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BACKGROUND GUIDE

COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE

MUNRFE ANNUAL CONFERENCE 2017

MODEL UNITED NATIONS OF THE RUSSIAN FAR EAST
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Welcoming letter from the Commission on Crime Prevention and Criminal Justice Chairperson

Greetings young diplomats!

I would put a good sense into the word "young diplomat" meaning that people who are reading this Guide are aspired to conquer new mountain in their life – Model UN Conference.

A small life of 5 days is waiting for you to give a chance to plunge into the atmosphere of English, debates, discussions, exchange of opinions, drafting resolution and finally international law. The fact is that there is no chance to fully prepare for this journey. Nevertheless, it is a true peculiarity of the Model UN world.

Having examined international law you should realize the scope of the topics you are going to discuss. Maritime piracy, human trafficking, migrant smuggling and cyber security hold the top of hot issues that the International Community is responding to every day.

You might not be introduced to that relevant news yet, but I assure you that absence of information among usual citizens is already an aspect of the problem that you need to solve being a delegate.

I hope you start making efforts to prepare yourself to the discussion of the issues related to the international law because for this Conference you are going to be a wordsmith who creates global frameworks suitable for each and everyone in the world.

I wish you good luck! I'm looking forward to meet you and your brilliant ideas on the floor.

Yours sincerely,

Alexandra Gritsenko
Chairperson

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Committee overview

Introduction

Originally, under the International Penal and Penitentiary Commission (IPPC), the international community has been addressing criminal justice and crime prevention issues since 1885. The United Nations (UN) assumed IPPC´s functions in 1950 when the General Assembly (GA) passed resolution 415, which replaced the IPPC with an Ad Hoc Committee of Experts to advise the Economic and Social Council (ECOSOC) on issues of crime prevention and treatment of offenders. Subsequently, the Committee on Crime Prevention and Control (CCPC), the predecessor of the Commission on Crime Prevention and Criminal Justice (CCPCJ), was established in 1971 as a subsidiary organ of ECOSOC. This organ focused on promoting information exchange between experts and states regarding the issue of crime prevention. In 1992, the UN noted that criminality was increasing at a rate of 5%, even faster than the global population growth. This demonstrated the need for the creation of a more effective body specialized in crime prevention and criminal justice. The Commission on Crime Prevention and Criminal Justice was established by the Economic and Social Council resolution 1992/1, upon request of General Assembly (GA) resolution 46/152, as one of its functional commissions.

The Commission acts as the principal policymaking body of the United Nations in the field of crime prevention and criminal justice. ECOSOC provided for the CCPCJ's mandates and priorities in resolution 1992/22, which include improving international action to combat national and transnational crime and the efficiency and fairness of criminal justice administration systems. The CCPCJ also offers Member States a forum for exchanging expertise, experience and information in order to develop national and international strategies, and to identify priorities for combating crime.

In 2006, the GA adopted resolution 61/252, which further expanded the mandates of the CCPCJ to enable it to function as a governing body of the United Nations Office on Drugs and Crime (UNODC), and to approve the budget of the United Nations Crime Prevention and Criminal Justice Fund, which provides resources for technical assistance in the field of crime prevention and criminal justice worldwide. The CCPCJ coordinates with other United Nations bodies that have specific mandates in the areas of crime prevention and criminal justice, and is the preparatory body to the United Nations Crime Congresses. Declarations adopted by the congresses are transmitted through the CCPCJ and the ECOSOC to the GA for endorsement. The CCPCJ implements the outcome of the congresses into concrete action through decisions and resolutions, many of which are recommended for adoption by the ECOSOC or, through the ECOSOC, by the GA.Intersessional meetings of the CCPCJ are regularly convened to provide policy guidance to UNODC. Towards the end of each year, the CCPCJ meets at a reconvened session to consider budgetary and administrative matters as the governing body of the United Nations crime prevention and criminal justice programme.

Mandate, Functions and Powers

By protecting human rights and fundamental freedoms, the UN Charter established the basis for CCPCJ's mandate in Article 1, Paragraph 3, stating that one of the purposes of the UN is "[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms". Following these principles, the CCPCJ was created as a functional commission and a subsidiary body of ECOSOC, which considers the annual reports of the CCPCJ during its General Segment.

The CCPCJ's responsibilities include monitoring, developing, and applying international standards and norms related to crime, as well as providing expert guidance and technical assistance on crime-related issues to Member States. The general priorities of the CCPCJ are combating and preventing national and transnational crime and improving criminal justice systems around the world to be fairer and more effective. Some of the top priorities of the CCPCJ in recent years have been corruption, human trafficking, illegal migration, treatment of prisoners, and terrorism.

Regular and Intersessional Meetings of the Commission

The Commission holds annual sessions for the duration of one week in the first half of the year, as well as one-day reconvened sessions at the end of each year to consider administrative and budgetary matters. The Commission has a maximum number of ten working days for its session, pursuant to General Assembly resolution 46/152. In order to examine draft decisions, draft resolutions and specific technical issues, a Committee of the Whole is convened concurrently with the annual session of the Commission. Intersessional meetings of the Commission are convened to finalize the provisional agenda of the Commission; to address organizational and substantive matters; and to provide continuous and effective policy guidance.

Structure and Membership

Governing Body of UNODC

The Commission acts as the governing body of the United Nations Office on Drugs and Crime. It approves the budget of the United Nations Crime Prevention and Criminal Fund, which provides resources for promoting technical assistance in the field of crime prevention and criminal justice worldwide.

United Nations Crime Congresses

The Commission provides substantive and organizational direction for the quinquennial United Nations Congress on Crime Prevention and Criminal Justice. It also considers the outcome of the congresses and takes decisions on appropriate follow-up measures.

Programme Network of Institutes

The Commission also maintains links to the United Nations Crime Prevention and Criminal Justice Programme Network, which supports the efforts the United Nations in the area of crime prevention and criminal justice and contributes to the work of the Commission.

The Commission is composed of 40 Member States elected by the Economic and Social Council, with the following distribution of seats among the regional groups:

(a) Twelve for African States;

(b) Nine for Asian States;

(c) Eight for Latin American and Caribbean States;

(d) Four for Eastern European States;

(e) Seven for Western European and other States.

Of the 20 Member States elected in 2012, four come from African States, five from Asia-Pacific States, two from Eastern European States, five from Latin American and Caribbean States, and four from Western European and other States. The term of office for Commission Members is three years.

In order to function effectively, the Commission needs to organize and prepare its work carefully and in advance. Such tasks are carried out by the Bureau and the Extended Bureau of the Commission, which play an active role in the preparation of the regular and the inter-sessional meetings with the assistance of the Secretariat. The Bureau of the Commission is composed of the Chairperson, three Vice-Chairpersons and one Rapporteur. At the end of its reconvened session, the Commission elects its Bureau for the next session. The Extended Bureau also includes the Chairpersons of the five regional groups, the European Union and the Group of 77 and China.

The United Nations is active in developing and promoting universal principles in crime prevention and criminal justice. Over the years a significant body of related United Nations standards and norms has emerged, covering a diversity of issues including access to justice, treatment of offenders, justice for children, victim protection, and violence against women. The United Nations Crime Congresses, held every five years since 1955, provide an invaluable source and driving force for developing these standards and norms. Since its inception in 1992, the Commission on Crime Prevention and Criminal Justice (CCPCJ) has taken the lead in their development. 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.

Role of the CCPCJ in developing the United Nations standards and norms

The CCPCJ is an essential mechanism for practical collaboration among States on criminal justice issues. Its mandate and priorities are to improve international action to combat national and transnational crime, and efficiency and fairness of criminal justice administration systems. As the principal policymaking body of the United Nations in the field of crime prevention and criminal justice, the CCPCJ is the forum where Member States negotiate and agree on relevant standards and norms. It also offers States a forum for exchanging expertise, experience and information to develop national and international strategies, and to identify priorities for combating crime.

What are the United Nations standards and norms?

The United Nations standards and norms are contained in instruments like resolutions or declarations. Adopted by the General Assembly or other intergovernmental bodies, they enjoy the consensus of Member States. A number of new standards and norms developed over the last decade in the areas of treatment of prisoners, women offenders, legal aid, judicial integrity, justice for children and violence against women, as well as the declarations of the most recent United Nations congresses on crime prevention and criminal justice. Today, there are over 58 different instruments containing standards and norms that relate to:

1. Persons in custody, non-custodial sanctions, and restorative justice;

2. Justice for children;

3. Crime prevention, violence against women and victim issues; and

4. Good governance, the independence of the judiciary and the integrity of criminal justice personnel and access to legal aid.

The standards and norms are a main pillar of UNODC work and make a significant contribution to promoting more effective and fair criminal justice structures in three dimensions: first, they are utilized at the national level by fostering in-depth assessments leading to the adoption of necessary criminal justice reforms; second, they help countries to develop sub regional and regional strategies; and third, the standards and norms represent universal 'best practices' that can be adapted by States to meet national needs.

- Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice

- United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)

- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

- UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

The Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice was first published in 1992. The second edition was issued in 2006 and the present edition in 2016. It contains the normative instruments in crime prevention and criminal justice developed by the international community since 1955.

Establishing International Legal Norms to Counter Maritime Piracy

History

Efforts to stem piracy began during ancient times in Crete, Athens, and the island of Rhodes. The Rhodians were the first to include piracy in their maritime laws. During the middle Ages, pirates were one of several thorns in trade between countries. To address this and other issues northern cities in Germany and German merchants in the Netherlands, Belgium, Luxembourg, England, and the Baltic banded together to form the Hanseatic League. Eventually, some countries established admiralty courts to enforce maritime laws. To Sir Charles Hedges, a judge of the British Admiralty Court during the late 1600s, pirates were robbers who seized a ship and/or its cargo through violent means upon the sea. In spite of these legal attempts to deal with piracy, though, an internationally accepted definition of piracy did not exist prior to 1958. Half pirate, half fisherman, the modern "sea bandit" is a player in a nameless war, that some observers describe as an asymmetric conflict or a clash between the "first and the fourth world", as the lawyer Larry Woodward defending a group of imprisoned pirates awaiting trial put it (Los Angeles Time, 13 June 2013). However, this does not oppose the fact that piracy and armed robbery against ships are criminal activities. Maritime piracy is an age-old practice. While it intensified at the end of the 1990s, reaching a peak in the western Indian Ocean in 2011, it has been in sharp decline globally since the beginning of 2013. There were 353 attacks on ships worldwide in 2012 (compared to 569 in 2011) but only 264 attacks in 2013. Data from the headquarters of the European operation Atalanta established that only 15 attacks were registered in the Somali zone for 2013 (compared to 34 in 2012), and not one ship was captured by pirates.

The first targets of Somali pirates were World Food Programme (WFP) ships. The UN asked the international community for the means to protect these vessels. The pirates then moved on to other targets. No longer limiting themselves to steal cargo to sell, the pirates began hijacking ships and their crews for months, or even years, and demanding increasingly higher ransoms (from $150,000 in 2005 to the highest ransom, $5m, in 2012). According to a World Bank report published in March 2013 ("The Pirates of Somalia: Ending the Threat, Rebuilding a Nation"), the hijacking of 149 ships worldwide between April 2005 and the end of 2012 earned the perpetrators between $315m and $385m.Acts of piracy threaten maritime security by endangering, in particular, the welfare of seafarers and the security of navigation and commerce. These criminal acts may result in the loss of life, physical harm or hostage-taking of seafarers, significant disruptions to commerce and navigation, financial losses to shipowners, increased insurance premiums and security costs, increased costs to consumers and producers, and damage to the marine environment. Pirate attacks can have widespread ramifications, including preventing humanitarian assistance and increasing the costs of future shipments to the affected areas. Piracy principally affects the inter-tropical zone close to strategic passages (Gulf of Aden, Malacca Strait, Singapore Strait) and zones with "high added value" such as the Gulf of Guinea. It remains difficult to characterize, but rather than adding up the number of attacks or hostage takings, it is important to be able to distinguish between the types of threat, the modus operandi, attempted attacks and the number of ships actually hijacked, cargo stolen, and crews taken hostage. Modern day piracy is an example of the "asymmetric threat": attackers with few means, valuable targets, wide economic and media impact and – in the case of the Gulf of Aden – spectacular international mobilization around a relative consensus.

UN actions

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides the framework for the repression of piracy under international law, in particular in its articles 100 to 107 and 110. The Security Council has repeatedly reaffirmed "that international law, as reflected in the United Nations Convention on the Law of the Sea of 10 December 1982 ('The Convention'), sets out the legal framework applicable to combating piracy and armed robbery at sea, as well as other ocean activities" (Security Council resolution 1897 (2009), adopted on 30 November 2009). Article 100 of UNCLOS provides that "[a]ll States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State." The General Assembly has also repeatedly encouraged States to cooperate to address piracy and armed robbery at sea in its resolutions on oceans and the law of the sea. For example, in its resolution 64/71 of 4 December 2009, the General Assembly recognized "the crucial role of international cooperation at the global, regional, subregional and bilateral levels in combating, in accordance with international law, threats to maritime security, including piracy".

The Division for Ocean Affairs and the Law of the Sea, as the secretariat of UNCLOS, has a mandate to provide information and advice on the uniform and consistent application of the provisions of UNCLOS, including those relevant to the repression of piracy. It also has a mandate to provide information on relevant developments in oceans and the law of the sea to the General Assembly, as well as to the Meeting of States Parties to UNCLOS, in the annual reports of the Secretary-General on oceans and the law of the sea. These reports provide updated information on developments in respect of piracy and other crimes at sea.

Before December 2008, piracy incidents were globally reported to the International Maritime Bureau Piracy Reporting Centre (IMBPRC), to the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) for the Asian region, to flag states, coastal states, and other entities. IMO received and continues to receive all reports from these sources. In December 2008, EUNAVFOR Operation Atalanta and the affiliated Maritime Security Centre Horn of Africa (MSCHOA) were established. At the same time the "Best Management Practices for Protection against Somalia Based Piracy" were developed and published and the United Kingdom Marine Trade Operations (UKMTO) deployed in 2001 in Dubai became the primary point of contact for all vessels in case of a pirate attack. EUNAVFOR, NATO and other maritime forces in the Western Indian Ocean, as well as IMB-PRC and ReCAAP are using the Mercury communication system to coordinate actions.

The "Code of conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden" (Djibouti Code of Conduct), was adopted in January 2009. Two years later, in 2011, the "Djibouti Code of Conduct Information Sharing Centers" were established in Yemen, Kenya and Tanzania (Dar es Salaam). These three centers have access to Mercury and may receive reports from local shipping which are not yet incorporated in the IMO Geographic Information System (GIS) database. Since April 2011, the NATO Shipping Centre's website also offers a database that possibly lists complementary incidents.

Further research

Article 15 of the 1958 Geneva Convention of the High Seas and Article 101 of the 1982 UN Convention on the Law of the Sea defines piracy as a violent seizure on the high seas of a private ship or the illegal detainment of persons or property aboard said ship for the purpose of private gain. Seems simple, but in reality there are problems with this definition. First, it limits piracy to crimes committed against private property or citizens. Second, the act must occur in international waters. Third, greed must be the motivating factor behind the crime.

What the law fails to address are acts of piracy committed: by governments, within territorial waters, for political purposes. For example, in 1997 the Libra Buenos Aires was at anchor in Rio de Janeiro's harbor. That same year the Petrobulk Racer anchored off Jakarta.

Another example occurs when armed men and/or women seize a ship for purposes other than financial gain. They do so to further some political agenda as in the case of the Achille Lauro in October 1985 when Palestinian guerrillas hijacked the Italian cruise ship while in Egyptian territorial waters. They demanded the release of 50 countrymen held by the Israelis before they would release the hostages. This made them terrorists rather than pirates, and they were eventually convicted of offenses related to the hijacking and murder of an American Passenger rather than acts of piracy.

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Strengthening Prevention Measures and Criminal Justice Responses to Human Trafficking and Migrant Smuggling in Asia-Pacific

Main terms and definitions

Trafficking in persons - the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means set forth have been used. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth. (*Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons, 2000*).

Forced labor - all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (*Article 2 Forced Labor Convention (No. 29) 1930).*

Slavery - the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (*art 2. Slavery Convention, 1926*).

Differences between victims of trafficking in persons and populations affected by forced labor and/or slavery: trafficking victims may be exploited for other purposes than forced labor or slavery, enumerated in article 3(a) of the UN Trafficking in Persons Protocol. In addition, while forced labor requires coercion or threat of punishment, in the context of trafficking in persons, victims can be trafficked by other means, including abuse of power or a position of vulnerability. For minors, the consent is always irrelevant in the determination of a trafficking case.

Migrant smuggling - the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. (*Article 3, Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000*)

Refugee - a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution. (*Article 1A (2) Status of refugees convention 1951/1967 Protocol relating to the Status of Refugees*)

Introduction

Trafficking in persons is a serious crime and a grave violation of human rights. Generally over the global statistics every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims.

On the basis of the definition given in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons (2000)* trafficking in persons consists of three constituent elements;

The Act (What is done)

Recruitment, transportation, transfer, harboring or receipt of persons

The Means (How it is done)

Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim

The Purpose (Why it is done)

For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices and the removal of organs.

To ascertain whether a particular circumstance constitutes trafficking in persons, it is considered the definition of trafficking in the Trafficking in Persons Protocol and the constituent elements of the offense, as defined by relevant domestic legislation.

The definition contained in article 3 of the Trafficking in Persons Protocol is meant to provide consistency and consensus around the world on the phenomenon of trafficking in persons. Article 5 therefore requires that the conduct set out in article 3 be criminalized in domestic legislation. Domestic legislation does not need to follow the language of the Trafficking in Persons Protocol precisely, but should be adapted in accordance with domestic legal systems to give effect to the concepts contained in the Protocol.

In addition to the criminalization of trafficking, the Trafficking in Persons Protocol requires criminalization also of:

- attempts to commit a trafficking offence
- participation as an accomplice in such an offence
- organizing or directing others to commit trafficking.

National legislation should adopt the broad definition of trafficking prescribed in the Protocol. The legislative definition should be dynamic and flexible so as to empower the legislative framework to respond effectively to trafficking which:

- occurs both across borders and within a country (not just cross-border);
- is for a range of exploitative purposes (not just sexual exploitation);
- victimizes children, women and men (not just women, or adults, but also men and children);
- Takes place with or without the involvement of organized crime groups.

Reasons of human trafficking:

intro

People escaping from war and persecution are particularly vulnerable to becoming victims of trafficking. The urgency of their situation might lead them to make dangerous migration

decisions. The rapid increase in the number of Syrian victims of trafficking in persons following the start of the conflict there, for instance, seems to be one example of how these vulnerabilities play out.

The presence of large numbers of troops creates demand for labor and sexual services. In connection with degraded rule of law and weak institutions, this demand generates trafficking flows into the conflict or post-conflict zones.

Conflicts create favorable conditions for trafficking in persons, but not only by generating a mass of vulnerable people escaping violence. Armed groups engage in trafficking in the territories in which they operate, and they have recruited thousands of children for the purpose of using them as combatants in various past and current conflicts. While women and girls tend to be trafficked for marriages and sexual slavery, men and boys are typically exploited in forced labor in the mining sector, as porters, soldiers and slaves

According to the *Global Report on Trafficking in Persons 2016* the key findings of the East Asia and the Pacific region are:

- Most frequently detected victim profile: Women, 51%
- Most frequently detected form of exploitation: Sexual exploitation, 61%
- Gender profile of convicted offenders: 60% males
- Share of national citizens among offenders: 95%
- Emerging trend: South-East Asia as destination for short, medium and long-distance trafficking.

This region includes highly developed areas, small Pacific islands, transitional and emerging economies, as well as least developed countries. As a consequence, it includes a variety of socio-economic contexts that are reflected in the patterns and flows of trafficking in persons.

Most of the approximately 2,700 victims detected during the 2012-2014 period whose age and sex profiles were reported were females, including a significant number of girls. Due to the frequent trafficking of girls, children comprise nearly a third of the victims detected in East Asia and the Pacific. Trafficking of males is broadly in line with the global average. Although there are significant differences within the region, females are widely detected across the board. Australia and Japan detect more women than girls, whereas girls are more detected than adults in some of the covered countries in South-East Asia.

Most victims in East Asia and the Pacific were trafficked for sexual exploitation. This was true for more than 60 per cent of the 7,800 or so victims detected between 2012 and 2014 whose exploitation was recorded. About a third of the detected victims were trafficked for forced labor. Among the most frequently reported types of forced labor was trafficking in the fishing industry, which was detected in Cambodia, Indonesia and Thailand. Domestic servitude was also reported in many countries in the region; both in origin and destination countries.

The vast majority – more than 85 per cent - of the victims detected in East Asia and the Pacific were trafficked from within the region. This also holds true for victims trafficked into richer countries like Australia and Japan. About 6 per cent of the victims were trafficked from South Asia, in particular from Bangladesh and India. Another 5 per cent of victims detected during this time period belonged to ethnic minorities in South-East Asia whose members are often deprived of citizenship.

More than half of the victims detected in East Asia and the Pacific are trafficked along short-distance flows, as a large part of the trafficking is either domestic or between neighboring

countries. Trafficking flows within the region are complex. The wealthiest countries, Australia and Japan, are destination countries. However, China, Malaysia and Thailand are also reported as destinations; primarily for trafficking from countries close by. Thailand mainly detects victims from neighboring countries such as Cambodia, Lao People's Democratic Republic and Myanmar, in addition to victims of domestic trafficking. Malaysia detects victims from Indonesia, as well as from the Philippines and Viet Nam.

Most of the countries in East Asia and the Pacific introduced an offence with a definition of trafficking in line with the UN Trafficking in Persons Protocol definition within five years after the entry into force of the Protocol. A few countries, mainly some Pacific islands and the Philippines, criminalized trafficking for sexual exploitation, forced labor and the other purposes included in the Protocol before December 2003. A few more countries adopted the Protocol definition of trafficking in persons in their domestic legislation between 2012 and 2014. China and some Pacific islands have specific trafficking in persons offences that criminalize some of the forms of exploitation listed in the UN Trafficking in Persons Protocol. These countries may also prosecute trafficking crimes under other offences.

Countries with very recently enacted legislation did not report any convictions during the reporting period. Three countries had less than 10 convictions, while the others had between 50 and a few hundred convictions per year. There is an overall stagnation in the number of convictions in East Asia and the Pacific. Most countries reported stable numbers, although the Philippines reported a clear increase, and Indonesia a clear reduction.

Information from a limited number of South-East Asian countries shows that 28 per cent of the persons investigated for trafficking in persons are convicted in the court of first instance.

Migrant smuggling is a crime involving the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident. Migrant smuggling affects almost every country in the world. It undermines the integrity of countries and communities, and costs thousands of people their lives every year.

The Smuggling of Migrants Protocol supplementing the *UN Convention against Transnational Organized Crime* defines the smuggling of migrants as the "procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."

In order to comply with the Smuggling of Migrants Protocol, Article 6 requires states to criminalize both smuggling of migrants and enabling of a person to remain in a country illegally, as well as aggravating circumstances that endanger lives or safety, or entail inhuman or degrading treatment of migrants.

Virtually every country in the world is affected by this crime, whether as an origin, transit or destination country for smuggled migrants by profit-seeking criminals. Smuggled migrants are vulnerable to life-threatening risks and exploitation; thousands of people have suffocated in containers, perished in deserts or dehydrated at sea. Generating huge profits for the criminals involved, migrant smuggling fuels corruption and empowers organized crime.

The topic of migrant smuggling is enormously complex. As a multi-layered criminal industry, migrant smuggling encompasses various issues such as irregular migration, human rights violations and border management. Migrant smuggling endangers the lives of migrants and negatively impacts origin, transit and destination countries. Knowledge and information about migrant smuggling is extremely difficult to obtain due to the covert and rapidly changing nature of the crime. There is an especially sizeable gap in migration policy research and data, particularly

in relation to migration patterns and processes involved in migrant smuggling, including its impact on migrants (particularly vulnerability, abuse and exploitation) as well as its impact on irregular migration flows (increasing scale, geography and profile of migrants). The adaptability of smugglers and smuggling organizations is high, and organizers shift routes in response to law enforcement countermeasures.

International framework

The number of countries with a statute that criminalizes most forms of trafficking in persons in line with the definition used by the UN Trafficking in Persons Protocol increased from 33 in 2003 (18 %) to 158 in 2016 (88 %). This rapid progress means that more victims are assisted and protected, and more traffickers are put behind bars.

Few international legal instruments have been as rapidly and globally endorsed as the UN Trafficking in Persons Protocol. The Protocol entered into force in December 2003 only three years after its adoption by the General Assembly in 2000. As of early October 2016, 170 countries have ratified the Protocol.

In order to monitor the implementation of the Protocol, UNODC analyses the specific legislation on trafficking in persons to ensure that victims might, legally, include men, women, boys and girls, as well as both domestic and transnational flows. National trafficking legislation is also reviewed to determine whether the act, means and purpose elements of trafficking are present and in line with the definition contained in article 3 of the Protocol. This analysis shows that since its entry into force, the number of countries criminalizing trafficking in persons on the basis of the Protocol definition saw a near fivefold increase, from 33 in the year 2003 to 158 in August 2016 (out of the 179 countries considered here).

The analysis shows that since the end of 2003, 124 of the 179 countries here considered have adopted legislation that criminalizes all aspects of trafficking in persons. Of the approximately 105 countries that did not consider trafficking in persons a crime at that time, only five remain today, about 3 per cent of the countries for which information was available. Some 16 countries (9 %) have legislation that criminalizes only certain aspects of trafficking in persons as defined by the UN Trafficking in Persons Protocol. Specifically East Asia and the Pacific countries introduced their legislation after December 2003. Some small island states in the Caribbean, Africa and the Pacific, as well as large populous countries in Asia, also only have partial legislation. However, most national legislation is recent, having been introduced during the last eight to 10 years. As a consequence, the average number of convictions still remains low. The longer countries have had comprehensive legislation in place, the more convictions are recorded, indicating that it takes time and dedicated resources for a national criminal justice system to acquire sufficient expertise to detect, investigate and successfully prosecute cases of trafficking in persons.

The ratio between the number of traffickers convicted in the first court instance and the number of victims detected is about 5 victims per convicted offender. Although most countries now have the appropriate legal framework for tackling trafficking crimes, the large discrepancy between the number of detected victims and convicted offenders indicates that many trafficking crimes still go unpunished.

These gaps in legislation leave at least two billion people around the world without adequate legal protection in line with the UN Trafficking in Persons Protocol. Since UNODC has no information on legislation in another 20 or so countries around the world, this population may

be larger, since it is likely that countries for which no information on trafficking in persons is available have no relevant legislation.

Stagnation in prosecution is a serious international problem.

About 15 per cent of the 136 countries covered did not record a single conviction for trafficking in persons per year during the 2012-2014 period; a share that has also remained stable. Nearly all are countries that either lack legislation on trafficking in persons or have only recently adopted it, while just a couple of countries have longstanding legislation but no convictions. Countries in this category include some island states in the Caribbean, the Pacific and Africa, as well as some countries in Sub-Saharan Africa and North Africa and the Middle East.

Accordingly, there seems to be a relation between the length of time a country has had legislation that criminalizes trafficking as required by the UN Trafficking in Persons Protocol, and the number of convictions for trafficking crimes in that country. While there may be multiple reasons, a contributing factor seems to be that it takes time and dedicated resources for the criminal justice system to acquire sufficient expertise in order to detect, investigate and successfully prosecute cases of trafficking in persons. In addition, countries that have criminalized human trafficking for a longer period of time tend to also have other responses in place which often facilitate prosecutions, such as victim protection schemes and national and international cooperation structures.

Legal issues

There is a positive correlation between the duration of existence of national trafficking in person's legislation and the number of trafficking convictions registered in a country. Most countries have now adopted legislation that criminalizes trafficking in persons according to the UN Trafficking in Persons Protocol; yet global conviction rates remain low. This might be related to the relatively recent nature of national legal frameworks in many countries. Accelerating the implementation of the domestic legislation by carrying out awareness-raising, training and other capacity building activities on the use of legislation may now be useful in rapidly enhancing the capacity of national criminal justice systems to identify, investigate and prosecute cases of trafficking in persons.

The status of national-level legislation is constantly monitored by UNODC and thus information is available for more countries.

While the legal definitions and, in certain cases the victim populations, of these different crimes may overlap to some extent, the use of one related national law over another makes great differences, especially to victims of trafficking. National legislations that comply with the UN Trafficking in Persons Protocol include a number of protection and assistance measures that are not available under other legal frameworks. In particular, States parties have the duty to protect the privacy and identity of victims of trafficking, to provide information on relevant court or other proceedings and assistance to enable their views to be heard in the context of such proceedings. In addition, States parties are obligated to ensure that victims of trafficking in persons can access remedies, including compensation. States parties must also consider providing for the physical safety of victims and to providing housing, counselling, medical, psychological and material assistance as well as employment, educational and training opportunities to victims of trafficking.

Adherence to the Protocol also triggers certain provisions under the UN Convention against Transnational Organized Crime. States parties have a broad array of mutual tools at their disposal

for prosecuting trafficking in persons cases that are unavailable if there is no compliance with the convention, such as tools that address the illicit income derived from such crimes, like money-laundering, confiscation and seizure; international cooperation measures such as mutual legal assistance and extradition; and law enforcement cooperation measures such as joint investigations. Not fully utilizing these tools to prosecute trafficking in persons results in a piecemeal approach that organized criminals exploit to their advantage every day.

The crime of trafficking in persons does not need to involve a border crossing. However, many detected victims are international migrants, in the sense that their citizenship differs from the country in which they were detected as trafficking victims.

Not all trafficking victims are international migrants, refugees or smuggled migrants. Firstly, because they did not avail themselves of the services of smugglers; and/or secondly, because they were trafficked within the borders of their home country. While trafficking in persons is a crime that aims to exploit a person who may or may not be a migrant, smuggling of migrants is always cross-border and does not, by definition, involve the exploitation of the migrant.

Victims of trafficking may be migrants who have been smuggled and may be refugees, amongst others. Refugees fleeing persecution or other dangers in their country are particularly vulnerable to traffickers. Similarly, migrants and refugees who have been smuggled are particularly vulnerable to being exploited because of lack of opportunity in the destination country and the costs associated with smuggling. If other elements of trafficking are present, the exploitation may render them victims of trafficking. Refugee status could be granted to victims of trafficking who may risk persecution in case of return to their home country, if the home country is unwilling or unable to protect them, depending on the individual circumstances.

The Declaration of the UN General Assembly Second High Level Dialogue on International Migration and Development held in October 2013 highlighted the need for concrete measures to enhance coherence and cooperation at all levels. It reiterated the international community's commitment to prevent and combat migrant smuggling, protect migrants from exploitation and other abuses and implement relevant international instruments on preventing and combating trafficking in persons and smuggling of migrants.

The Report of the Secretary-General dated April 2016 "*In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*" emphasized that the failure to reinforce international law and improve common responses to address large migrant movements will lead to greater loss of life, heighten tensions between States and communities, and increase the growth of criminal migrant smuggling networks. A number of issues challenge the effective implementation of the Protocol, including: "(a) insufficient prevention and awareness; (b) lack of data and research; (c) lack of legislation; (d) inadequate policies and planning; (e) weak criminal justice system responses; (f) inadequate protection of the rights of smuggled migrants; and (g) limited international cooperation".

As the United Nations migration agency, the International Organization for Migration (IOM) advocates and actively supports a holistic migration policy approach - one that recognizes migration as a "mega-trend" of this century. From that perspective migration is not only inevitable, but also necessary and desirable if well-managed through sensible, humane and responsible policies. IOM has a long history of working with States and partners to combat migrant smuggling, and ensures that its activities align with, build on and directly complement other national, regional and international initiatives. IOM's broad migration management mandate, including facilitating

migration, regulating migration, and addressing forced migration, places the Organization in a unique position to offer a comprehensive approach to counter migrant smuggling.[1]

There are an estimated 244 million international migrants in the world, with an estimated 40 million residing in the Asia and Pacific region. At the same time, 30 per cent of all international migrants spread across the world — approximately 74 million migrants — originate in Asia and the Pacific. With migration taking place not only from the global south to the global north, but also south to south, the Asia and Pacific region has some of the world's largest migration corridors. It is a dynamic region that has seen significant developmental gains. The region has also seen rapid urbanization, driven in part by migration. Seventeen of the world's 31 'mega cities' are to be found in Asia and the Pacific. The scale of mobility in the region remains large, with diverse and complex patterns. The full range of migration drivers are evident in these flows, ranging from income inequality and demography to conflict and the environmental impact of climate change. Almost half of the migrants are female, and the ratio is often higher for specific origin countries and sectors, such as domestic work.[2]

Migration statistics in the region do not always capture the full scope of migration dynamics, in part due to the difficulty of measuring temporary, circular and, especially irregular mobility. Given the region's long and porous land and sea borders, there is also significant intra- and extra-regional irregular migration in Asia and the Pacific, including migration that is facilitated by smugglers. While much of the irregular flow is believed to occur between neighboring countries, irregular migration routes are also known to extend much further, over land and by sea, to connect non-contiguous states.

Irregular migration in the region is known to exacerbate migrants' vulnerabilities, resulting in poor health, lack of social protection, and discrimination, while exposing them to abuse and exploitation. Migrants in the region are also disproportionately targeted by human traffickers, and are subjected to many associated forms of exploitation, including forced labor, debt bondage and other slavery-like practices. Human trafficking affects men, women and children in sectors that include agriculture, construction, fishing, and hospitality, as well as the sex industry.

With rapid economic development in some parts of the region, there are significant risks of abuse and exploitation along the labor supply chains of multinational companies. Furthermore, there are unaccompanied children on the move throughout Asia and the Pacific, as well as widespread instances of families left behind, including children; a considerable individual and social cost of migration.

Despite efforts by national governments and their partners across the region, there remain numerous opportunities to enhance the protection of and assistance to migrants through greater coordination and cooperation between and within states. Such efforts have to be underpinned by multi-sectoral approaches and evidence-informed policies, and a commitment to continually increase technical capacities at sub-national, national and regional levels.

[1] http://www.iom.int/sites/default/files/our_work/DMM/IBM/IOM-Approach-to-counter-migrant-smuggling-Brochure.pdf

[2] https://www.iom.int/sites/default/files/country/AP/IOM-Strategy-in-Asia-and-the-Pacific-2017-2020.pdf

Current actions and planned initiatives

In September 2015, the world adopted the 2030 Sustainable Development Agenda and embraced goals and targets on trafficking in persons.

5.2 - Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation

8.7 - Take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms

16.2 - End abuse, exploitation, trafficking and all forms of violence against and torture of children

These goals call for an end to trafficking and violence against children; as well as the need for measures against human trafficking, and they strive for the elimination of all forms of violence against and exploitation of women and girls. Thanks to the 2030 Agenda, we now have an underpinning for the action needed under the provisions of the UN Convention against Transnational Organized Crime, and its protocols on trafficking in persons and migrant smuggling.[3]Another important development is the UN Summit for Refugees and Migrants, which produced the groundbreaking *New York Declaration (2016).* Of the nineteen commitments adopted by countries in the Declaration, three are dedicated to concrete action against the crimes of human trafficking and migrant smuggling. UNODC's report is also the last before the world gathers in 2017 at the UN General Assembly for the essential evaluation of the Global Plan of Action to Combat Trafficking in Persons. These decisive steps forward are helping to unite the world and produce much needed international cooperation against trafficking in persons. The *International Agenda for Migration Management* (IAMM), the key outcome of the Berne Initiative Process launched by the government of Switzerland in 2001, was designed to assist governments in developing effective measures for the management of migration. It offered a non-binding yet comprehensive set of common understandings and effective practices, and a reference system for dialogue, cooperation and capacity building at the national, regional and global level, developed in a process of comprehensive consultations among states and other stakeholders from all regions. The IAMM was one of the first international outcomes to have recognized the complexities described above and to have set forth a range of recommendations to combat human smuggling that in many ways mirror those underpinning the New York Declaration. They included involving all relevant stakeholders, adopting effective national legislation, strengthening cooperation and mutual assistance between law enforcement authorities, strengthening efforts to raise awareness, improving data collection and the knowledge base, and providing capacity building where necessary.[4]The comprehensive report of Peter Sutherland, the former Special Representative of the Secretary General on Migration, also made a number of recommendations that would go far toward combating human smuggling. Among them were to improve cooperation (while recognizing that much unauthorized migration happens in complicity with State actors or where State capacity is weak); expand legal pathways to offer alternatives to current dangerous migration routes and, thereby, to undercut criminal smuggling networks; and equip migrants with proof of legal identity which would further reduce the risks of migrants being exploited by criminal smugglers.

[3] http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

[4] https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Counter-Smuggling.pdf

Further research

There is a necessity to determine mutual tools for prosecuting trafficking in persons and migrant smuggling cases that are unavailable. If there is no compliance with the convention, such as tools that address the illicit income derived from such crimes, like money-laundering, confiscation and seizure; international cooperation measures such as mutual legal assistance and extradition; and law enforcement cooperation measures such as joint investigations. Not fully utilizing these tools to prosecute those crimes results in a piecemeal approach that organized criminals exploit to their advantage every day.

It is an urgent issue to differ definitions of migrant and international migrant. In accordance with defined difference global community should pay attention to the fundamental and basic steps in brining into the light new definition.

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Facilitating international cooperation to combat cybercrime

Introduction

In 2011, at least 2.3 billion people, the equivalent of more than one third of the world's total population, had access to the Internet. Over 60 per cent of all Internet users are in developing countries, with 45 per cent of all Internet users below the age of 25 years. By the year 2017, it is estimated that mobile broadband subscriptions will approach 70 per cent of the world's total population. By the year 2020, the number of networked devices (the "Internet of things") will outnumber people by six to one, transforming current conceptions of the Internet. In the hyper connected world of tomorrow, it will become hard to imagine a "computer crime", and perhaps any crime, that does not involve electronic evidence linked with Internet protocol (IP) connectivity.[5]

There is no international definition of cybercrime nor of cyberattacks. Offences typically cluster around the following categories:

i) offences against the confidentiality, integrity and availability of computer data and systems;
ii) ii) computer-related offences;
iii) iii) content-related offences;
iv) iv) offences related to infringements of copyright and related rights.

Broadly, cybercrime can be described as having cyber-dependent offences, cyber-enabled offences and, as a specific crime-type, online child sexual exploitation and abuse.

- Cyber-dependent crime requires an ICT infrastructure and is often typified as the creation, dissemination and deployment of malware, ransomware, attacks on critical national infrastructure (e.g. the cyber-takeover of a power-plant by an organised crime group) and taking a website offline by overloading it with data (a DDOS attack).
- Cyber-enabled crime is that which can occur in the offline world but can also be facilitated by ICT. This typically includes online frauds, purchases of drugs online and online money laundering.

[5] Comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector (UNODC/CCPCJ/EG.4/2013/2), 2013, p. 2.

- Child Sexual Exploitation and Abuse includes abuse on the clear internet, darknet forums and, increasingly, the exploitation of self-created imagery via extortion - known as "sextortion".

What most people see online is only a small portion of the data that's out there on the "clearnet". Most search engines, for example, only index 4% of the internet. The Deep Web, which is defined as a part of the World Wide Web that is not discoverable by search engines, includes password-protected information - from social networks through to email servers. The Darknet is a collection of thousands of websites that use anonymity tools like TOR to encrypt their traffic and hide their IP addresses. The high level of anonymity in the digital space enables criminals to act without being easily detected. The darknet is most known for black-market weapon sales, drug sales and child abuse streaming. The darknet is also, however, used for good - including enabling free speech by human rights activists and journalists.

“Definitions” of cybercrime mostly depend upon the purpose of using the term. A limited number of acts against the confidentiality, integrity and availability of computer data or systems represent the core of cybercrime. Beyond this, however, computer-related acts for personal or financial gain or harm, including forms of identity-related crime and computer content-related acts not (all of which fall within a wider meaning of the term “cybercrime” lend themselves easily to efforts to arrive at legal definitions of the aggregate term. Certain definitions are required for the core of cybercrime acts. However, a “definition” of cybercrime is not as relevant for other purposes, such as defining the scope of specialized investigative and international cooperation powers, which are better focused on electronic evidence for any crime, rather than a broad, artificial “cybercrime” construct.

The acts commonly included in notions of cybercrime are illegal access to a computer system; illegal access, interception or acquisition of computer data; illegal data interference or system interference; production, distribution or possession of computer misuse tools; breach of privacy or data protection measures; computer-related fraud or forgery; computer-related identity offences; computer-related copyright and trademark offences; computer-related acts causing personal harm; computer-related acts involving racism or xenophobia; computer-related production, distribution or possession of child pornography; computer-related solicitation or “grooming” of children; and computer-related acts in support of terrorism offences.

Legal measures play a key role in the prevention and combating of cybercrime. These are required in all areas, including criminalization, procedural powers, jurisdiction, international

cooperation, and Internet service provider responsibility and liability. At the national level, both existing and new (or planned), cybercrime laws most often concern criminalization, indicating a predominant focus on establishing specialized offences for core cybercrime acts. Countries increasingly recognize, however, the need for legislation in other areas. Compared to existing laws, new or planned cybercrime laws more frequently address investigative measures, jurisdiction, electronic evidence and international cooperation. Globally, less than half of responding countries perceive their criminal and procedural law frameworks to be sufficient, although this masks large regional differences. While more than two-thirds of countries in Europe report sufficient legislation, the picture is reversed in Africa, the Americas, Asia and Oceania, where more than two-thirds of countries view laws as only partly sufficient, or not sufficient at all. Only one half of the countries, which reported that laws were insufficient, also indicated new or planned laws, thus highlighting an urgent need for legislative strengthening in these regions. [6]

International and regional framework

The last decade has seen significant developments in the promulgation of international and regional instruments aimed at countering cybercrime. These include binding and non-binding instruments. Five clusters can be identified, consisting of instruments developed in the context of, or inspired by: (i) the Council of Europe or the European Union, (ii) the Commonwealth of Independent States or the Shanghai Cooperation Organization, (iii) intergovernmental African organizations, (iv) the League of Arab States, and (v) the United Nations. A significant amount of cross-fertilization exists between all instruments, including, in particular, concepts and approaches developed in the Council of Europe Convention on Cybercrime. Analysis of the articles of 19 multilateral instruments relevant to cybercrime shows common core provisions, but also significant divergence in substantive areas addressed.

Globally, 82 countries have signed and/or ratified a binding cybercrime instrument, one or more of: the Council of Europe Convention on Cybercrime, the League of Arab States Convention on Combating Information Technology Offences, the Commonwealth of Independent States Agreement on Cooperation in Combating Offences related to Computer Information or the Shanghai Cooperation Organization Agreement in the Field of International Information Security.

Overall, one-third of responding countries report that their legislation is highly, or very highly, harmonized with countries viewed as important for the purposes of international cooperation. This varies regionally, however, with higher degrees of harmonization reported within the Americas and Europe. This may be due to the use, in some regions, of multilateral

[6] UNODC Comprehensive Study on Cybercrime, 2013, p.71-52

instruments, which are inherently designed to play a role in harmonization. Fragmentation at the international level, and diversity of national laws, in terms of cybercrime acts criminalized, jurisdictional bases, and mechanisms of cooperation, may correlate with the existence of multiple cybercrime instruments with different thematic and geographic scope. Both instruments and regions presently reflect divergences derived from underlying legal and constitutional differences, including differing conceptions of rights and privacy.

According to General Assembly resolution 65/230 and Commission on Crime Prevention and Criminal Justice resolutions 22/7 and 22/8, the Global Programme on Cybercrime is mandated to assist Member States in their struggle against cyber-related crimes through capacity building and technical assistance.

The Global Programme is designed to respond flexibly to identified needs in developing countries by supporting Member States to prevent and combat cybercrime in a holistic manner. The main geographic nexus for the Cybercrime Programme in 2017 are Central America, Eastern Africa, MENA and South East Asia & the Pacific with key aims of:

- Increased efficiency and effectiveness in the investigation, prosecution and adjudication of cybercrime, especially online child sexual exploitation and abuse, within a strong human-rights framework;
- Efficient and effective long-term whole-of-government response to cybercrime, including national coordination, data collection and effective legal frameworks, leading to a sustainable response and greater deterrence;
- Strengthened national and international communication between government, law enforcement and the private sector with increased public knowledge of cybercrime risks.

Since 1998, the Russian government has annually introduced a draft resolution in the First Committee of the General Assembly on "Developments in the field of information and telecommunication in the context of security". With gradual changes, the non-binding resolution has been adopted by the UN General Assembly each year.

In the resolution of 2001, Russia requested the establishment of a group of governmental experts (GGE), consisting of experts from 15 states, chosen on the basis of equitable geographical distribution, for a study to consider existing and potential threats in the sphere of information security and possible cooperation measures to address them. The first GGE, convened in 2004, failed to adopt a consensus report due to significant differences on key aspects of international

information security. Nevertheless, a formation of a second GGE to be assembled in 2009 was proposed. The second GGE was able to produce a consensus report which mainly highlighted the need to continue discussing further norms to address existing and potential threats in the sphere of information security.

A third GGE was called for in 2011. The group convened in 2012-2013 and successfully produced a consensus report which is regarded as a substantial development in the context of international cooperation on cyber security norms. Perhaps the most significant outcome was that the report affirmed the applicability of international law, especially the UN Charter, to cyberspace. The report expressed a common understanding and the need to cooperate by offering several recommendations to promote peace and security in state use of ICTs (e.g., developing confidence- and capacity-building measures and engaging in the exchange of information). A fourth GGE was established in 2014 and finished its work in July 2015.

Although the aforementioned annual resolutions and the reports by the GGE can be viewed as signs of growing consensus, there is no common understanding on how exactly the existing international law should apply to cyberspace, and development of new global cyber norms has been limited. For example, in 2011, a group of SCO states proposed a controversial International Code of Conduct for Information Security (2011) which has not put forward to the General Assembly. In January 2015, an updated version of the document was submitted to the General Assembly. As presented in this INCYDER news item, the updated Code of Conduct contains only minor changes. The UN (see INCYDER news) has reiterated the concerns for the fundamental human rights in the digital age many times. In March 2015, the General Assembly decided to establish a new Special Rapporteur on the Right to Privacy in order to better address such issues and to create a safer digital environment.

Lost in criminalization

While high-level consensus exists regarding broad areas of criminalization, detailed analysis of the provisions in source legislation reveals divergent approaches. Offences involving illegal access to computer systems and data differ with respect to the object of the offence (data, system or information), and regarding the criminalization of "mere" access or the requirement for further intent, such as to cause loss or damage. The requisite intent for an offence also differs in approaches to criminalization of interference with computer systems or data. Most countries require the interference to be intentional, while others include reckless interference. For interference with computer data, the conduct constituting interference ranges from damaging or deleting, to altering, suppressing, inputting or transmitting data. Criminalization of illegal

interception differs by virtue of whether the offence is restricted to non-public data transmissions or not, and concerning whether the crime is restricted to interception "by technical means". Not all countries criminalize computer misuse tools. For those that do, differences arise regarding whether the offence covers possession, dissemination, or use of software (such as malware) and/or computer access codes (such as victim passwords). From the perspective of international cooperation, such differences may have an impact upon findings of dual-criminality between countries.

Several countries have adopted cyber-specific crimes for computer-related fraud, forgery and identity offences. Others extend general provisions on fraud or theft, or rely on crimes covering constituent elements — such as illegal access, data interference and forgery, in the case of identity offences. A number of content-related offences, particularly that concerning child pornography, show widespread criminalization. Differences arise however regarding the definition of "child", limitations in relation to "visual" material or exclusion of simulated material, and acts covered. Although the vast majority of countries, for instance, cover production and distribution of child pornography, criminalization of possession and access shows greater variation. For computer-related copyright and trademark infringement, countries most usually reported the application of general criminal offences for acts committed willfully and on a commercial scale. [7]Countries highlight that good practices on cybercrime prevention include the promulgation of legislation, effective leadership, development of criminal justice and law enforcement capacity, education and awareness, the development of a strong knowledge base, and cooperation across government, communities, the private sector and internationally.

Further research

While doing a research, delegates need to focus their investigations on:

- increase of social media and user-generated Internet content has resulted in regulatory responses from governments, including the use of criminal law, and calls for respect for rights to freedom of expression
- forms of expression (human rights)
- consideration of privacy
- investigation of cybercrime
- new policing techniques
- electronic evidence and case building

[7] UNODC Comprehensive Study on Cybercrime, 2013, p.77-107

- legal distinction between electronic evidence and physical evidence

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