

CREATING INCLUSIVE SOCIETIES: THE REDUCTION OF REOFFENDING IN THE CONTEXT OF THE UN CRIME PROGRAMME

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I. UNAFEI

Three things have brought us together at this Symposium. First, the celebration of the 60th anniversary of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI). Second, a shared interest in the reduction of reoffending. And third, the leadership displayed by Japan in the development of United Nations guidelines on this topic.

UNAFEI is the oldest institute in the United Nations Crime Programme Network, and has a rich legacy of activities over the past sixty years. For this reason, it has a special place in the UN Crime Programme.

UNAFEI's distinctive approach to promoting good practice in crime prevention and criminal justice has been the organization of training courses and seminars for practitioners. Especially over the past two decades, UNAFEI has expanded its technical assistance format to include, for example, bilateral and subregional seminars. It has also organized Workshops at UN Crime Congresses, thematic workshops at sessions of the UN Crime Commission, and ancillary meetings and side events, often in cooperation with Member States as well as with other institutes in the UN Crime Programme Network.

The establishment of UNAFEI in 1962 marked a significant growth of the capacity of the UN Crime Programme to provide technical assistance in the region, and beyond. From Japan's point of view, the training courses and seminars have the added benefit of providing the participants with information on Japanese experiences and developments in crime prevention and criminal justice, as well as insights into Japanese culture more broadly.

In 1982, the Asia Crime Prevention Foundation (ACPF) was established to support UNAFEI programmes, for example by co-organizing public lectures and study tours. The ACPF also provides a framework for the networking of UNAFEI alumni, both within Japan and internationally. This is an important function, considering that over the years, more than 6,200 criminal justice practitioners have participated in UNAFEI's courses and seminars, and many of them have moved on to play leading roles in crime prevention and criminal justice in their own country.

II. THE REDUCTION OF REOFFENDING IN THE UN CRIME PROGRAMME

The second thing that connects us here today is an interest in the reduction of reoffending.

Corrections in general has been the subject of the active international exchange of experience for over 150 years. It has been endlessly debated in academic and professional conferences, dealt with by the League of Nations, and specifically included in the UN Crime Programme from the outset.

Over the course of those 150 years, the theory of correctional treatment has evolved, and the priority given to it on the global level has changed. At first, the focus in criminology was on the individual offender. The goal was to diagnose the specific "cause of crime", which would guide the practitioner in proper treatment of the offender in a custodial environment.

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This explains why, when the UN Crime Programme was established seventy years ago, the topics identified by the General Assembly dealt almost *solely* with corrections: the assessment of offenders before sentencing; institutional treatment and different prison regimes; the training of correctional staff; pre-release treatment; and after-care.

From today's perspective, we might note the relative absence in that first formulation of the UN Crime Programme of such issues as the victim of crime, the work of the police, the prosecutor and the judge, and discussions of specific forms of crime such as property crime, violent crime, and economic crime. These would come, but many years later.

Similarly, the First UN Crime Congress, held in 1955, dealt almost solely with corrections. The five Congress themes were:

- the proposal for Standard Minimum Rules for the Treatment of Prisoners;
- selection and training of personnel for penal and correctional institutions;
- open penal and correctional institutions;
- prison labour; and (as the only non-corrections-related topic)
- the prevention of juvenile delinquency.

Since those early years, the approach to correctional treatment has changed.

- We are more aware of how the economic and social environment can lead an individual to crime,
- We are more aware of the potentially negative impact that the operation of the criminal justice system itself may have on the individual suspect or offender,
- There is a growing concern about prison overcrowding, and
- More attention is being paid to community-based sanctions and other measures, including restorative justice.

Each successive UN Crime Congress has reflected our changing understanding of, and our national priorities in, crime prevention and criminal justice, including corrections. For example, the Third and the Fourth UN Crime Congresses reflected a continuing shift towards viewing crime not so much as an issue of individual conduct, but more as an issue of economic and social development.

It can also be argued that the concerns and approach of the host country inevitably colour the discussions at a Congress. The Third UN Crime Congress, held in Stockholm in 1965, was the first UN Crime Congress to examine the specific question of reoffending: one of the themes was "Measures to combat recidivism." This was high on the agenda of the host government, Sweden.

The agenda items at the Fourth UN Crime Congress, held in Kyoto in 1970, dealt with social defence policies in relation to development planning, public participation in crime prevention and control, the Standard Minimum Rules on the Treatment of Prisoners, and the organization of research for policy development in social defence – issues which Japan has regarded as important in crime prevention and criminal justice. All of these issues have a corrections aspect.

Beginning during the 1980s and the 1990s, however, national representatives gathered at UN Crime Programme meetings in Vienna were increasingly voicing concerns about transnational crime as a security threat, to the extent that "domestic" criminal justice concerns such as corrections and the reduction of reoffending received less and less attention. This is reflected in the topics considered at meetings in Vienna. It is even more visible at the UN Crime Congresses. The Sixth UN Crime Congresses in 1980, and the Seventh UN Crime Congress in 1985 – forty years ago! – were the *last* UN Crime Congresses to have a separate theme specifically devoted to corrections.¹

Thus, at the same time as the scope of the international debate on corrections and reoffending expanded

¹ These Congress themes were the deinstitutionalization of corrections and its implications for the residual prisoner (1980), and criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures (1985).

to include different concerns and new approaches, a second trend in the United Nations was towards relatively *less* discussion at the global level on these themes.

This is not to say that corrections disappeared entirely from the UN Crime Programme, or even from the UN Crime Congresses. Instead of being discussed at global meetings in Vienna or as separate themes at UN Crime Congresses, the topic was being dealt with by members of the Programme Network of Institutes, in Congress workshops, as well as in technical cooperation projects conducted by the UN Secretariat through its growing network of field and regional offices.

The Programme Network of Institutes, for example, has cooperated in organizing Workshops at the UN Crime Congresses, and several of these have been related to corrections. In Kyoto last year, the topic was “Reducing reoffending: Identifying risks and developing solutions.” UNAFEI, of course, had the primary responsibility for this most recent workshop.

Several of the institutes in the Network, in addition, have been active in respect of corrections. For example, the Australian Institute of Criminology, HEUNI, ILANUD, the Korean Institute of Criminal Policy, the National Institute of Justice (in the United States) and UNICRI have published studies and technical reports on different aspects of corrections. The newest PNI member, the Thailand Institute of Justice, has been particularly active, as befits an institute established in particular to work on issues related to the pressing problems faced by women offenders.²

But there is one PNI member that has been pre-eminent in dealing with corrections: UNAFEI. Look over the long list of UNAFEI activities, and you will find at least one UNAFEI international training course or seminar on corrections *almost every single year*.

Arguably the most influential single UNAFEI contribution to the UN Crime Programme was the organization of one expert meeting.³ A draft proposal formulated at that meeting, following further revision, led to the adoption by the UN General Assembly of the United Nations Standard Minimum Rules for Non-custodial Measures. In recognition of its provenance, it is officially known as the Tokyo Rules.

The Tokyo Rules are an example of UN standards and norms. This term refers to instruments adopted by the General Assembly and ECOSOC that are intended as benchmarks in the development of crime prevention and criminal justice. As noted on the UNODC website, “These standards and norms provide flexible guidance for reform that accounts for differences in legal traditions, systems and structures whilst providing a collective vision of how criminal justice systems should be structured.”⁴

Over the years, a considerable number of UN standards and norms have been adopted. The first was the Standard Minimum Rules on the Treatment of Prisoners. Originally adopted in 1955, these have been updated in 2015. The revised version is known as “the Nelson Mandela Rules.” In addition to the Tokyo Rules and the Nelson Mandela Rules, there are two other key standards and norms that deal with corrections, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters.

Standards and norms are commonly referred to as “soft law” instruments, in the sense that they provide guidance but are not legally binding. This does not mean that standards and norms are meaningless, and have no practical effect. Indeed, in many Member States, the Nelson Mandela Rules, the Tokyo Rules and the Bangkok Rules have been used as a basis in legal reform.

Especially during the 1990s, there was considerable debate in the UN Crime Commission over the status of the standards and norms, and over whether new instruments should be developed. Some key Member States argued that the UN supposedly already has a sufficient number of standards and norms, and the focus

² A background document is available on publications by the various institutes on corrections and related issues.

³ Draft of Proposed United Nations Standard Minimum Rules for the Non Institutional Treatment of Offenders, UNAFEI, 1988.

⁴ <https://www.unodc.org/unodc/en/commissions/CCPCJ/ccpcj-standards-and-norms.html>

of future activities should be on implementation on the national and local level, through technical assistance projects, training and research. Why should the UN do more on the global level?

There are several ways to answer that question. We are constantly learning from research and experience. The global exchange of experience helps to identify promising approaches, and how to adapt the standards and norms to the national and local context. Earlier standards and norms may need to be updated, as happened with the Nelson Mandela Rules. We may become aware of significant gaps in the standards and norms that need to be filled with new instruments, as happened with restorative justice, and with the treatment of women offenders.

Furthermore, the earlier UN standards and norms are essentially *minimum standards*, and deal, for example, with the rights of the defendant and the convicted offender. More recent standards and norms often take the form of *guidelines*. They are intended to be practical, to inform practitioners around the world as to what appears to “work,” and what seems promising.

The Sustainable Development Goals, in turn, stress the importance of a cross-cutting approach to different fundamental goals. Member States should seek to balance social, economic and environmental sustainability. If we want progress in preventing and countering transnational crime, we need at the same time to work on the performance of the domestic criminal justice system, and that includes corrections. We still have a lot to learn from one another also on the global level.

III. PLACING THE PROPOSED GUIDELINES ON THE REDUCTION OF REOFFENDING INTO THE OVERALL CONTEXT OF JAPAN’S CONTRIBUTION TO THE UNITED NATIONS CRIME PROGRAMME

All of this helps to answer the question of why we need to continue working on United Nations standards and norms. This brings me to the third thing that I mentioned as having brought us together today: The leadership displayed by Japan in the development of UN guidelines on the reduction of reoffending. You may not be aware of the remarkable extent to which, time and time again, Japanese experts have been involved when key decisions have been made, not just on the draft guidelines, and not just on corrections, but more broadly in the UN Crime Programme.

The Meiji Restoration in Japan in 1868 came at an auspicious time, when broader international cooperation began to take shape in crime prevention and criminal justice. Practitioners and policymakers from different countries started to exchange their experiences and insights at international conferences. For example, Japan’s diplomatic representative to Tsarist Russia, Minister Tokujiro Nishi, attended the Fourth Congress of the International Penal and Penitentiary Commission (IPPC), held in St. Petersburg, Russia, in 1890. Japan continued to send delegations to subsequent IPPC Congresses.

When the United Nations was established, its work on crime prevention and criminal justice was largely a continuation of the work of the IPPC. The broad outline of the work of the UN is familiar to many of you: the sessions of the UN Crime Commission, the organization of UN Crime Congresses (which continue the tradition started by the IPPC), the development of standards and norms, the activity of UNAFEI and the other institutes that form the UN Crime Programme Network, as well as the extensive technical assistance.

Before the Crime Commission was established in 1991, there was a much smaller body, the UN Crime Committee. Only an alternating handful of experts attended – at first, only four or five individuals at each meeting. Vice Minister of Justice Yoshitsuga Baba attended the meetings in 1965 and 1969, and Mr. Atsushi Nagashima (as the personal representative of Vice Minister Baba) attended the 1966 meeting. Considering that by 1960 the UN had one hundred Member States, it is fair to say that *during these early years, a disproportionately large number of UN Crime Committee participants were Japanese.*

Japanese experts have also been active in the UN Secretariat. In order to help prepare the Fourth UN Crime Congress, a Japanese civil servant, Mr. Minoru Shikita, was sent to the UN Secretariat, from 1967 to 1970. He served ultimately as the Officer-in-Charge of the Secretariat unit dealing with crime and justice, and

then as the Deputy Executive Secretary at the Fourth UN Crime Congress itself. He returned to the UN Secretariat during the 1980s, to serve as the Chief of the same UN Secretariat unit. In this capacity, he was responsible also for the organization of the Seventh UN Crime Congress in 1985.⁵

I have already mentioned that during the 1980s, some Member States wanted a change in the UN Crime Programme priorities. They argued that the growth of transnational crime required a more action-oriented UN Crime Programme, one which they believed was not being provided by the small UN Crime Committee, which – again in their view – seemed to be devoting much of its time to the drafting and adoption of “soft law” resolutions.

The discussions ultimately led to a General Assembly decision to restructure the UN Crime Programme in 1990 and 1991. Much of these discussions took place within the framework of the UN Crime Committee itself. I am sure that by now it would not surprise you to hear that the chairperson of the Committee at that decisive time was Japanese: Mr. Minoru Shikita, who took over this position in 1988.

The most notable and ultimately far-reaching structural change was that the UN Crime Committee was replaced by the United Nations Crime Commission. The Commission consists of 40 Member States, elected for three-year terms. So far, over a hundred Member States have served on the UN Crime Commission for at least one term. Of these countries, only six have been re-elected time after time, without interruption, since 1992: Brazil, China, Iran, the Russian Federation, the United States – and Japan.⁶

Moreover, Japan's active involvement is also reflected in the composition of the Bureau of the UN Crime Commission: the chairperson, three vice-chairpersons, and rapporteur at each session, who are responsible for guiding the discussions. There have so far been thirty sessions of the Commission. A Japanese representative was elected to the Bureau a total of six times, and in three of these cases, as chairperson.⁷

Thus, a disproportionately large number of UN Crime Commission participants have been Japanese, and in addition they have served disproportionately often in positions of responsibility.

The Fourteenth UN Crime Congress, held in Kyoto in March 2021, can be regarded as the epitome – so far – of the contribution of Japan to the UN Crime Programme. Its planning and organization showcased the contribution of many Japanese agencies and individuals (in particular the Ministry of Justice, the Ministry of Foreign Affairs, and UNAFEI).

Organizing any international conference requires a considerable effort. Organizing a major global conference in the middle of a global pandemic would seem the stuff of an organizer's nightmare. Due largely to the determined efforts of Japan, the Fourteenth UN Crime Congress was held successfully, although in a hybrid format, with only a few hundred participants on-site, and the vast majority participating online from around the world. The Kyoto Congress set the pattern for how UN hybrid conferences can be organized.

At earlier UN Crime Congresses, one of the most difficult tasks had been the negotiation of the Congress Declaration. The host government of Japan was well aware that in order to have the Kyoto Declaration adopted during the opening ceremony would require very careful preparation and wide consultations with Member States. At the same time, the host government wanted a Declaration that would identify the various priorities.

In this, Japan clearly succeeded. The Kyoto Declaration is remarkably substantive, balanced, well-structured and well-written.⁸ No longer does transnational crime appear to dominate the UN Crime

⁵ Shikita-sama has served in a number of roles in Japan and internationally. He has also been prosecutor, professor, Deputy Director and Director at UNAFEI, and chairperson of the ACPF.

⁶ In addition, several countries have served with only a few brief “gap years.” Among them are Austria, Canada, Indonesia, Mexico, Nigeria, Pakistan and Thailand.

⁷ A Japanese representative served as chairperson of the UN Crime Commission at the sessions in 1996, 2017 and 2022. A Japanese representative served as vice-chairperson at the sessions in 2015, 2016 and 2021.

⁸ Earlier Congress Declarations were negotiated over a protracted period of time in advance of the Crime Congress, and then during long hours extending at times late into the night at the Congress venue itself. As a result, the text tended at

Programme agenda; I would say that Japan's leadership has helped to restore a balance between transnational crime, and such domestic crime prevention and criminal justice concerns as corrections. The Kyoto Declaration also very clearly approaches crime and justice through the framework of the Sustainable Development Goals.

The text of the Kyoto Declaration is the result of consensus among Member States, but it can be seen to have a Japanese imprint. One can see nods to such Japanese institutions as voluntary probation officers. The concept of a "culture of lawfulness," which many foreign observers readily associate with Japan, had aroused some heated criticism by a few Member States largely on the grounds that it was not "agreed language." Nonetheless, it found its way into the Kyoto Declaration. And most importantly for today's Symposium, the Kyoto Declaration calls for work on the reduction of reoffending.⁹

Overall, Japan has emerged as one of the major contributors to the United Nations Crime Programme. Its contribution has been institutional, personal and substantive.

The institutional contribution of Japan has been seen in the sessions of the UN Crime Commission, and in the extensive technical assistance provided by UNAFEI. For example, the 6,200 practitioners who have attended UNAFEI events have helped to strengthen their respective criminal justice systems. Japan also has the distinction of being the only UN Member State to have organized two UN Crime Congresses, in 1970 and in 2021.

The greatest personal contribution of a Japanese representative to the UN Crime Programme is undoubtedly that of Mr. Minoru Shikita. However, I would like to draw attention also to the successful work of Minister of Justice Yoko Kamikawa in guiding the preparations for the Fourteenth UN Congress, and of H.E. Ambassador Takeshi Hikihara in the negotiations in Vienna, including the difficult work on the Kyoto Declaration.

Japan's approach to negotiations can be described as low-keyed and constructive, seeking to avoid confrontation and to find ways to take the Crime Programme forward. This has been helped by the fact that for over sixty years, Japan has been a consistently active participant in these negotiations.

Since decisions within the UN Crime Programme are made by consensus, it is not possible to definitely determine how Japan's participation has influenced the substance of the Programme. Nonetheless, it can be argued that over the years, several aspects of Japanese criminal policy have influenced the evolution of the UN Crime Programme. Among these are efforts to promote greater community involvement in crime prevention, such as through the use of voluntary probation officers; and to strengthen networking among practitioners in order to foster the international exchange of promising practice.

And today, we can recognize how the sustained Japanese interest in decreasing the prison population, improving institutional corrections, and expanding the use of non-custodial measures in order to reduce reoffending is helping us to formulate new UN guidelines.

My conclusion is that *Japan is a major global power in the UN Crime Programme, and is recognized as such by its peers, the other Member States.*

I can also say that all of this is a record of which Japan can be proud.

times to be rather rambling, with the readability suffering from the layers of last-minute amendments. The structure and style of the Kyoto Declaration are much clearer and more straightforward.

⁹ Note can also be made of the references to the establishment of regional networks for practitioners, and involving youth in crime prevention forums, topics that Japan has identified as areas in which it intends to continue contributing to the UN Crime Programme. At a side event organized during the 2022 session of the UN Crime Commission, Assistant Vice Minister Noriko Shibata described Japan's follow-up work to the Kyoto Congress as being based on three pillars, one of which was the work on the guidelines on the reduction of reoffending. In respect to regional networks for practitioners, in January 2022 Japan organized an Asia-Pacific regional forum on mutual legal assistance that brought together about 130 participants. A second meeting is planned for January 2023. In respect to youth, in October 2021 Japan organized the First Global Youth Forum on a Culture of Lawfulness. (Personal notes by the author from the 2022 session of the UN Crime Commission.)