

MUNLAWS 19

STUDY

GUIDE

CONGRESS ON CRIME PREVENTION
AND CRIMINAL JUSTICE

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Ljubljana, September 2019

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Introduction to the Committee

The aim of this study guide is to introduce The United Nations Congress on Crime Prevention and Criminal Justice and to provide essential background information to the participants of MUNLawS' 14th CCPCJ.

The following text was written with the purpose of being a mere introduction or rather overview of the topic that shall be discussed at the conference. Thus, it shall not under any circumstances replace participants' further research and preparation from the viewpoint of the assigned country. In addition, broader knowledge attributes greatly to a fruitful debate.

Furthermore, in order to fully familiarize with the procedure of the simulation, special guide titled Rules of Procedure is available on the website for the delegates to prepare for the conference. In case of misunderstanding, we kindly ask the delegates to consult with us, the chairs prior to the Congress' session.

Introduction to the Topic

"Prevention is the first imperative of justice" ¹

United Nations Crime Congresses are the only major United Nations conference in the field of crime prevention and criminal justice. Organized by the United Nations Office on Drugs and Crime (UNODC), congresses present the largest and most diverse gathering of high-level representatives of Governments, intergovernmental and non-governmental organizations, as well as policymakers, scholars and practitioners in the area of crime prevention and criminal justice.



Figure 1: First Crime Congress, Geneva 1955

The earliest known occasion that the collection of statistics on crime at the international level was at the General Statistical Congress held in Brussels in 1853.² However, history of international conferences on crime control matters dates back to 1872, 21 years after the first collection of statistics, when conferences were held in London under the auspices of the International Prison Commission, which later became the International Penal and Penitentiary Commission (IPPC).³

¹ United Nations Document S/2004/616, para. 4

² A short history of the collection of UN crime and justice statistics at the international level. Available at: <https://www.unodc.org/unodc/en/data-and-analysis/A-short-history-of-the-collection-of-UN-crime-and-justice-statistics-at-the-international-level.html> (accessed on 30. 8. 2019)

³ United Nations Congresses on Crime Prevention and Criminal Justice 1955-2015: 60 years of achievement. Available at: https://www.un.org/en/events/crimecongress2015/pdf/60_years_booklet_EN.pdf. (accessed on 30. 8. 2019)

In 1955, the First International United Nations Crime Congress was convened in Geneva. Since then the Congresses became the oldest periodic conferences organized by the United Nations, with 137 governments, 73 NGO's and more than 2000 individuals participating.⁴ Although in the formal sense, the UN Crime Congresses do not set UN policy, they significantly influence it.

Introduction and Context

14th Crime Congress

In its resolution 72/192, the General Assembly decided that the main theme of the Fourteenth Congress shall be “Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda”⁵ (though our simulation bears a different title). In accordance with resolution 56/119, the states participating shall be represented by the highest-level officials, for instance Head of State or Government and government ministers.

A single political declaration called Congress Declaration “containing recommendations derived from the deliberations of the high-level segment, the round tables and the workshops, to be submitted to the Commission for its consideration” will set the crime prevention and criminal justice agenda for the next five years and shall be adopted and submitted to the Commission for its consideration. The aim of the Conference is to continue the dialogue which started in Doha, Qatar. Furthermore, The Congress provides opportunity to undertake a stocktaking exercise, reflect on 2015 to 2020, and to map jointly a quinquennial operational road map to 2025, 5 years before the realization of the 2030 Agenda. ⁶ All aspects of crime prevention and criminal justice will be discussed, and participants will present both official governmental positions and current research results. From 20th to 27th April 2020, a real-life 14th Crime Congress will be held In Kyoto, Japan.

⁴ Ibid.

⁵ Fourteenth United Nations Congress on Crime Prevention and Criminal Justice: Discussion guide. Available at: https://www.unodc.org/documents/congress/Documentation_14th_Congress/DiscussionGuide/A_CONF23_4_PM1_e_V1806329.pdf (accessed on 30. 8. 2019)

⁶ Regional Preparatory Meetings for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice. Available at: <http://www.un-congress.org/>. (accessed on 30th August 2019)

Previous Congresses

1955 The First Congress adopted the Standard Minimum Rules for the Treatment of Prisoners.

1960 The Second Congress recommended special police services for juvenile justice.

1965 The Third Congress analyzed the relationship between criminality and social change.

1970 The Fourth Congress called for improving crime prevention planning for economic and social development.

1975 The Fifth Congress approved the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1980 Under the theme “Crime prevention and the quality of life”, the Sixth Congress recognized that crime prevention must be based on the social, cultural, political and economic circumstances of countries.

1985 The Seventh Congress adopted the Milan Plan of Action and several new United Nations standards and norms under the theme “Crime prevention for freedom, justice, peace and development”.

1990 The Eighth Congress recommended action against organized crime and terrorism under the theme “International crime prevention and criminal justice in the twenty-first century”.

1995 The Ninth Congress focused on international cooperation and practical technical assistance for strengthening the

rule of law under the theme “Seeking security and justice for all”.

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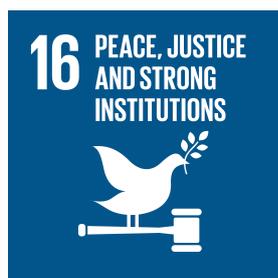
2000 The Tenth Congress adopted the Vienna Declaration committing Member States to strengthen international cooperation in the fight against transnational crime and criminal justice reform.

2005 The Eleventh Congress adopted the Bangkok Declaration, a crucial political document laying the foundation for and showing the direction towards strengthening international coordination and cooperation efforts, in order to prevent and combat crime.

2010 The Twelfth Congress adopted Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World

2015 The Thirteenth Congress adapted Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participants.

2030 Agenda



2030 Agenda (United Nations Resolution 70/1) is a plan of action for people, planet and prosperity. Adopted by Heads of State and Governments of 193 parties on the 25th September at The United Nations Summit in New York, 2030 Agenda consists of 17 Sustainable Development Goals and 169 associated targets.

Together they form integrated and indivisible plan of action for people, planet and prosperity, which should be reached by 2030. Discussions began in June 2012, with the Rio+20 Conference on Sustainable Development, where Governments decided to develop global Sustainable Development Goals, building on the Millennium Development Goals but also including issues such as natural resources management, sustainable consumption and production, effective institutions, good governance, the rule of law and peaceful societies⁷

Crime Prevention and Terrorism and the 2030 Agenda

Firstly, it is essential to recognize that the work of the United Nations is undoubtedly driven by the 2030 Agenda for Sustainable development and its Sustainable Development Goals (SDGs)⁸, thus the connection between the goals set, crime prevention and terrorism has to be addressed – how/which SDGs (in)directly apply to crime prevention, how are states to develop in a sustainable manner while facing threats of terrorism and crime, what is the responsibility of the international community – these are all legitimate questions to be considered.

Even though the direction of the debate may seem clear at first glance, we have to acknowledge the diversity we face and the challenges it presents. A number of regions

⁷ The 2030 Agenda for Sustainable Development and the SDGs. Available at: https://ec.europa.eu/environment/sustainable-development/SDGs/index_en.htm (accessed on September 10th 2019)

⁸ The 2030 Agenda for Sustainable Development and the SDGs. Available at: https://ec.europa.eu/environment/sustainable-development/SDGs/index_en.htm (accessed on September 10th 2019)

worldwide enjoy increased or sustained levels of peace and security. In contrast to those regions, many countries are still faced with protracted violence and armed conflicts. Additionally, the countries with high level of crime are usually also the countries with weak institutions, their citizens lack access to justice and information, especially in regard to rule of law. Furthermore, fundamental freedoms and human rights of those people are being denied regularly, although more than half of the world has internationally recognized human rights institutions.

In line with 16th goal of The Agenda there can be no doubt that more effective, inclusive and transparent national and international institutions must be formed and implemented or in the case of their existence improved upon. However, before we dive into a political debate, we have to establish a baseline especially since we are operating with terms that can be interpreted in many different ways. Moreover, we also need to look at some of the basic principles a democratic state with the rule of law as the center of its system has to take into consideration.

Crime

Crime is a word we are all familiar with, however, criminologists all over the world have been on a wild goose chase when it comes to the search for a definitive answer on what crime actually means. Though a universal definition is undoubtedly unattainable, many great minds have discussed this issue and such thoughts serve as a great baseline for our debate. Firstly, we must realize where the importance of this definitions lies – if it is too narrow, harms that might otherwise be included are ignored and just the opposite goes for a definition that is too broad – then almost any deviation becomes a crime.⁹ It is also important to realize that some countries (systems) differentiate criminal acts based on the danger they pose to the health and safety of the public (which are protected by regulations) and how concrete the danger is – is it only abstract (it does not pose concrete danger to the

⁹Stuart H. et Lanier M., *What is crime?: Controversies Over the Nature and what to Do about it*, Rowman & Littlefield, 2001

protected good) or is it concrete (the protected good is in direct danger or even damaged)?¹⁰ The answer to these two questions may guide the classification of certain (criminal) acts and countries may use this “tool” to approach different sorts of deviant acts in different manners (e.g. prescribe different punishments for more and less serious acts...).

Terrorism

When we take a closer look at the word terrorism, we can see similar patterns - it is a word commonly used, be it in everyday conversations or in the media but it is hard to put our finger on a satisfactory definition just based on lay understanding. If we decide to go from a broader definition and narrow it down gradually, it is best to stem from a definition which describes terrorism as a political term. On the other hand, terrorism cannot be limited to only that – some of its meaning is also about power – be it the acquisition, the use or the pursuit of power¹¹. Based on these facts it would be quite poetic for us to come up with the definition of our own, however Bruce Hoffman does it best in his work *Inside terrorism*: “Terrorism is violence – or, equally important, the threat of violence – used and directed in pursuit of, or in service of, a political aim.”¹² This definition might seem compelling, however we must realize that terrorism is a term that describes a dynamic phenomenon and that is exactly where the main reason for why defining it is such a hard task – as acts of terrorism change, the term changes with them.¹³ Despite this, we can seek help by stemming from criminal codifications which incriminate terrorism¹⁴. It is important to note though that this is a legal definition and not a political one - this distinction being of paramount importance – it is important to separate political international dialogue and the use of the word terrorism there and the criminalization or the prosecution of acts of terror which are in the authority of the prosecuting states or supranational bodies.

¹⁰ Bavcon L., Šelih A., Korošec D., Ambrož M. et Filipčič K., *Kazensko pravo: splošni del*, Ljubljana, Uradni List Republike Slovenije, 2017, Šesta izdaja.

¹¹ Hoffman B., *Inside terrorism*, Columbia University Press, 2006

¹² Ibid

¹³ Ibid

¹⁴ For example Article 108 of the Slovenian Criminal Code

Despite this being said, there is an important question worth discussing and possibly answering – **is there enough basis for the international criminalization of terrorism?** If we look at the ICC (International Criminal Court) as one of the most important supranational organizations in this field, terrorism is not one of the crimes the ICC has the jurisdiction over. This, however, is not a mistake but a deliberate intention of the majority of the states parties to the Rome Conference – they rejected the inclusion of terrorism in the Rome Statute.¹⁵ Despite this, we believe it is important to once again open a discussion regarding the possibility and/or the purpose of the criminalization of terrorism in international law. In state practice we can find quite a wide array of reasons to support such a stance: terrorism undermines basic human rights, the state and the political process (especially democracy) and international peace and security.

On the other hand, that question of the political meaning of the word terrorism remains – is the term too political for an agreement to be reached on a definition and what exactly that means for the criminalization of such acts.¹⁶ We believe it would be interesting to hear opinions from different countries regarding these questions.

Criminal Law

Another important term we have to familiarize ourselves with is criminal law. When we sieve through all the human behavior (or rather human acts) and eliminate acts characterized as criminal (i.e. ones that pose danger to values, protected in legislation), we come to the term criminal law.

When it comes to the function of criminal law however, it is quite a paradoxical one – on one hand it protects the society as a sort of a “minimal moral codex” internalized by most citizens (and based on this it gives the state the right to prosecute and punish individuals

¹⁵ Cohen A., *Prosecuting terrorists at the International Criminal Court: Reevaluating an Unused Legal Tool to Combat Terrorism*, Michigan State International Law Review, Volume 20 (2013)

¹⁶Saul B., *Reasons for Defining and Criminalizing “Terrorism” in International Law*, Mexican Yearbook of International Law, Vol. 6, 2006

who break this standard) and on the other it limits the state's power to treat individuals arbitrarily, illegally and inhumanly thus protecting said individuals.¹⁷

Based on the aforementioned functions criminal law makes use of some safety mechanisms to prohibit the state from arbitrarily infringing human rights – most notably the presumption of innocence. The importance of this (procedural) guarantee is double: firstly, the state lays the foundation for its use when legislators incriminate a certain behavior and secondly, when the state prosecutes an individual, the guilt should be proven beyond reasonable doubt¹⁸ (meaning the state has to prove an individual is guilty and not *vice versa*, it is not the obligation of the prosecuted to prove that he/she is innocent).

This, however, is not the only safeguard the states know and utilize – some other guarantees are for example judicial approval of some (investigative) acts executed by the police or other executive bodies (via warrants), the judges' independence, the right of the accused to examine witnesses...¹⁹

If we think of the state's power to prosecute and punish as a sword and the state's responsibility to protect as a shield, generally speaking we could argue that the seriousness of the criminal acts committed by individuals could tip the scales in favor of the sword – this however means that the shield has to lower. Based on this we could speak of a double use of coercive measures that already exist – one with more safeguards and one with less. Thus, the use we choose could depend on the seriousness of a crime. The more serious the crime is, the higher the sword raises. Let's imagine the police want to search a suspect's car. They cannot just walk up to it and break into it by themselves as they please – generally speaking the judge has to approve such actions (his decision making is also limited by law as to prevent arbitrary decisions). This can be seen as a loss of efficiency for executive bodies so

¹⁷ Bavcon L., Šelih A., Korošec D., Ambrož M. et Filipčič K., *Kazensko pravo: splošni del*, Ljubljana, Uradni List Republike Slovenije, 2017, Šesta izdaja.

¹⁸ Picinali F., 'Innocence and burdens of proof in English criminal law', *Law, Probability and Risk*, 13 (3-4), 2014

¹⁹ Vervaele, J. A. E., *Special Procedural Measures and Respect of Human Rights*, *Revue Internationale de Droit Pénal*, 2009/1-2, Vol. 80. Accessible at: <https://www.cairn.info/revue-internationale-de-droit-penal-2009-1-page-75.htm> (accessed on 14.9.2019).

the question arises of whether coercive methods with less guarantees can be used for crimes which pose greater danger for the society (thus lowering the shield while simultaneously raising the sword).²⁰

Although the public interest undeniably lies in the prosecution and punishment of individuals but even more so in crime prevention, states have to respect such guarantees (and with that the rule of law) which serve as the basis for a democratic society despite them possibly considering these mechanisms as being a burden to the efficiency of serious crime prevention, investigation and prosecution²¹. **Finding the balance between the active approach of the state on one hand** (e.g. policing tactics...) **and the respect for the aforementioned internationally acknowledged assurances** should be one of the most important questions to answer.

Building on the Legacy of the Doha Declaration



Figure 2: Main goals of The Doha Declaration

We can agree that Doha Declaration represents the “latest and greatest” UN policy when it comes to crime prevention, rule of law and sustainable development. With that being said we believe that it is of utmost importance to a) monitor the progress, especially when it comes to mechanisms introduced in the Declaration and b) develop aforementioned mechanisms even further. The work of the Follow-up Committee for the Implementation of the “Doha Declaration” is reporting a positive trend when it comes to progress, especially regarding new countries being added to the beneficiary list. Despite this, it is important to

²⁰ Ibid

²¹ Ibid

realize that mechanisms from the Declaration should not be considered as static but rather as dynamic – in line with this school of thought we believe that everything could and should be improved so we would like delegations to present their ideas regarding this exact question.

A Different Approach to Sustainable Development

Even though that there has been a lot of emphasis on criminal law and different legal instruments so far, we believe that the discussion should not be limited to this specific field. Quite the contrary – states should take as wholistic of an approach as possible - they should use every (effective) method they deem reasonable to prevent and combat crime. A sustainable environment requires safety for its users – this, however, does not only mean that it does not pose direct health threats to inhabitants, but also that people should feel safe for their own being and possessions. It is true that a sustainable environment is a prerequisite for sustainable development, however it can also be an indicator of this exact phenomenon which only serves to reaffirm the thesis that these two topics are inseparably intertwined. By stating this we have established a baseline – it is undoubtedly important to have a sustainable environment for sustainable development, though the question arises - what exactly is a sustainable city? For starters sustainability should not only be limited to environmental sustainability, but it should be rather interpreted as a result of a mixture of many different (social, economic and environmental) factors. But a city is only a reflection of its citizens – it is thus clear that cities cannot just rely on their urban form to make them more sustainable or safer.²² Cities build communities so it is of paramount importance for different states to address this challenge and discuss the building blocks that lay the foundation for the sustainable development of cities and with that the development of communities. Though it is important to realize that the example of a city only serves as a starting point – we would like to hear as many different (and creative) ideas regarding aforementioned issues as possible when it comes to our debate.

²²Du Plessis C., *The Links Between Crime Prevention and Sustainable Development, Sustaining Human Settlement: a challenge for the new millennium*, Publisher: Urban International Press, pp.239-270. Accessible at: https://www.researchgate.net/publication/334737207_THE_LINKS_BETWEEN_CRIME_PREVENTION_AND_SUSTAINABLE_DEVELOPMENT (accessed on 13.9.2019).

Questions to Answer

Based what we have established so far, we believe that these questions should serve as rough outlines as to the direction of the debate as well as some ideas worth putting in the resolution.

- How should states parties build upon/monitor the (progress of) goals from the Doha Declaration?
- Is there enough basis for the criminalization of terrorism in international law? If so, how should states approach this?
- What is the right balance between states' activity when it comes to prosecution of crimes and the respect for rule of law and the respect for procedural guarantees (sword and shield)?
- What are some other/new/inventive methods to enable sustainable development as well as battle crime?

Further Reading

- United Nations Congresses on Crime Prevention and Criminal Justice 1955–2015 60 years of achievement. Available at:
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- Figure X: 16th goal of 2030 Agenda, available at:
<https://unstats.un.org/sdgs/report/2016/goal-16/>