

STATEMENT BY THE BRAZILIAN DELEGATION

Vienna, 13th of April 2000

Mr. Chairman,

Allow me, at the outset, to congratulate you on your election to preside over this meeting. Under your able guidance, the Brazilian delegation is certain that our task in this Congress will be successfully carried out.

Distinguished delegates, ladies and gentlemen,

The beginning of this millennium underlines two facts, regarding the treatment given to crime and the delinquent, that we admit and proclaim openly - the relentless failure of prison sentencing to respond to criminality and our incapacity to create an efficient treatment for violently dangerous criminals.

We are presently surrounded by an ever-growing number of acts of violence and terrorism¹, or related to the illegal trafficking in firearms², which demand, besides effective prevention and investigation, a response that is able to protect society from its effects.

Besides that, the world is nowadays also concerned with the need to criminalize conducts, such as computer related crimes. These offences very often involve misoriented youngsters who cause harm to third parties without necessarily being propelled by greed or violence. Therefor their segregation would be of no social avail.

This situation requires us to tread on a very narrow path, which can lead on the one hand to impunity and on the other to the demagogical and disruptive use of Penal Law.

We would like to assert that Penal Law shall only be resorted to when all others have proven insufficient to the solution of social disadjustment. Apart from that, it is urgent that prison should not be seen as a compulsory component of it.

We must shout out loud that jail, the king of punishments of the last century, is now unveiled. We will not, in this speech, make a detailed inventory of the evils entailed by this punishment. These are so great that if added to its social inefficiency and consequent uselessness they become to those sentenced a *cruel and degrading punishment*, disavowed by all³. It is cruel because it deprives the human being of the physical freedom that distinguishes man from animals. It is degrading because it submits him to suffering and humiliation without the remotest trace of social benefit. In truth, if the efficacy of a

¹ Draft declaration para 17

² Draft declaration para 14

³ Universal Declaration fo Human Rights, article 5

punishment can be measured by the rate of recidivism, imprisonment is disastrous. For this reason it should be used sparingly, only when social safety requires it.

Brazil is an unjust country, lacking resources to build more schools and hospitals; therefore our prisons are neither exemplary nor sufficient. This does not allow us to accept the idea that the fiasco of imprisonment as an institution of crime prevention or social reinsertion of criminals, is a typical phenomenon of developing countries due to the lack of appropriate investment and management. For this reason we refer all those interested in the "forensic examination" of prisons, to authors such as ELLIOT CURRIE⁴ and Judge LOIS G. FORER⁵, whose studies on the penitentiary system of rich countries are strong admonitions against prisons.

The international debate about criminality cannot, under any circumstance; focus on the need to criminalize conducts and cooperate towards repression without taking into account the social and economic environment which led to crime, poverty being the key one. The first and foremost modality of international cooperation against crime is the cooperation through which developed countries will help developing countries in social investments of the struggle against poverty and violence. This will be much more effective than the indiscriminate creation of imprisonment reasons, unfounded in terms of their true implementation and - worst of all - an entity that has not been historically performed a satisfactory activity.

As we have in Brazil a large number of robberies, rapes, and other crimes for which humanity has not discovered an acceptable alternative to prisons, we cannot but support any idea to reform the prison system⁶. It is imperative, however, to avoid the decisive fight to separate Penal Law and imprisonment in two parts:

- a) on one hand, restrictions to physical liberty without resorting to prison. Attempts in this sense as those well described by DAVID C. ANDERSON in "*Sensible Justice: alternatives to prison*"⁷ become frightening, partly due to the use of electronic technology in the physical monitoring of the sentenced. But, since they eliminate evils inherent to the prison system, they should be known and debated.
- b) On the other hand alternative sentencing of whatever kind, non-restrictive of physical freedom. These would include, inter alia, monetary sanctions, and more importantly compensation to victims, rendering services to the community or the temporary suspension of rights.

The Government of Brazil strongly supports the inclusion, in the Final Declaration of the Congress, of the clause that stipulates full international cooperation regarding repression of crime (as well as every repression of crime within the boundaries of each State) as long as it *respects human rights and fundamental freedoms*⁸. These rights and freedoms pertain to all

⁴ Metropolitan Books Henry Holt and Co. New York 1998

⁵ W.W. Norton and Co. New York, London 1994

⁶ Draft Declaration, para 20

⁷ The New Press, New York, 1998

⁸ *Draft Declaration*, para 2

men, as we are all "born free and equal in dignity and rights"⁹. Those committing penal violations do not loose them, neither do we- who perform investigations or international cooperation in the repression of criminality.

If crime- especially organized crime - which we attempt to repress internationally - is the oppressor of communities because of its burden of violence and illegality, we cannot admit that the law dedicated to repression becomes oppressive in turn. We can equally not confer this power to criminals, as few as they might be. They cannot harass us, the others, the honest ones, restricting our rights and freedoms in our strive to investigate, combat and cooperate in the repression of delinquency.

In the twenty-first century we certainly do not want to live as if we were in Orwell's 1984. We do not want telescreens, telephone taps, cameras, monitoring, controls on all of us; we do not want to be questioned, searched, have our privacy invaded by Authorities without them having a perfectly sound reason for it.

Brazil, through the Ministry of Justice in close cooperation with other Federal Government bodies, has been undertaking efforts to implement significant reforms, in order to put into practice the above mentioned principles. Those reforms include, *inter alia*, the modernization of the Penal Law Code, which entered into force in 1940, the Penal Execution Law and the Penal Procedure Code. Several bills have already been sent to the Congress, such as: criminalizing of organized crime; prohibition of trading and use of guns by private citizens; expropriation involved in any matter related to drug dealing (examples). As far as the prison system is concerned, major changes have been made: construction of smaller Penitentiaries (in accordance with the rules of Tokyo - UN Minimum Standards for Prisons), stronger incentives to the application of alternative sentencing.

Regarding the fight against corruption, on an unprecedented initiative, the Ministry of Justice, established a partnership with Transparency International by which that NGO will scrutinize all new contracts and bidding processes.

Another relevant initiative undertaken by the Brazilian Ministry of Justice was the launching of the first comprehensive National Public Security Plan, to which different Ministries made contributions, in their respective areas of competence. The Plan received inputs from the Federated States, civil society, NGOs and international organizations as well. Among the 100 actions set out in the plan, attention should be given to the national program of Police training, involving more than 50 thousand police officers from the 27 federated states. This program will emphasize the respect of human rights, the need for community police and the integration between state military and civil police forces. The creation of the National Observatory for Public Security, that will analyze good practices among governmental and civil society work in preventing violence, also should be noted. The National Plan did not forget to address the new forms of criminality, such as cyber crimes. In this matter, the inputs provided by the X Congress will be extremely valuable, in order to send to the Congress a bill that is tuned to the legislation created in other countries

⁹ Universal Declaration, art 1

We live in an era of globalization. As we all know, crime is always ahead of the law and has known how to benefit from the existence of frontiers to subtract its authors or the result of their actions from any kind of punishment.

We must react, establishing closer investigative and jurisdictional cooperation among us. We must also attempt to create a common definition of what constitutes a criminal offense in the legal paths of this world. One very appropriate model could be the "Code of Conduct for Public Servants"¹⁰.

Brazil, being constitutionally engaged¹¹ with the *prevalence* of human rights, the self-determination of peoples and the non-intervention - defends the celebration of treaties and conventions which reduce problems in the field of *dual criminality* and favor harmonious integration of sovereignty with international cooperation in the struggle against delinquency.

As happened in most Latin American countries, we in Brazil also endured a very long period without constitutional guarantees. We are therefore not prone to accept them only figuratively, as sketches on a piece of paper. For this reason, we hereto subscribe to our commitment towards a minimal penal law, of *ultima ratio*, to the recognition that imprisonment is an outright failure and the understanding that constitutional guarantees must be observed under every circumstance, for each and every human being so as not to reduce constitutions to simple useless bits of paper.

Mr. Chairman and Distinguished Delegates,

Let me conclude by reemphasizing that, above all, we cannot forget that the roots of crime and violence are planted within the intolerable situation of misery in which a significant part of the world population lives. They expect a lot from developed countries. The new millennium is in the outcry for a new Penal Law: concentrated on the most disrupting actions of social order; unlinked from the idea of prison as a natural and compulsory consequence of crime; respecting the Constitution and internationally proclaimed Human Rights and fundamental Freedoms.

We must not let ourselves be seduced by the easy solution of understanding the repression of crime as a form of vengeance or a demonstration of force. The key element for peace is certainly the prevalence of a democratic and tolerant society, where the respect for human rights is the fundamental cornerstone.

Thank You Very Much

¹⁰ Draft Declaration, para 15

¹¹ Constitution of Brazil Article 4 numbers II, III and IV