victims of Crime Protection Act" (Opferschutzgesetz) was finally put into effect.

Besides the generally advancing perception of victimological concerns, the rapidity of this development can be explained by the fact that an increasing alienation of justice and population has been noticed as well as criticized in the Federal Republic. The claims of procedural victimology met with the new political idea of the need for a more popular administration of public power. The criminal procedure by politicians was looked upon as an easy field to demonstrate good will so far.

To that extent procedural victimology mainly expresses a common problem of modern technocratic societies. In the conception of a participatory democracy—contrary to the just representative one—expertism and professionalism are facing suspicion. There is an increasing request for controlling the mainly governmental experts by participation of the affected citizens.[2] This socio-political dimension of procedural victimology cannot be discussed here but had to be mentioned because of its importance for the acceptance of procedural victimology in Germany.

An other aspect of avoiding secondary victimization of crime victims, the compensation of damages, has for a long time been handled as a mere problem of civil proceedings. The victim could assert his or her damages like any other civil action at a civil court. Not until later was it realized that this usually was not helpful. Because of the offender's lack of assets the title mostly could not be enforced. Victims did not obtain compensation and additionally had to pay for the costs of litigation. Victim compensation acts or schemes—effective in the FRG since 1976—are trying to help. The government pays for damages caused by criminal offenses and hereby helps the victim to avoid a risky claim. In the following, these two aspects of victim's rights shall be represented in the context of the central European criminal procedures, which are in alphabetical order: Austria, Federal Republic of Germany, France, Great Britain, Italy, Spain and Switzerland (only the cantons of Bern, Zürich and Solothurn).[3]

The following positions of victims in a criminal procedure are conceivable:

Victim's Rights
(Rights to obtain information)
1. Information about course of procedure, hearings and last decisions of an instance
2. Right to inspect files
3. Right to be present and participate in the proceedings.
4. Right of interrogation

(Rights to initiate)
5. Right to apply
6. Right to summon
7. Right to prosecute
   a) dispositively
   b) exclusively
8. Right to discontinue the prosecution
9. Right to appeal

Victims' Duties
10. Duty to be present (going beyond witnesses duties)
11. Toleration of public in court
12. Duty to testify as a witness

Victims' Protection Rights
13. Right to have an adviser
14. Release from costs
15. (Partial) exclusion of the public
16. Limitation of public media reports regarding the procedure
17. Privilege from testifying
18. Protection against content and manner of questions
19. Right to pursue compensation in the criminal procedure
20. Priority and security pertaining crime caused claims for damages
21. Compensation by government, respectively, by the sources of public authority.

Only some of the above mentioned items need a short explanation. The right to prosecute (figure 7) means all initiative competences placing the victim on an equal level with the public prosecutor, like the German "Privatklage" (private prosecution), "Nebenklage" (victim as joint plaintiff) and the "Strafantragsrecht," which is the formal demand of an injured party as a presupposition for the prosecution of the offender. The right to discontinue the prosection (figure 8) can be explained as the victim's right to finally deadlock the prosecution without the help of the public prosecutor or the court, like in Spain, where the victim can interrupt proceedings by condonating the offender at any time before final judgment. This could also be called negative right of prosecution.

Figure 14, release from costs, is crucial for the realization of victims' rights. Asking for costs—e.g. general procedural costs, costs for legal adviser, costs for summoning witnesses—would mean to put another burden onto the victim. If the victim is poor, the demand for costs leads to a de facto denial of participatory rights.

Figure 20 points out the victim's privilege of his or her civil claims to those of the state (costs of the proceedings, utilization of confiscated objects and values) thus improving his or her chances for getting a payment or compensation by the offender.

The above listed items only represent a crude outline of classified characteristics. Each individual position is imaginable within a great number of different variations which actually can be discovered in the legal systems of the mentioned European countries. Those offenses, for example, which guarantee Strafantragsrecht, this is exclusive initiating rights to the victim, are different from country to country (rape, bodily injury, sexual assault, libel) and there are also differences as to the preconditions of being privileged from testifying and of excluding the public. The right to claim damages in the criminal procedure (adhesive procedure) remains absolutely theoretical in the FRG whereas the statutes guarantee practical relevance in other codes of criminal procedure, such as France and Spain. The examples could be multiplied. A synoptical and for that reason necessarily shortened presentation will be given at the end of this lecture. The following discussion of some central regulations shall be reserved for general considerations which will then refer to detailed problems of the countries.

With the "initiating victims' rights," which start the procedure and guarantee participation during the preliminary investigations, it is evident, that especially Italy and Spain are, more than Germany, integrating exclusive victims' rights to improve victims' protection. Not the principle of reducing the caseload but the protection of victims' privacy from unwanted acts of public prosecution is the reason for granting the right to exclusively initiate the criminal procedure. A broad spectrum of sexual assault delinquency or delinquency typically originating from social relationships cannot be prosecuted against the victims' will. On the other hand, the potential danger of offenders making further reprisals against the victim seems to be assessed to a lower extent in these countries in comparison to German law. Either way is imperfect and dangerous. The victim given the right to decide on public prosecution is well off in case he/she prefers the case not being prosecuted. The stress of a troublesome hearing as witness, and danger to privacy by public proceedings can be avoided. Yet this privilege turns to become a burden as it might incite the perpetrator to threaten the victim or to manipulate his/her decision in favor of the perpetrator. There is no in-between method which demonstrates that granting procedural rights to victims of crime must not necessarily be helpful to the victim.

The procedural laws of Austria, Switzerland and France are giving much more participatory rights to the victim during the preliminary examinations. In France this is a necessary consequence of the "action

civile," which from the beginning procedurally integrates the victim as a plaintiff for his or her damages—a solution, which is not adoptable to the German criminal procedure without broad changes of its structure. On the other hand, Austria and Switzerland with their more comparable procedural laws are showing, that a stronger integration of the victim during the preliminary examinations is quite possible.

Considering to what extent the preliminary examinations usually are already determining the evidence related parts of the proceedings[4]—often without being correctable in trial—it seems useful to strengthen the victim's position by ceding participatory rights during this early course of procedure. But as the same is current for the defendant, an extension of these rights of victims must run parallel with the corresponding disposition over the defendant's rights.

This turns our attention to another crucial problem of procedural victimology. Improving victims' rights must not lead to a deterioration of defense rights. The philosophy of enlightenment finally helped the creation of penal proceedings reigned by the idea of fair trial in Europe. The assumption of innocence made the accused a subject with its own rights instead of a mere object of interrogation and condemnation. All achievements which make criminal procedure fair, which embody the rule of the law, are results of the standpoint looking upon the accused as an innocent person until he/she definitely is found guilty by a court's decision.

It would be dreadful if the idea of procedural victimology endangered these basic rights having being accomplished in a more than 100 years struggle of European history. That is why every proposition of granting victims new procedural rights has to be checked thoroughly as to its consequences for the defendant's rights. If a new victim's right has such a negative influence, there remain two possibilities. Either the defendant's position is compensated accordingly or it should be forgotten. A good example can be found in the German Victims of Crime Protection Act. There the victim is granted a lawyer in any position of the proceedings. This made it evident that a defendant without the help of an advocate facing the prosecutor and the victim assisted by a lawyer would fall back to a position of a rather helpless object of proceedings. To avoid this the German Victims of Crime Protection Act made a defence council imperative as soon as the victim used his/her right to have a legal adviser.

Finally it should be mentioned that the increased liability to pay for the costs, caused by the more intensive participation (as especially provided in the procedural statutes of Switzerland) may privilege or discriminate certain social groups. Especially in times when social problems are reflected in a law-related way it is legitimate to combine a right to proceed with a financial risk in order to guarantee the individual's careful consideration before exercising his or her right. However, this must not lead to a de facto denial of rights. Certainly the legal aid statutes of European procedural laws protect the most indigent people. However, those who are well to do but not rich, like the upper lower class and the lower middle class, are seriously concerned by costs caused by the procedural participation.

Victim's participation in trial is extensively guaranteed in the procedural codes of the Romanic countries and even comes close to a trial pursued by parties in spite of the general principle of public prosecution. It is interesting that the victim's role of being quasi-party in the procedure in France, Italy and spain is shaped more effectively as it is the case in the English pattern of a real party-trial.

Yet, it as well has to be mentioned that the Romanic countries are reducing the procedural rights of victims as soon as serious crimes are prosecuted. To that extent the German situation before the "Victims of Crime Protection Act" was similar, where private prosecution (Privatklage) accessory

prosecution of the injured party (Nebenklage) were limited to petty offences.

As far as the victim's part as a witness is concerned, victims' rights are comparable in the procedural codes of the countries mentioned above. They resemble the German standard, reminding the judge to be cautious and to treat the witness/victim well—as far as the search for truth may allow this. It is evident that this conflict between victims' protection and truth-finding has not yet been solved by strict and non-ambiguous regulations. In any rape case, for example, all over the world this problem reveals ardent relevance. Examining whether the alleged victim did agree to the sexual intercourse, necessarily comes down to victimizing questions.[5] The way of asking may be held in a proper tone by control of the court. Yet the girl remains offended by being distrusted and regarded as a potential liar, and an indecent, lewd person.

The English statutory regulations regarding the limitation of media about presence in trial have been adopted to the German law in a similar way. Moreover the German law has found formulations not only to enable the court to exclude the public but giving the victim (and other procedural participants) the right to make the court exclude the public as soon as privacy or secret information (mostly related to business activities) are touched. The use of information from public proceedings is generally unlimited in German law, however. Only civil law provides a bit of protection. Infringements of personality's rights give reason for damage claims (immaterial damages). Though German media normally are reluctant in publishing names of accused and related persons, there should be a legal regulation of these problems.

Whereas the German "Victims of Crime Compensation Act" provides compensation in a similar or even better way than other European countries, there are comparably bad conditions to claim further damages from the offender. The latter is not at all without relevance in comparison with the former. Wide areas of possible damages (damages for pain and suffering, immaterial damages) are excluded from governmental compensation, because the "Victims of Crime Compensation Act" is limiting damages to bodily and economical injuries caused by an unlawful assault against the person. Furthermore the Victims of Crime Compensation Act contains reasons for refusal which are unknown in a civil proceeding. That is why in spite of the "Victims of Crime Compensation Act," there is a significant need for support of victims in asserting their claims.

Whereas the German "Adhäsionsverfahren" (pursuing of a damage claim in a criminal procedure, adhesive procedure) does not have the intended practical relevance—it does not work at all[6]—the French "action civile" is much more effective. It replaces what has only been codified in an unsatisfying way by the German Privatklage (private prosecution), Nebenklage (joint prosecution) and Adhäsionsverfahren (adhesive procedure).

Although there are certain differences between the French and German criminal procedural codes, a historically conditioned structural similarity can be pointed out. Furthermore many actual deviations of the French law are those, which up to the newest history were in the same or in a similar manner parts of the German criminal procedural law. The French investigating judge, for example, whose function is mostly comparable to the German judge for preliminary investigations, or the jury system at the cour d'assises and the German "Schwurgericht" which existed until 1974, are examples. Of course the modern German criminal procedure does not know the juror whose competence is limited to the verdict of guilty or not guilty. Nevertheless especially the "action civile" points out how different procedural rules can be worked out in spite of general identity. There is no need for a direct taking over of the "action civile," having grown and being tested in France for a long time.

But it is instructive to realize that this kind of extensive integration of victims into the criminal procedure in order to improve their chances to obtain damages from the offender, is obviously working in a legal system which is closely related to our German law. As this can also be assumed for the other two Romanic procedural codes, this should cause the legislator to think about improvements.

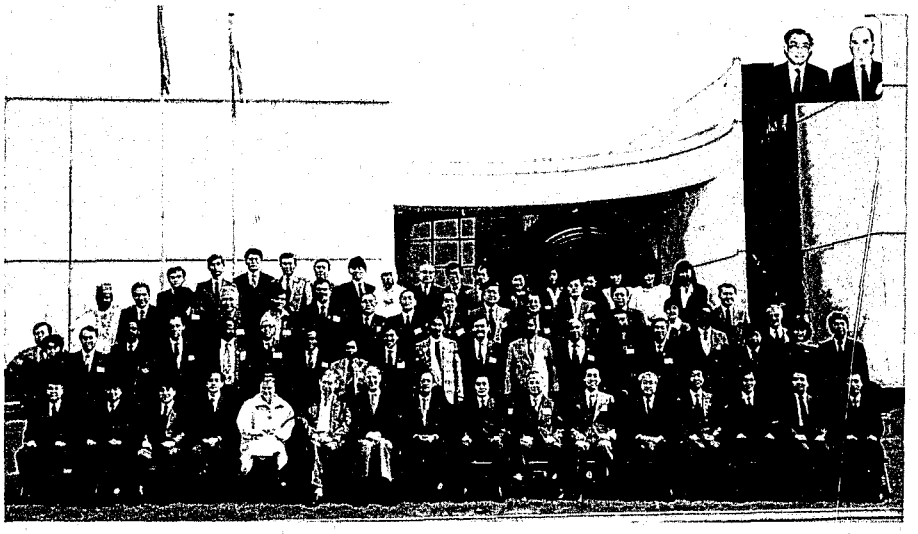
As a result of the comparing view it can be stated that the consideration of victims' rights is not at all a new paradigm. Especially the Romanic procedural codes have known things for a long time which have been raised as new demands in the German victimological discussion. The procedural laws of Austria and Switzerland are also containing many of these allegedly new demands.

Taking all this for granted we get the impression that procedural protection of victims' rights has been dispersed in European procedure codes. Taking all of these items—notwithstanding the different kind of legal systems—the victim's position is highly satisfactory. It seems to me that a lacking concentration on the victims' interests made European procedure laws forget the whole core of victim directed safeguards, once upon a time known all over Europe. The new victimological discussion could lead to a revival of old ideas, newly made up to the situation of modern times.

Notes

1. Jung, ZStW 1981, p. 1157
2. The discussion on whether or not lay judges are helpful in penal proceedings is reigned by the same problems, see: Kühne, ZRP 1985, p. 237.
3. For more details see Kühne (editor): Opferrechte im Strafprozeß. Ein europäischer Vergleich, 1988, passim.
4. Weihrauch, Die Verteidigung im Ermittlungsverfahren, 1989, p. 2.
5. Kühne/Ammer, Kriminologie der Notzucht, in: JuS 1986, p. 388 (390 ff.)
6. Empirical data: Kühne, Monatsschrift für Kriminologie, 1986, p. 98.

The 81st International Seminar
(UNAFEI, Feb. 6—Mar. 11, 1989)



On Top: Yu (Visiting Expert), Wood (Visiting Expert)

4th Row: Kanai (Staff), Tsumura (Staff), Echizen (Staff), Tsuruta (Staff), Takashima (Staff), Ohashi (Staff), Asano (Chief Cook), Tokuda (Staff), M. Satoh (Staff), Kai (Staff), T. Saitoh (Staff), Shimizu (Staff), Iwasaki (Coordinator), M. Nakamura (Coordinator), N. Watanabe (Staff), N. Nishimura (Coordinator)

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2nd Row: Manba (JICA Coordinator), Nitisiri (Thailand), Whittaker (Barbados), Torres Romero (Paraguay), Mbinda (Kenya), Shrestha (Nepal), Perera (Sri Lanka), Hartoko (Indonesia), Talhata (Malaysia), Gawied (Saudi Arabia), Pang (Hong Kong), Sirker (Bangladesh), Jayasuriya (Sri Lanka), Susanta (Indonesia), Lu (China), Yacowb (Sudan), Dacanay (Philippines), Burge (Linguistic Advisor), Uchida (Staff)

Seated: Nishikawa (Faculty), I. Nishimura (Faculty), S. Satoh (Faculty), N. Nishimura (Faculty), Mrs. Kirschner, Kirschner (Visiting Expert), Tak (Visiting Expert), Dharmadasa (Visiting Expert), Utsuro (Director), Campos (Visiting Expert), Sugihara (Visiting Expert), Horiuchi (Deputy Director), Yamaguchi (Faculty), Yabe (Chief of Secretariat), Shionoya (Faculty), F. Saitoh (Faculty)

The 82nd International Training Course (UNAFEI, Apr. 17—Jul. 6, 1989)

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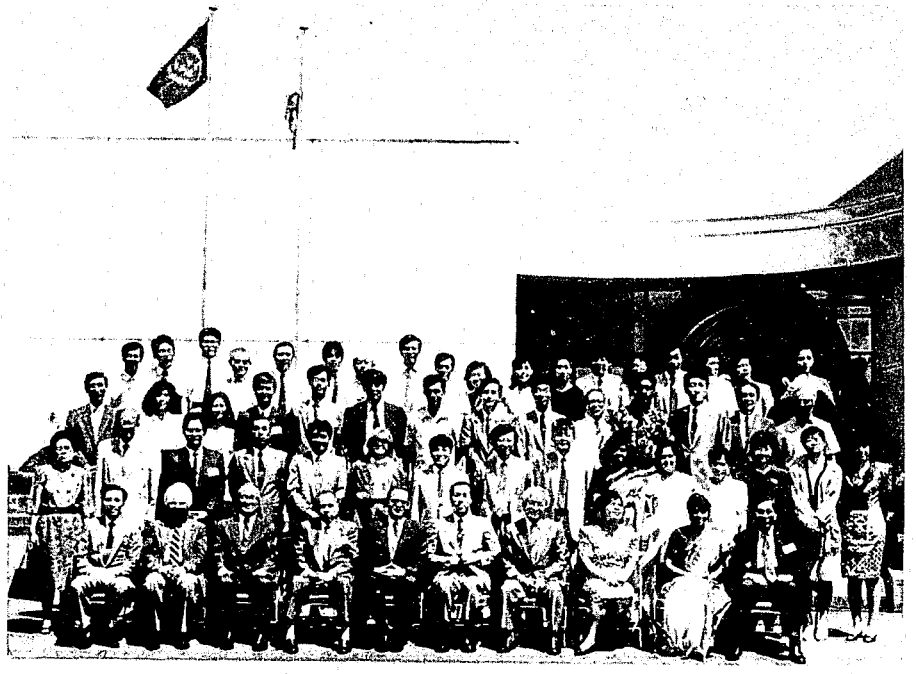
Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region (Aug. 3—10, 1989)



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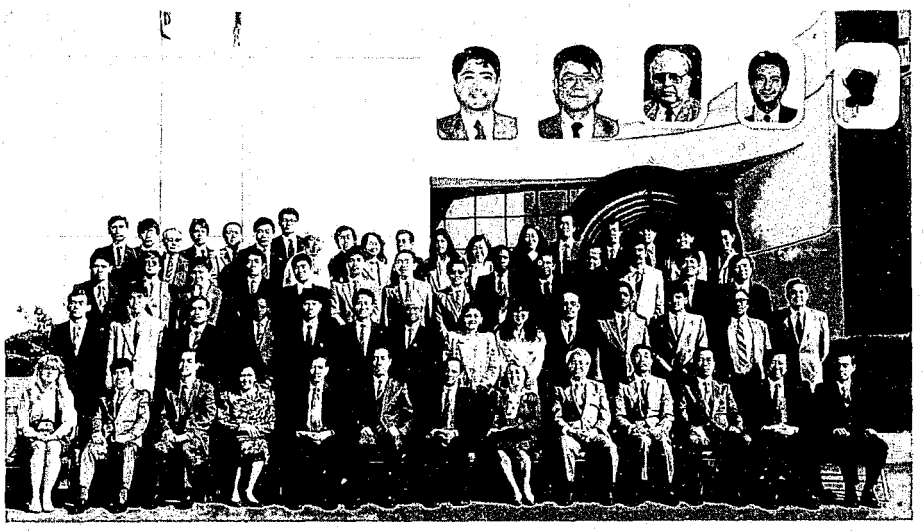
Seated: Saitoh (Faculty), Singh (India), Inuzuka (ESCAP), Cheah (ESCAP), Van Roy (ESCAP), Sugihara (Director), Horiuchi (Deputy Director), De Leon (Philippines), Perera (Sri Lanka), Abu Bakar (Malaysia)

The 83rd International Training Course
(UNAFEI, Sep. 4—Nov. 24, 1989)



On Top: I. Nishimura (Faculty), Nishikawa (Faculty), Schneider (Visiting Expert), Zvekic (Visiting Expert), Shiddo (Visiting Expert)

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Seated: Fix (Linguistic Advisor), S. Sato (Faculty), N. Nishimura (Faculty), Mrs. Soetjipto, Mr. Soetjipto (Visiting Expert), Sugihara (Director), Mukherjee (Visiting Expert), Tsitsoura (Visiting Expert), Horiuchi (Deputy Director), Yamaguchi (Faculty), Nagano (Chief of Secretariat), Nagashima (Faculty), F. Saito (Faculty)