

**CRIME**

**Tenth  
United Nations Congress  
on the Prevention of Crime  
and the Treatment of Offenders  
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Agenda item 3

**Promoting the rule of law and strengthening the criminal justice system**

**Report of Committee I on topic I**

1. At its 1st plenary meeting, on 10 April 2000, the Congress allocated agenda item 3, entitled "Promoting the rule of law and strengthening the criminal justice system" (topic I), to Committee I, in accordance with the programme of work proposed by the Secretary-General (E/CN.15/1999/6 and Corr.1, para. 8 and annex) and approved by the General Assembly in its resolution 54/125 of 17 December 1999. For its consideration of the item, the Congress had before it a working paper prepared by the Secretariat (A/CONF.187/3).

**Proceedings**

2. At the 1st to 3rd meetings of Committee I, held from 10 to 12 April 2000, a general discussion on the item was held under the chairmanship of Mr. R. K. Raghavan (India).

3. The Committee was assisted in its deliberations by a panel of experts. At the 1st meeting, Mr. Xavier Raufer, Professor at the Institut de criminologie in Paris, introduced the discussion on the rule of law during conflicts or periods of transition. At the 2nd meeting, Mr. Bulelani Ngcuka, National Director of Public Prosecutions of South Africa, introduced the discussion on the problems in and solutions for creating and implementing new legislation. At the 3rd meeting, Mr. Nihal Jayawickrama of Sri Lanka, Executive Director of Transparency International, introduced the discussion on the balancing of judicial independence with judicial accountability.

4. At the 1st meeting, statements were made by the representatives of Sweden, China, Austria, Croatia, Argentina, South Africa, Cameroon and Namibia and by the observer for Penal Reform International.

5. At the 2nd meeting, statements were made by the representatives of Thailand, Cuba, Turkey, the United States of America, the Republic of Korea, France, Poland, Slovakia, Argentina and Mexico.

6. At the 3rd meeting, statements were made by the representatives of Bolivia, Peru, Egypt, Canada, Ukraine, Oman, the Sudan, Swaziland and Madagascar.

## General discussion

7. Several speakers referred to recent examples of conflicts and periods of transition that illustrated the relationship between a lack of rule of law and organized crime. It was stated that the conflict in Kosovo had resulted in an explosion of organized crime in areas such as drug trafficking and trafficking in women and children, the effects of which had been felt on a regional scale. Mr. Raufer, in introducing the issue, proposed the creation of a credible international early-warning body that would be consulted in order to advise Governments in the planning and execution of peacekeeping operations. He stressed the importance of assessing possible weak areas in the rule of law to ensure effective crime control during post-conflict reconstruction.

8. It was also stated that, in South Africa, repressive and politically oriented criminal justice system of the past, especially the system of policing and prosecution, had led to a general inability to cope with new challenges during transition, in particular problems posed by organized crime and money-laundering. The example of South Africa was used by Mr. Ngcuka to illustrate the challenges of introducing new legislation, especially innovative policies, which might be viewed with suspicion by court or other officials. Another significant problem was that the application of urgently needed legislation was being delayed by judicial uncertainty while new laws were being interpreted by the courts.

9. Several speakers noted that an increase in lawlessness was a common feature of emerging democracies. It was argued that among the factors contributing to that increase was the fact that respect for authority and for the rule of law had deteriorated under the previous regime. New democracies faced challenges in creating new laws and infrastructure and coping with increased crime, which often occurred during transition. The public's loss of confidence in the new system might even produce a backlash that would weaken the protection of accused persons.

10. Among the recurring themes in many of the presentations were the importance of maintaining a balance between the efficiency of criminal justice systems and the protection of individual rights, the need to address the economic factors contributing to crime, and the importance of combating corruption.

11. In referring to judicial independence and accountability, several speakers emphasized the importance of there being a system of judicial appointment based on professional qualification and not on political affiliation. Several speakers referred to the need for introducing a code of judicial ethics as a means of holding members of the judiciary accountable without compromising their independence. Mr. Jayawickrama suggested that such a code should be drafted and enforced by the judiciary, with the participation of the community.

12. Several speakers referred to a variety of difficulties in international cooperation, difficulties that were being exploited by organized criminal groups. The participants stressed that, although effective international cooperation required the appropriate institutional arrangements, the human element was important. The point was made in the discussion that it was not States and institutions that cooperated, but the people in the system. It was suggested that, with due respect to the principle of the rule of law, creative alliances could be developed between the practitioners concerned to overcome unnecessary formalities and delays in international cooperation.

## Conclusion

13. In the discussion on agenda item 3, several key components of the rule of law were identified, including the following: law should conform to the standards enshrined in the Universal Declaration of Human Rights<sup>1</sup> and other international instruments; law should be applied fairly and equally to all and should be accessible to all; law should respect the separation of powers of different branches of government; law should be capable of being accepted and obeyed; and law should be drafted clearly and comprehensively.

14. In the discussion the point was also raised that the adoption of law alone did not necessarily result in the desired changes in the criminal justice system. What was further needed was effective implementation whereby the law would be accepted and respected by both civil society and those administering criminal justice. That could be promoted through the involvement of the community at the grass-roots level. Some problems facing the implementation of law were identified, such as the limitation of financial resources, the lack of adequate personnel and facilities, judicial and institutional resistance, and the need for profound changes in attitudes and practices in order to make it possible to deal with bigger and more complicated cases.

15. The participants also stressed the importance of maintaining a balance between the efficiency of administering the criminal justice system and the protection of the basic rights of those involved in the criminal process, such as fairness and equality before the law.

16. The participants recognized that international cooperation was the key to making the rule of law work universally. Especially for many developing countries and countries with economies in transition, technical assistance was essential for making the rule of law a reality and for strengthening criminal justice systems. Such assistance could often lead to benefits for both the recipient and the donor.

17. The participants agreed on the need to respond to new forms of crime. For example, sophisticated organized criminal groups had adopted new methods, and States must find ways to deal with those developments effectively while respecting basic rights and the rule of law.

18. The participants reaffirmed the importance of existing international instruments such as the Universal Declaration of Human Rights and other relevant conventions. They affirmed the importance of new and emerging international instruments such as the draft United Nations Convention against Transnational Organized Crime<sup>2</sup> and the Rome Statute of the International Criminal Court.<sup>3</sup>

19. Governments were urged to deal with the underlying causes of crime when implementing law reform. The causes of breakdowns in justice should be studied in order to strengthen the rule of law. Plans for reform should take into consideration the two prerequisites for the rule of law: an effective and impartial justice system; and open, transparent and accountable government.

20. It was stated that, where such a code did not exist, Governments should give consideration to the development of a code of judicial ethics prescribing standards of conduct both in and out of court, establishing the relationship between the judiciary and

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<sup>1</sup> General Assembly resolution 217 A (III).

<sup>2</sup> A/AC.254/4/Rev.8.

<sup>3</sup> A/CONF.183/9.

other branches of government, as well as between the judiciary and other officials in the criminal justice system.

21. Governments and other members of the international community planning and executing peacekeeping operations and post-conflict reconstruction were urged to consider the establishment of a system for addressing crime control in order to prevent organized criminal groups from exploiting weak areas in the rule of law.

22. Governments were also urged to strengthen technical assistance, in particular to developing countries and countries with economies in transition, in order to promote the effective implementation of the rule of law.

23. It was stated that Governments should strive to simplify and expedite international cooperation procedures wherever possible, with due respect to the rule of law.

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