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BLUE CRIMINOLOGY

*The power of United Nations
ideas to counter crime globally*

A monographic study

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Criminologie onusienne

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The Commission on Crime Prevention and Criminal Justice: A Search for Complimentarity Between Politics and Criminology



Introduction

The Commission on Crime Prevention and Criminal Justice (Crime Commission) was established in 1992 to address concerns that had been expressed about the pre-existing Committee on Crime Prevention and Control in a series of meetings beginning with the Seventh United Nations Congress (1985). Many reasons for the 1992 changes are discussed in the various documents, but the major concerns appear to have been the fact that Member States felt that the pre-existing Programme lacked the profile and resources it needed to address the concerns of governments about domestic and transnational crime problems, and that the existing arrangements did not ensure sufficient governmental participation or oversight.

A. Political and substantive functions of the Commission

The Commission, which was established in 1991 and first convened in April of 1992, is intended to be the principal UN policy-making body with respect to crime prevention and criminal justice¹ and to have a comprehensive competence over such matters. This includes both proactive and reactive aspects and crime which is both transnational nature, or which occurs within individual Member States.² In essence, its substantive mandate is to consider any issues which may be referred to it as crime prevention and criminal justice subject-matter by the Member States, subject to other bodies with more specific mandates, including the Commission on Narcotic Drugs and the Conferences of States Parties to the 2000 and 2003 conventions against transnational organized crime and corruption. Even where another body has a more specific, overlapping mandate, the competence of the Commission over crime matter remains: the Commission is merely directed to consider the need to avoid such overlaps. This ensures that there is comprehensive coverage of the subject matter, which is essential because crime issues are inherently difficult to classify, frequently

overlap with other areas and can change substantially as crime and the reactions of Member States to it evolve over time.

The open-ended nature of its jurisdiction supports one of the most critical functions of the Commission, that of simply delineating the subjective and objective scope of global crime. It serves to identify at an early stage any new or emerging crime problem encountered by one State in objective factual terms, and disseminate information to all. In subjective terms, “*crime*” includes any sort of harmful conduct the Member States choose to label as crime and respond to with crime prevention and criminal justice measures, and the Commission provides the primary forum in which Member States can express and respond to views about whether various subject matter warrants a crime prevention and/or criminal justice response or should be dealt with as a non-criminal issue. As the twentieth session (2011) passes, this poses one of the most serious challenges to the Commission. It faces issues of much greater scope and diversity than was originally envisaged, with much less time and resources than were originally allocated. While the extrabudgetary resources allocated for crime prevention, criminal justice, and terrorism-prevention projects has increased substantially since the Commission was first convened, the resources available for the Commission itself have actually been reduced. Since 2005, its annual sessions have been reduced from eight sitting days to five, and at the twentieth session, dramatic reductions in the capacity to produce documents in all languages were announced.

At the same time as its capacity has been eroded, the demands on the Commission and on national delegations to its sessions, has increased. The criminal law aspects of issues such as the protection of the environment and cultural heritage property are now coming before the Crime Commission with increasing frequency. Given the functions of the Commission and the positions of many Member States that these warrant a crime prevention and criminal justice response,



¹ ECOSOC resolution 1992/22, Part IV, op. § 4.

² See, for example, A/46/152, p. § 7, and op. § 3.

this is entirely appropriate, but also unsustainable from the standpoint of the management of Commission sessions and the production of documents. It also poses a major challenge to delegations, which must be expanded to include expertise in what for some Member States are nor crime prevention and criminal justice issues.

As with other functional commissions of the ECOSOC, the Crime Commission is intended as a forum for considering expert assessments of crime problems. Substantive experts bring actual knowledge on how crime works, how it affects Member States and their populations, and how to gain further knowledge, an especially critical function as crime itself globalises and factors such as technological change produce an ever-accelerating evolution of crime, and as a place where States in need of technical assistance could be brought together with States willing and able to provide it. One of its founding documents states that:

*“Each Member State shall make every effort to ensure that its delegation includes experts and senior officials with special training and practical experience in crime prevention and criminal justice, preferably with policy responsibility in the field”.*³

It is also clear, however, that political functions, generally brought before it by the Member States’ foreign ministries and diplomatic representatives, are also central to the work of the Commission. These include marshalling and contributing financial resources and holding UNODC and other UN bodies accountable for how they are spent, general oversight of the work of the Secretariat, and coordinating the work of the Commission with other bodies, especially in areas such as rule of law, narcotics and human rights, where overlapping or dual-aspect subject matter is often encountered. At its most fundamental level, however, the work of diplomatic representatives in the Commission consists of articulating the political will of the various Member States. Diplomatic experts serve as channels of communication, bringing the political views of their governments into the Commission, taking back their assessments of the political views of other States, both individually and collectively, and ultimately conveying the consent of each Member State to join consensus on outcomes.

They are the means whereby governments seek to influence the Commission, and whereby the Commission itself seeks to influence the views of their governments in return.

Without the former, diplomatic discourse would be sterile and devoid of underlying substance, and without the latter there would be substance, but little or no meaningful discourse or transfer of substantive knowledge from one State to another. A balance of the two gives the Commission a function similar to that of domestic legislatures in establishing legitimacy. Unlike legislatures, the outputs of the Commission are not usually legislative or prescriptive in nature, but they are seen by the Member States and their populations as valid and legitimate because they are the output of open and transparent deliberations, first in establishing criminological validity, and second in establishing political consensus.

B. The Commission’s responsibilities before other UN policy-making bodies

The Commission can also be seen as a boundary body in both a vertical and horizontal sense. From a vertical perspective, most of the subordinate bodies the Commission creates consist primarily of substance experts mandated to conduct research and produce analytical reports, and much of its Secretariat performs a similar function. The bodies to which the Commission itself reports, on the other hand, the ECOSOC and General Assembly, are primarily diplomatic bodies set up to take substantive input from functional expert bodies and integrate these into the larger global framework. From a horizontal perspective, proposals to use crime prevention and criminal justice measures frequently entail subject-matter that may not necessarily be seen as criminal in itself, but rather a policy decision on the part of Member States to use the criminal law as a means of implementing or enforcing non-criminal policies in areas such as human rights, good governance, rule of law, or environmental law. This is reflected in the fact that the Commission and its delegations must frequently coordinate with the work of other bodies, and in the fact that UNODC has, under the oversight of the Commission, a key role as the source of criminal justice expertise for the rest of the UN secretariat, who have need of it on an issue-by-issue basis.



³ A/46/152 (Annex), § 24.

Both the diplomatic/political and criminological elements are essential, but they can be difficult to reconcile, and a balance is needed to ensure that what is produced is valid in substantive terms, while at the same time being viable in political terms. The tension between politics and criminology is not unique to the Commission. It is mirrored in debates that regularly arise in most if not all Member States, and with which all criminologists are familiar. Indeed, the Commission's proceedings often parallel domestic debates in which one side of the political spectrum advocates reactive and retributive policies seen as providing "just desserts" punishments and strong, effective deterrence, while the other side advocates social reforms, proactive measures and restorative justice sentencing. What is different in the Commission is that, while individual States (or at least those with regular democratic changes in government) tend to oscillate back and forth between these policies, the Commission tends to try to articulate all policies all the time, reflecting the fact that its Members tend to collectively reflect a full range of political philosophies as individual countries shift back and forth. In a global crime environment, this has value both in disseminating information among the Member States and stabilising the policy oscillation by intermingling the various political and ideological positions in play, injecting an element of pragmatism and bringing some degree of consistency and continuity over the longer time-scales that govern international policy-making.

C. Capacity and resources

Since its inception, the Commission and its secretariat have faced a steadily-increasing workload with steadily-diminishing capacity in terms of duration and documentation and other resources, which has increased pressure to do more with less. The duration of annual sessions was reduced from eight days to five in 2005, which has limited time for discussions, made it difficult to produce translated versions of texts under negotiation, and forced more parallel meetings which smaller delegations cannot attend. The regular budget allocation for the Commission and its work have been subject to a *de facto* freeze since the late 1980s, with the result that an annually increasing shortfall in the amount of any inflation plus any actual increase in mandated workload has been created. This has been made up by the voluntary contribution of extra-budgetary resources, which have risen from about 75% to

over 90% of UNODC's overall budget since the Commission was established. One consequence has been some degree of shift of control or influence over the policy agenda and controversy between recipient States, who want policy priorities set in the Commission, and the donors, who often articulate priorities by "earmarking" their contributions to specific projects that reflect their priorities. This debate, along with the need for joint oversight by the Crime and Drug Commissions, led to the establishment of an open-ended intergovernmental working group on finance and governance in 2009. The debate has become more acute in the context of the recent global financial crisis and the erosion of both voluntary contributions and dues assessments (some of which depend on economic or development indicators). One consequence of this has been a dramatic reduction in the resources available to produce written documents submitted to the Commission, and the Report of the Commission itself, in the six official languages of the U.N.

At the twentieth session, these pressures re-invigorated efforts to make the sessions of the Commission itself more efficient, including decisions to require the early submission of draft resolutions to ensure availability in languages at the beginning of each session and to allow the Member States to prepare and select appropriate expert delegates beforehand. These and other reforms may well succeed in making the Commission more efficient than it already is, and one must always be optimistic, but they do nothing to address the underlying fact that chronic underfunding of the capacity of the Commission to do its work has severely limited what the Commission can accomplish. As with any intergovernmental body, the work is expensive, but the increasing importance with which the Member States regard transnational crime problems is clearly evident in the extrabudgetary resources they have allocated, the perception of States that it is not just a social issue but a matter of regional security and economic globalisation, and the increasing politicisation of the Commission itself and the vigour with which many recent resolutions have been negotiated. Given the importance of these issues to Member States, the Commission represents substantial value as the primary forum for developing international responses and supporting domestic responses, but it falls far short of its potential and will continue to do so until Member States take the funding of responses to crime as seriously as they take the problem of crime itself.



D. The search for balance

The search for balance is also made difficult by the fact that the political and diplomatic side of the equation tends to have most of the influence: diplomats are the channel of communication to political governments, they tend to control financial resources, and they are resident in Vienna. Assembling a group of substantive experts on subjects such as juvenile justice or economic crime is expensive, difficult, and may encounter active opposition from States who prefer to avoid subject matter that might be embarrassing to them, or who seek to allocate the resources to other subject matter that their governments see as a greater priority. Assembling a group of diplomatic representatives is much easier and less expensive, but also far more limited in what they can achieve. Such groups can be very effective in financial and management discussions on which they themselves are experts, but any substantive discussion about crime is either devoid of substance or reduced to a time-consuming exercise in which they articulate the views of experts at home based on instructions but are not able to conduct any form of substantive discourse on a real-time basis. Perhaps the best recent examples of this have been Commission intersessional meetings, which have produced useful management texts, but which have consistently failed to reach agreement on substantive and thematic Commission agenda items which can support coherent debate in the Commission, and which are usually not agreed sufficiently far in advance to permit expert participants to be identified, coordinated and properly prepared for the discussions. This disconnect also becomes a factor in the search for adequate resources for the work, when there is no consensus between crime experts, who seek mandates and resources to develop factual information about crime; legal, policy and practical responses to crime; and to deliver assistance to Member States which seek it; and diplomatic experts who generally articulate the desire of the Member States to minimise costs. While it is clearly important to have both inputs in order to ensure accountability in budgetary matters, the record so far is not very encouraging as the Commission commences its third decade.

E. Conclusion

However difficult the search, a balance must be found which meets criminological, diplomatic and budgetary requirements. The reality of global crime is that the true agenda is neither set nor controlled by the diplomats or the criminologists. It is set by the criminals, whose evolving and expanding grasp poses a serious threat to all Member States and their peoples. To meet the requirements of both substantive validity and political viability, it is essential that substance experts be provided with a forum in which views can be expressed and knowledge exchanged freely and independently of the political constraints often imposed by Member States, but it is also essential that this forum be supported by diplomatic expertise to facilitate communications and negotiations, and it is essential that substantive outputs be politically considered and filtered. To accomplish this, there must be sufficient expertise in the sessions, and there must be sufficient time to exchange views on the issues and where necessary to obtain instructions from capitals to ensure that consensus, when it emerges, actually reflects the informed will and consent of the Member States. There must also be sufficient documentation of inputs and outputs to permit the Member States to actually put to use the information they have gathered and the decisions they have made. The task of the criminologists is to tell the diplomats what is necessary, and the task of the diplomats is to tell the criminologists what is possible. The task of both is to collaborate effectively to produce crime prevention and criminal justice measures that will be effective against crime and which Member States are willing and able to implement. ■