## THE VICTIMOLOGIST

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Newsletter of the World Society of Victimology



#### **Editor's Comment**

Several delegates for the World Society of Victimology (including Marc Groenhuijsen, the WSV President, and John Dussich, Chair, WSV UN Liaison Committee) attended the Twelfth United Nations Congress on Crime Prevention and Criminal Justice in Salvador, Brazil from 12 - 19 April. UN Congresses of this type have been held every 5 years since 1955 in different parts of the world. From a victims' rights perspective, the most notable was held in 1985 when the draft Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was recommended to the UN General Assembly.

At this year's Congress there were eight substantive items on the agenda: children, youth and crime; terrorism; crime prevention; smuggling of migrants and trafficking in persons; money-laundering; cyber-crime; international co-operation in fighting crime; and violence against migrants and their families.

The Congress brought together policy-makers and practitioners, individual experts, academia, representatives from intergovernmental and non-government organisations; other UN entities; the media and others.

This edition of *The Victimologist* includes some of the presentations made by delegates at an ancillary meeting hosted by the WSV; and information on the outcomes for victims of crime.



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## Twelfth United Nations Congress on Crime Prevention & Criminal Justice Recognises Victims of Crime

Ensuring the rights and needs of victims of crime were not over-looked was a key aim of for the WSV delegation at the United Nations Congress.

Twenty-seven of the fifty-two high-level delegates who spoke during the three day high-level segment of the Congress mentioned either victims in general or specific victims, such as women, children and trafficked people as well as migrants. Several of the delegates acknowledged that victims have rights. Canada's Senior Assistant Deputy Minister, for example, said his country had enacted legislation to protect victims' rights. Several

delegates also identified a need for victim assistance. Ghana, for instance, has set-up a victim support unit as a component of its response to organised crime. Slovakia's Deputy Prime Minister and Minister for Justice associated victim protection as a crime prevention priority; and, Turkey's Ambassador to the UNODC in Vienna also made a connection between reducing victimisation and crime prevention. Kenya's Assistant Minister, Minister of Justice, listed victimology among the subjects that should be part of training and education on the rule of law.

After the high-level segment the Congress sat to adopt its reports, including the Salvador Declaration (which is an outcome statement). Victims are a recurring theme in the declaration that was adopted despite a few reservations. Specifically, paragraph 7 of the declaration says, "We recognise the importance of adopting appropriate legislation and policies to prevent victimisation, including revictimisation, and to provide protection and assistance to victims".

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## WSV recommends UN Congress establish an Expert Group to report on the use and application of the declaration on victims' rights ato the UN Commission on Crime Prevention and Criminal Justice in 2011

United Nations

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# Twelfth United Nations Congress on Crime Prevention and Criminal Justice

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Salvador, Brazil, 12-19 April 2010

Recommendation to acknowledge 25<sup>th</sup> anniversary of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and establish an Expert Group to report to the UN Commission of Crime Prevention and Criminal Justice in 2011

In the year of the 25<sup>th</sup> anniversary of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the 55<sup>th</sup> year of the UN Crime Congress, the World Society of Victimology recommends that States make all possible efforts to incorporate clauses in the Declaration of the UN Congress, Salvador 2010 that:

An Expert Group Meeting with equitable geographical representation to study ways and means to promote the use and application of the said basic principles and guidelines, strengthen victims' rights and improve access to justice, including the possible creation of a Convention for Justice and Support for Victims of Crime and Abuse of Power.

The Expert Group report on its conclusion to the Commission on Crime Prevention and Criminal Justice at its 2011 session.

#### Justice and Support for Victims of Crime and Abuse of Power

Millions of people, especially many women and children, throughout the world suffer harm as a result of crime, terrorism and the criminal abuse of power. The rights of these victims are not always adequately respected and they may, in addition, endure further harm when assisting the authorities in

prosecuting the perpetrators. In 1985 the UN General Assembly (GA/RES/40/34) called upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Two decades later the Member States in the Declaration of the UN Congress on Crime Prevention and Criminal Justice in Bangkok in 2005 underlined the importance of giving special attention to the need to protect witnesses and victims of crime and terrorism and reaffirmed their commitment to strengthening, where needed, the legal and financial framework for providing support to such victims.

Also in 2005 the UN General Assembly has adopted the Basic Principles and Guidelines of the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/C. 3/60/Ll.24); and further adopted the Guidelines for child Victims and Witnesses by ECOSOC. As well the Guide for Policy Makers and the Handbook on Justice of Victims by ECOSOC in 1999 has been promulgated.

In the year of the 25<sup>th</sup> anniversary of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the 55<sup>th</sup> year of the UN Crime Congress, the World Society of Victimology recommends that States make all possible efforts to incorporate clauses in the Declaration of the UN Congress, Salvador 2010 that:

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The Expert Group report on its conclusion to the Commission on Crime Prevention and Criminal Justice at its 2011 session.

Proposed by the World Society of Victimology (which is a not-for-profit, nongovernmental organization with Special Category consultative status with the Economic and Social Council [ECOSOC] of the United Nations and the Council of Europe). This recommendation is made in consultation with other NGOs, victimology institutes and associations, and individual experts.

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Editor's Note -- John Dussich also read the recommendation as an intervention at a plenary session

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Want to know more about the

### Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Salvador, Brasil, 12-19 April 2010

See -- http://www.unodc.org/unodc/en/crime-congress/12th-crime-congress-documents.html

#### Ancillary Meeting – The Case For A Convention on Victims' Rights Session 37 – Thursday 15 April

# Introductory Comments -History of the draft Convention and Introduction of the draft UN Resolution for a Convention on Justice and Support for Victims of Crime and Abuse of Power

John Dussich.

Director, Tokiwa International Victimology Institute,

Professor, California State University, Fresno, USA

The intention of these comments is to, first, recall how the idea of the proposed draft Convention came into being; and, second, to introduce the draft Resolution for this proposed Convention. In fact, I will make reference to four documents: First, the landmark United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power introduced in 1985; second, the evolving Convention for the future possibly in 2015; third, the Resolution which is our primary focus now for next month's May's meeting; and Commission fourth. recommendations (submitted by the WSV) which were accepted by the United Nations Office of Drugs and Crime for distribution at the Congress and which represent the same basic text of the Resolution, but in a statement format.

The beginning of this long process was officially begun at the Zagreb Symposium in 1985, where Professors LeRoy Lamborn and Irvin Waller were jointly urging for the WSV to coordinate and promote a UN Declaration for Crime Victims' Rights. Immediately following this symposium many WSV members went to Milan and began a vigorous campaign to get a resolution accepted that would introduce the Declaration we wanted. In the process of those intense negotiations, both a Resolution was crafted along with a "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power." The Resolution was accepted, along with the recommended Declaration. This was then send back to the Vienna UN office to ECOSOC

reformulated in preparation for introduction to the General Assembly in New York with Assembly Resolution 40/34. On November 29<sup>th</sup>, of that same year, 1985, at the 96<sup>th</sup> Plenary Meeting, the Declaration was passed by the General Assembly unanimously!

This event was greeted with great joy and satisfaction by the victimology community in many parts of the world. In a relatively short period of time, and as a first cogent product of its youthful existence, the World Society of Victimology, in cooperation with many allied organizations, had successfully nurtured in a significant international instrument that expressed a wide range of noble principles on behalf of victims of crime and abuse of power that had been just prior to that date the subject of academic lectures, the utterings of practitioners and the aspirations of victim rights lawyers.

The immediate question emerged, how to implement these wonderful objectives. What vehicle should we use to spread the word about these changes? It was assumed that the Declaration would be self evident. Once the news of these principles was promulgated, the needed changes would automatically follow. The Declaration was translated into all the UN languages and distributed across the globe. Within less than a year, it was available on the UN website. It was the subject of discussion and debate by victimologists in many national and international fora. However, in spite of the flurry of its disseminations in many countries, the much awaited for implementation came very slowly and in only a few countries. It was discussed at each of the following WSV symposia: Israel in 1988, Brazil in 1991, Australia in 1994, and in the Netherlands in 1997. It was also discussed in the UN Security Council and in resolutions, from 1991 to 1995. Finally, the Expert Group Meeting on Victims of Crime and Abuse of Power in the International Setting, held at Vienna in December 1995 recommended that actions be taken to remedy the problem of poor implementation.

The Governments of the Netherlands and the United States of America agreed to act as host for two expert group meetings on victims of crime and abuse of power in the international setting, one was organized by the United States Department of Justice at Tulsa, Oklahoma, in August 1996 and the other organized by the Ministry of Justice of the Netherlands at The Hague in March 1997. The results of those two expert group meetings, suggested that many countries did not have

the necessary information about how to proceed with the recommended implementations of the Declaration, so it proposed the creation of a manual as a strategic guide for policy makers and of a handbook as a resource tool for practitioners. The USA agreed to publish these two documents and in 1999 these publications came into being and were distributed worldwide. Their effect was soon realized in that they were used for a wide range of training sessions in many national and international Many countries accepted challenges to implement changes and the desired effect of these two documents began to be realized.

In spite of these important improvements, as early as 1997, at the WSV Amsterdam symposium, Sam Garkawe voiced concern that perhaps a convention was now needed to require all countries to follow recommendations of the Declaration. He again brought up the need for a Convention in April of 2005 at the Bangkok Congress in his speech there. From subsequent discussions, two issues emerged: the first, was the realization that new victimological information was now available from 20 years of research and experience; and, it became clear that many countries would not invest in the needed changes unless they were required to do so. Later that year, in December, a group of experts was assembled under the coordination of INTERVICT and the leadership of its director, Professor Marc Groenhuijsen. Those who were invited to come were: Hidemichi Morosawa, Sam Garkawe, Marlene Young, Karen McLaughlin, Raj Kumar, Lechart, Irvin Waller, Adedokun Adejemi and Marianne Hilfe. It was at this meeting that the actual first text of a convention was created. That first draft was distributed, mostly within the WSV. With the benefit of suggestions, a second version was published on the INTERVICT and WSV websites.

The next year at the WSV symposium in Orlando, USA, Marc Groenhuijsen organized a special workgroup to further consider changes on this new draft convention. After the symposium further changes were made and also published on the WSV and INTERVICT websites. This version was labeled the December 2006 Convention. Lastly, in 2008, under the leadership of myself, the Tokiwa International Victimology Institute (TIVI) hosted two days of seminars focused on analytic critiques and recommendations aimed at changing the content; and, for the first time, a full day aimed at creating a series of strategies

that would bring the Convention closer to fruition. The products of these two days were published in a symposium proceedings book, titled *Raising the Global Standards*, and became the substance of the most recent modifications in the current version of the Convention crafted by Sam Garkawe, Marc Groenhuijsen and myself in December of 2009. This version, after some additional improvements were made, was published and dated, February 8, 2010 and placed on the WSV and INTERVICT websites, where it is now.

In anticipation of introducing this recent version of the Convention, now titled: "Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power", and recognizing that only nations may introduce an agenda item to consider a convention, in my role as a member of the WSV's UN Liaison Committee. I crafted a one-page draft Resolution that a country might accept to initiate the process of brining the Convention to the Crime Commission table for discussion and consideration in Vienna at the 2009 meeting in April. As this Resolution could not attract support in the short period from January to April 2009, the Resolution was only a proposal and not accepted as an agenda item. However, it was distributed widely and has also been distributed at this 12th Crime Congress in anticipation of the May 2010 Crime Commission to be held next month from the 17th-20th.

At this Congress and in preparation for the upcoming May 2010 Commission meeting, the WSV prepared a Recommendation document which was approved just this past Tuesday for distribution to the member States. Many of you have seen these Recommendations. The text of this document is essentially the same as the text of the aforementioned Resolution.

Last night, the WSV was told that the proposed draft of the Salvador Declaration will include also wording in support of victims' rights. Furthermore, the WSV team during this Congress has been successful in obtaining 21 signatures in only three days from NGOs and individuals supporting the WSV initiative for the Resolution.

Our challenge from now to May 17<sup>th</sup>, is to convince a country that is willing to adopt a Resolution, similar to this draft, as an agenda item prior to May 17<sup>th</sup> so that it can discussion by the current Commission at that time.

At the conclusion of this meeting, there will be petition sheets passed around. I would like to

invite you all to support these initiatives with your signatures. Thank you very much.

**After-word** – John says, "We were able to get 69 signatures on our petition to support our proposed Resolution, especially by many NGOs, country delegates (mostly from Brazil) and individuals."

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# Cloaking the truth – ex post facto the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

#### Michael O'Connell,

Vice President, World Society of Victimology, Commissioner for Victims' Rights, South Australia

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 is frequently called the Magna Carta on victims' rights. It is one of the most celebrated documents since the victim was rediscovered.

Like the original Magna Carta, the Declaration is both inspirational and aspirational. From the victims' perspective the Declaration is a great paper.

Magna Carta proclaims many clauses intended to prevent innocent citizens becoming victims of abuse of power. It also states, *To no one will we sell, to no one deny or delay right or justice*, it did not say this only applies to defendants. It also importantly became the basis of the principle of justice that if a right is violated there should be a remedy.

The drafters did not intend the UN Declaration to be simply a set of pious platitudes; rather they intended it to be a statement on certain purposes and rights that form the basis of specific responsibilities and activities to ensure victims have access to justice and fair treatment, restitution and compensation, as well as victim assistance.

There is no doubt that the Declaration has positively influenced the treatment of victims of crime. It has also influenced many international instruments; for example, the Rome Statute and Rules & Procedures of the

International Criminal Court. As well, Of the 10 primary principles of justice found in the Declaration, the UN Convention against Transnational Organized Crime (UNTOC) contains 4 of these, whereas UNTOC's Protocol Against Trafficking in Persons, Especially Women and Children contains 6 in a mandatory form and another 3 in an optional form. The declaration has also influenced regional instruments; for example, the 2001 Council of the EU Framework Decision (a legally binding document for the current 25 European Union Member States) includes 8 of the 10 principles. (Garkawe 2000)

Furthermore, many of the fundamental principles and resultant rights have subsequently become part of domestic legislation. In my home country, Australia, 5 of 6 States have a declarations or charter on victims' rights, while the sixth has pledge to honour the UN Declaration. Thus, it is considered one of the most important documents on international law.

Unlike Magna Carta, the UN Declaration has not been revised and amended. Many clauses in Magna Carta were renewed over hundreds o years. Many of the original clauses have been encapsulated into other law or amended by other law.

In the year of the 25<sup>th</sup> anniversary of the Declaration it is worthwhile contemplating how to further advance victims' rights. The WSV has recommended at this Congress that the UNODC appoint an Expert Committee for this purpose.

Although it can be argued that victims of crime are better off as a consequence of the Declaration, research reveals a more pessimistic picture.

About one decade after the UN Declaration was promulgated, for example, over one half of victims across our world (who completed the international crime survey) said they were unhappy about the way police treat them. Many stated that police "did not do enough" or "did not recover the goods". About 1 in 5 said the police failed to keep them informed about progress in their case. 1 in 5 women victims of domestic violence or sexual assault. responded that police were "incorrect" or Victims of personal violence, "impolite". including domestic violence and rape, were the least satisfied with the police because they felt that the police "did not do enough" or "were not interested". (International Crime Victim Survey 2000)

Then about two decades after the UN Declaration, approximately one half of the victims who reported a crime were satisfied with the way the police treated their case, although in several countries where levels of satisfaction used to be comparatively high, the rates of satisfaction have decreased. This group of countries includes the USA, Canada, England & Wales, Sweden and the Netherlands, which are countries where better treatment of victims is actively promoted. (International Crime Victim Survey 2005)

Since the UN adopted the Declaration, victim support in those countries that share a common law criminal justice system as well as the Netherlands and Sweden has improved, so that it is frequently provided to victims. In other countries where victims have been surveyed and comparative data is available, there has been a modest increase in victim support most countries. Notably, less than 1 in 10 victims of serious crimes who reported to police received specialised Furthermore, about 4 in 10 of those who did not, expressed a need for support. Victim support agencies provided services approximately 1 in 5 of victims with expressed needs. (International Crime Victim Survey 2005)

Uniformly across our world where victims have been surveyed, the results show the implementation of victims' rights has been patchy and for too many people, victims' rights are empty promises (see e.g. O'Connell 2006 (Australia); Human Rights Watch 2009 (USA); Wemmers et al 2005 (Canada); Groenhuijsen 1997) Over all, far too many victims still end up traumatized by criminal justice systems. Moreover, too many victims are treated poorly and do not receive adequate material, psychological and social support.

I do not refute that victims' rights are entrenched in much law; however, those rights are rarely seen as binding on those obliged to act accordingly.

The Declaration encourages laws and practices in order to guarantee fundamental fairness and justice for all victims of crime. However, victims' rights – with few exceptions – are not yet analogous to the concepts of natural justice and procedural justice.

Thus, ex post facto the Declaration, the rhetoric cloaks the truth for many victims.

It is my contention that the UN Declaration should not remain a static document.

In 1985 the United Nations adopted a declaration referring to the rights of victims of

crime. It established the importance of victims being treated with dignity and respect and given information, compensation and services, as well as the right to be heard at appropriate times in the case.

The causes that lead to the existing Declaration remain realities for many victims. Their discontent has not diminished. Now is time to seriously examine the feasibility of a Convention on victims' rights. It is time for all victims to benefit from binding international For this purpose there should be an monitoring mechanism; appropriate to consideration given а means of enforcement, so if violations happen and cannot be resolved in victims' home countries, there may an avenue (in accord with the international legal principles of Responsibility) for victims to seek a remedy.

#### JOINT STATEMENT ON BEHALF OF NON-GOVERNMENTAL ORGANIZATIONS

#### High-level Segment – Sunday 18 April

## Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Presented for the NGO Alliance by Yael Daniele

Thank you, Mr. President, for giving me the floor. This statement is made on behalf of numerous NGOs and many individual experts represented at the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and it has been prepared through an open consultative process to develop our shared viewpoint.

Civil society has a key role in contributing to the development and implementation of national and international instruments and structures to combat crime and victimization. We challenge abuses, defend human rights, identify systemic weaknesses. We advocate for, and propose, new initiatives and approaches for just and humane responses to both the victims and the perpetrators of crime. It is in this spirit that we make this statement. Our statement will address victims, juveniles, access to justice and fair treatment, organized crime and research and evaluation.

#### **Victims**

Every year, all over the world, more than one billion people suffer harm as a result of crime. Millions more are victims of abuse of power and terrorism. Throughout history they have been forgotten and ignored segments of their societies, without a voice or rights. While the rights of offenders have been established, those of victims have been largely overlooked. At best, criminal justice systems have used victims as witnesses to establish their cases.

The Seventh UN Congress adopted the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. For the first time, the international community recognized their plight and acknowledged their rights. This, and all subsequent victim rights instruments and provisions, called on States to promote and fulfil the rights of victims and ensure that their needs are met. We call for the establishment of an expert group to study the implementation instruments of these and to recommendations.

No member of the international community can speak of any crime without acknowledging its victims and their rights. We call on all States to adopt and implement appropriate legislation, policies, and practices for the protection of, and assistance to, victims of crime, abuse of power and terrorism. Justice would then be realised both for the victims and for society.

#### **Juveniles**

A second major concern we address is juveniles.

All Member States should adopt a minimum age of criminal responsibility. We propose that this should be no less than 12 years of age as established under international law. Additionally we recommend that the age of criminal responsibility be increased to 14 as proposed by the United Nations Special Rapporteur on Torture.

Children living in the street and / or domestically-abused children should be the concern of the community as a whole. Staff in relevant community-based institutions and organizations should have specialized training to support and assist these children to become viable members of their communities, also to prevent their further victimization and possible criminalization.

The children of prisoners are forgotten victims of crime. Their needs should be taken into account at each stage of the criminal justice process, from arrest to release from prison.

Turning to children who come into conflict with the law, we recommend that young children below the age of criminal responsibility should be dealt with through supportive care rather than punishment, as recommended by international instruments.

Responses to offences committed by minors should have an educational aim and, as far as possible, ensure the young person's participation in decisions made about them throughout the process. All measures on their behalf should be regularly monitored in order to improve them. They should ensure the protection of those minors deprived of their liberty, in particular their physical and mental integrity and their welfare.

#### **Access to Justice and Fair Treatment**

The third concern is how we ensure access to justice and fair treatment.

Civil society and governments have a responsibility to work together to reduce prison populations. Restorative justice is one example of an effective and useful tool in working with offenders and preserving the interests of victims. It is important that the public understand how it works and appreciate its benefits.

The excessive and arbitrary use of pre-trial detention and inadequate access to legal aid for disadvantaged defendants undermine confidence in criminal justice systems. They result in a series of adverse consequences that are almost certainly magnified further down the criminal justice chain. These undermine health, promote corruption and torture and contribute to the social exclusion of pre-trial detainees and their families. Limiting the use of pre-trial detention is critical. The accused person must have access to proper legal assistance as early as possible, including in police custody.

In view of the rapidly increasing use of prison for women who offend, we call on the Commission on Crime Prevention and Criminal Justice to adopt the draft Supplementary Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders this year, as they summarize best practice in working with women who offend.

Given the high proportion of drug users in prison populations in many countries, it is important to utilize fully evidence-based alternatives to conviction, punishment and imprisonment. Where treatment is compulsory, the place of detention for treatment should be subject to inspection in the same way as prisons.

Following from this, we stress that visiting mechanisms for prisons are essential. They ensure that the treatment of inmates complies with UN standards and norms. We strongly urge States that have not yet ratified the Optional Protocol to the Convention against Torture to do so, and those which have ratified it to designate or establish independent and effective national preventive mechanisms.

binding instrument with an effective monitoring mechanism to cover the Standard Minimum Rules is required. We ask the Commission to establish a working group to consider the preparation of a draft Convention or similar instrument on the rights of persons held in places of compulsory detention,

We call upon the General Assembly, through the Commission, to take note of the document "Basic Principles of Religious Freedom in Prison" that was reviewed by managers, representatives of Buddhist, Hindu. Orthodox. Muslim. Eastern Protestant Christian and Roman Catholic faiths, and by a number of Member States at this Congress.

#### **Transnational and Organized Crime**

At the 4th Conference of the Parties to the UN Convention against

Transnational Organized Crime (UNTOC), States Parties declared that a victim-centered approach was essential to an effective strategy to protect and assist victims of trafficking. Just as victim-centered approaches are key to the implementation of the Protocol, so they are essential to its effective review. In the year 2000, victims of trafficking placed their hope in an international framework promising to prevent, suppress, and punish trafficking in persons. They have now waited 10 long years

for this to become reality. Member States must а victim-centered monitoring mechanism to UNTOC and its protocols without further delay.

Turning to organized crime and corruption, in our view, these are two sides of the same coin. We call for integration of crime prevention and anti-corruption strategies to advance justice, equity and the possibility of achieving sustainable development.

#### Research and Evaluation

There is a need for more research on effective criminal justice practice, particularly in crime prevention. Greater emphasis should be placed on criminal justice education, taking advantage of new technology and teaching techniques. The Commission should consider the development of a Criminal Justice Education Declaration.

Finally, we thank our Brazilian hosts for this excellent opportunity to exchange ideas. A great deal of reform in criminal justice has occurred in Latin America over the past 25 years pertaining to the Rule of Law. Much can be learned from the region in improving criminal justice throughout the world.

#### **Concluding Remarks**

As civil society organizations are committed monitoring to progress implementing the Salvador Declaration and the resolutions adopted by the Commission and other UN bodies. We look forward to maintaining our critical partnership advancing the effectiveness of prevention and criminal justice.

Thank you, Mr. President.



*The Victimologist* -- Newsletter of the World Society of Victimology



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