



## COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE BACKGROUND GUIDE 2013

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# NATIONAL MODEL UNITED NATIONS



[nmun.org](http://nmun.org)

17 - 21 March - Conference A  
24 - 28 March - Conference B

## POSITION PAPER INSTRUCTIONS

**Two copies of each position paper should be sent via e-mail by 1 MARCH 2013**

### 1. TO COMMITTEE STAFF

A file of the position paper (.doc or .pdf) for each assigned committee should be sent to the committee e-mail address listed here. Mail papers by 1 March to the e-mail address listed for your particular venue. Delegates should carbon copy (cc:) themselves as confirmation of receipt. Please use the committee name, your assignment, Conference A or B, and delegation/school name in both the e-mail subject line and in the filename (example: GA1st\_Cuba\_ConfA\_MarsCollege).

### 2. TO DIRECTOR-GENERAL

- Each delegation should send one set of all position papers for each assignment to the e-mail designated for their venue: positionpapers.nya@nmun.org or positionpapers.nyb@nmun.org. This set (held by each Director-General) will serve as a back-up copy in case individual committee directors cannot open attachments.  
*Note:* This e-mail should only be used as a repository for position papers.
- The head delegate or faculty member sending this message should cc: him/herself as confirmation of receipt. (Free programs like Adobe Acrobat or WinZip may need to be used to compress files if they are not plain text.)
- Because of the potential volume of e-mail, only one e-mail from the Head Delegate or Faculty Advisor containing all attached position papers will be accepted.

Please use the committee name, your assignment, Conference A or B, and delegation/school name in both the e-mail subject line and in the filename (example: GA1st\_Cuba\_Conf A\_Mars College).

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Commission on the Status of Women .....	csw.nya@nmun.org
Commission on Crime Prevention and Criminal Justice .....	ccpcj.nya@nmun.org
Economic Commission for Africa .....	eca.nya@nmun.org
Economic and Social Commission for Western Asia .....	escwa.nya@nmun.org
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United Nations Development Programme .....	undp.nya@nmun.org
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### OTHER USEFUL CONTACTS

Entire Set of Delegation Position Papers .....	positionpapers.nya@nmun.org
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Dear Delegates,

Welcome to the 2013 National Model United Nations Conference. As part of the volunteer staff for the Commission on Crime Prevention and Criminal Justice, we are aiming to facilitate your educational experience at the conference in New York. This year's Directors are Fiona Macdonald (Conference A), and David Toscano (Conference B). Stephan Berberich (Conference A) and Tsesa Monaghan (Conference B) will be serving as your Assistant Directors. Fiona studied law at the University of Trier in Germany, with a focus on European and International Law. She has been involved with Model UN for six years and this will be her third year on staff. She is looking forward to working within the field of International Law. David has served on staff for three years and has participated in two regional NMUN conferences in Latin America. He is a lawyer, and a graduate of Universidad San Francisco de Quito (Ecuador), and is obtaining a second major in International Relations. Currently, he is studying a master's programme on EU Competition Law at King's College London. Stephan Berberich holds a Bachelor's degree in Political Science, and is studying for a Master's in International Relations with an emphasis on Peace, Security and Conflict at Université Libre de Bruxelles. This is his second year on staff. Tsesa Monaghan is completing her Bachelor's degree at Macalester College in St Paul, Minnesota, where she studies Political Science and German Studies. She is especially interested in issues of human rights, hunger, poverty, and education. This is her second year on staff, and her fifth NMUN conference.

This year's topics under discussion for the Commission on Crime Prevention and Criminal Justice are:

1. Environmental Protection through Criminal Law
2. Establishing International Legal Norms to Counter Maritime Piracy
3. Strengthening Prevention Measures and Criminal Justice Responses to Human Trafficking

The Commission on Crime Prevention and Criminal Justice is the United Nations system's core body for addressing international matters related to transnational criminal activities such as justice systems regulations, legislature implementation, punishment of criminals, and victim's assistance. While drafting your working papers, you will provide solutions for the improvement of the current situations in countries that have been affected by transnational organized crime.

This background guide will give you an overview of the topics at hand, and the work of the Committee. Nevertheless, it should only serve as an introduction to your research and preparation for the Conference. The references listed for each topic provide you with a good starting point for your own research, but we highly encourage you to deepen your knowledge further, especially considering your country's position. Each delegation is requested to submit a position paper which reflects your research on the topics. Please take note of the NMUN policies on the [website](#) and in the [delegate preparation guide](#) regarding [plagiarism](#), [codes of conduct/dress code/sexual harassment](#), [awards philosophy/evaluation method](#), etc. Adherence to these guidelines is mandatory.

If you have any questions regarding your preparation for the committee and the Conference itself, please feel free to contact any of the substantive staff of the Commission on Crime Prevention and Criminal Justice, or the Under-Secretaries-General for the ECOSOC Department, Yvonne Jeffery (Conference A) and Harald Eisenhauer (Conference B). We wish you all the best in your preparation for the Conference and look forward to seeing you in March.

### Conference A

Fiona Macdonald  
Director

Stephan Berberich  
Assistant Director

### Conference B

David Toscano  
Director

Tsesa Monaghan  
Assistant Director



## Message from the Directors-General Regarding Position Papers for the 2013 NMUN Conference

For NMUN-New York 2013, each delegation submits one position paper for each assigned committee. A delegate's role as a Member State, Observer State, Non-Governmental Organization, etc. should affect the way a position paper is written. To understand these differences, please refer to the [Delegate Preparation Guide](#).

Position papers should review each delegation's policy regarding the topics of the committee. International and regional conventions, treaties, declarations, resolutions, and programs of action of relevance to the policy of your State should be identified and addressed. Making recommendations for action by your committee should also be considered. Position papers also serve as a blueprint for individual delegates to remember their country's position throughout the course of the Conference. NGO position papers should be constructed in the same fashion as position papers of countries. Each topic should be addressed briefly in a succinct policy statement representing the relevant views of your assigned NGO. You should also include recommendations for action to be taken by your committee. It will be judged using the same criteria as all country position papers, and is held to the same standard of timeliness.

Please be forewarned, delegates must turn in entirely original material. ***The NMUN Conference will not tolerate the occurrence of plagiarism.*** In this regard, the NMUN Secretariat would like to take this opportunity to remind delegates that although United Nations documentation is considered within the public domain, the Conference does not allow the verbatim re-creation of these documents. This plagiarism policy also extends to the written work of the Secretariat contained within the Committee Background Guides. Violation of this policy will be immediately reported and may result in dismissal from Conference participation. Delegates should report any incident of plagiarism to the Secretariat as soon as possible.

Delegation's position papers may be given an award as recognition of outstanding pre-Conference preparation. In order to be considered for a Position Paper Award, however, delegations must have met the formal requirements listed below and be of high substantive standard, using adequate language and showing in-depth research. While we encourage innovative proposals, we would like to remind delegates to stay within the mandate of their respective committee and keep a neutral and respectful tone. Similarly to the minus point-policy implemented at the conference to discourage disruptive behavior, position papers that use offensive language may entail negative grading when being considered for awards. Please refer to the sample paper following this message for a visual example of what your work should look like at its completion. The following format specifications are **required** for all papers:

- All papers must be typed and formatted according to the example in the Background Guides
- Length must **not** exceed two single-sided pages (one double-sided paper, if printed)
- Font must be Times New Roman sized between 10 pt. and 12 pt.
- Margins must be set at one inch for the whole paper
- Country/NGO name, school name and committee name must be clearly labeled on the first page,
- National symbols (headers, flags, etc.) are deemed inappropriate for NMUN position papers
- Agenda topics must be clearly labeled in separate sections

To be considered timely for awards, please read and follow these directions:

1. **A file of the position paper** (.doc or .pdf format required) **for each assigned committee** should be sent to the committee email address listed in the Background Guide. These e-mail addresses will be active after November 15, 2012. Delegates should carbon copy (cc:) themselves as confirmation of receipt.
2. Each delegation should also send **one set of all position papers** to the e-mail designated for their venue, Conference A: [positionpapers.nya@nmun.org](mailto:positionpapers.nya@nmun.org) or Conference B: [positionpapers.nyb@nmun.org](mailto:positionpapers.nyb@nmun.org). This set will serve as a back-up copy in case individual committee directors cannot open attachments. These copies will also be made available in Home Government during the week of the NMUN Conference.

Each of the above listed tasks needs to be completed no later than **March 1, 2013 (GMT-5)**.

**Please use the committee name, your assignment, Conference A or B, and delegation/school name in both the e-mail subject line and in the filename (example: GA1st\_Cuba\_ConfA\_Mars College).**

*A matrix of received papers will be posted online for delegations to check prior to the Conference. If you need to make other arrangements for submission, please contact Hannah Birkenkötter, Director-General (Conference A), or Nicholas Warino, Director-General (Conference B), at [dirgen@nmun.org](mailto:dirgen@nmun.org). There is an option for delegations to submit physical copies via regular mail if needed.*

Once the formal requirements outlined above are met, Conference staff use the following criteria to evaluate Position Papers:

- Overall quality of writing, proper style, grammar, etc.
- Citation of relevant resolutions/documents
- General consistency with bloc/geopolitical constraints
- Consistency with the constraints of the United Nations
- Analysis of issues, rather than reiteration of the Committee Background Guide
- Outline of (official) policy aims within the committee's mandate

Each delegation can submit a copy of their position paper to the permanent mission of the country being represented, along with an explanation of the Conference. Those delegations representing NGOs do not have to send their position paper to their NGO headquarters, although it is encouraged. This will assist them in preparation for the mission briefing in New York.

Finally, please consider that over 2,000 papers will be handled and read by the Secretariat for the Conference. Your patience and cooperation in strictly adhering to the above guidelines will make this process more efficient and it is greatly appreciated. Should you have any questions please feel free to contact the Conference staff, though as we do not operate out of a central office or location, your consideration for time zone differences is appreciated.

Sincerely,

*Conference A*  
Hannah Birkenkötter  
Director-General  
[hannah@nmun.org](mailto:hannah@nmun.org)

*Conference B*  
Nicholas Warino  
Director-General  
[nick@nmun.org](mailto:nick@nmun.org)

**Delegation from  
The United Mexican States**

**Represented by  
(Name of College)**

***Position Paper for the General Assembly Plenary***

The issues before the General Assembly Plenary are: The Use of Economic Sanctions for Political and Economic Compulsion; Democracy and Human Rights in Post-Conflict Regions; as well as The Promotion of Durable Peace and Sustainable Development in Africa. The Mexican Delegation first would like to convey its gratitude being elected and pride to serve as vice-president of the current General Assembly Plenary session.

**I. The Use of Economic Sanctions for Political and Economic Compulsion**

The principles of equal sovereignty of states and non-interference, as laid down in the Charter of the United Nations, have always been cornerstones of Mexican foreign policy. The legitimate right to interfere by the use of coercive measures, such as economic sanctions, is laid down in Article 41 of the UN-charter and reserves the right to the Security Council.

Concerning the violation of this principle by the application of unilateral measures outside the framework of the United Nations, H.E. Ambassador to the United Nations Enrique Berruga Filloy underlined in 2005 that the Mexico strongly rejects “the application of unilateral laws and measures of economic blockade against any State, as well as the implementation of coercive measures without the authorization enshrined in the Charter of the United Nations.” That is the reason, why the United Mexican States supported – for the 14<sup>th</sup> consecutive time – Resolution (A/RES/60/12) of 2006 regarding the *Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba*.

In the 1990s, comprehensive economic sanctions found several applications with very mixed results, which made a critical reassessment indispensable. The United Mexican States fully supported and actively participated in the “Stockholm Process” that focused on increasing the effectiveness in the implementation of targeted sanctions. As sanctions and especially economic sanctions, pose a tool for action “between words and war” they must be regarded as a mean of last resort before war and fulfill highest requirements for their legitimate use. The United Mexican States and their partners of the “Group of Friends of the U.N. Reform” have already addressed and formulated recommendations for that take former criticism into account. Regarding the design of economic sanctions it is indispensable for the success to have the constant support by all member states and public opinion, which is to a large degree dependent on the humanitarian effects of economic sanctions. Sanctions must be tailor-made, designed to effectively target the government, while sparing to the largest degree possible the civil population. Sanction regimes must be constantly monitored and evaluated to enable the world-community to adjust their actions to the needs of the unforeseeably changing situation. Additionally, the United Mexican States propose to increase communication between the existing sanction committees and thus their effectiveness by convening regular meetings of the chairs of the sanction committees on questions of common interest.

**II. Democracy and Human Rights in Post-Conflict Regions**

As a founding member of the United Nations, Mexico is highly engaged in the Promotion of Democracy and Human Rights all over the world, as laid down in the *Universal Declaration on Human Rights (UDHR)* in 1948. Especially since the democratic transition of Mexico in 2000 it is one of the most urgent topics to stand for Democratization and Human Rights, and Mexico implements this vision on many different fronts.

In the Convoking Group of the intergovernmental Community of Democracies (GC), the United Mexican States uphold an approach that fosters international cooperation to promote democratic values and institution-building at the national and international level. To emphasize the strong interrelation between human rights and the building of democracy and to fortify democratic developments are further challenges Mexico deals with in this committee. A key-factor for the sustainable development of a post-conflict-region is to hold free and fair election and thus creating a democratic system. Being aware of the need of post-conflict countries for support in the preparation of democratic elections, the United Mexican States contribute since 2001 to the work of the International Institute for Democracy and Electoral Assistance (IDEA), an intergovernmental organization operating at international, regional and national level in partnership with a range of institutions. Mexico’s foreign policy regarding human rights is substantially

based on cooperation with international organizations. The Inter American Commission of Human Rights is one of the bodies, Mexico is participating, working on the promotion of Human Rights in the Americas. Furthermore, the Inter-American Court of Human Rights is the regional judicial institution for the application and interpretation of the *American Convention of Human Rights*.

The objectives Mexico pursues are to improve human rights in the country through structural changes and to fortify the legal and institutional frame for the protection of human rights on the international level. Underlining the connection between democracy, development and Human Rights, stresses the importance of cooperation with and the role of the High Commissioner on Human Rights and the reform of the Human Rights Commission to a Human rights Council.

Having in mind the diversity of challenges in enforcing democracy and Human Rights, Mexico considers regional and national approaches vital for their endorsement, as Mexico exemplifies with its *National Program for Human Rights* or the *Plan Puebla Panama*. On the global level, Mexico is encouraged in working on a greater coordination and interoperability among the United Nations and regional organizations, as well as the development of common strategies and operational policies and the sharing of best practices in civilian crisis management should be encouraged, including clear frameworks for joint operations, when applicable.

### **III. The Promotion of Durable Peace and Sustainable Development in Africa**

The United Mexican States welcome the leadership role the African Union has taken regarding the security problems of the continent. Our delegation is furthermore convinced that The New Partnership for Africa's Development (NEPAD) can become the foundation for Africa's economic, social and democratic development as the basis for sustainable peace. Therefore it deserves the full support of the international community.

The development of the United Mexican States in the last two decades is characterized by the transition to a full democracy, the national and regional promotion of human rights and sustainable, economic growth. Mexico's development is characterized by free trade and its regional integration in the North American Free Trade Agreement. Having in mind that sustainable development is based not only on economic, but as well on social and environmental development, President Vicente Fox has made sustainable development a guiding principle in the Mexican Development Plan that includes sustainability targets for all major policy areas.

The United Nations Security Council has established not less than seven peace-keeping missions on the African continent, underlining the need for full support by the international community. In post-conflict situations, we regard national reconciliation as a precondition for a peaceful development, which is the reason why Mexico supported such committees, i.e. in the case of Sierra Leone. The United Mexican States are convinced that an other to enhance durable peace in Africa is the institutional reform of the United Nations. We therefore want to reaffirm our full support to both the establishment of the peace-building commission and the Human Rights Council. Both topics are highly interrelated and, having in mind that the breach of peace is most often linked with severest human rights' abuses, thus need to be seen as two sides of one problem and be approached in this understanding.

As most conflicts have their roots in conflicts about economic resources and development chances, human development and the eradication of poverty must be at the heart of a successful, preventive approach. Lifting people out of poverty must be seen as a precondition not only for peace, but for social development and environmental sustainability.

The United Mexican States want to express their esteem for the decision taken by the G-8 countries for a complete debt-relief for many African Highly-Indebted-Poor-Countries. Nevertheless, many commitments made by the international community that are crucial for Africa's sustainable development are unfulfilled. The developed countries agreed in the *Monterrey Consensus of the International Conference on Financing for Development* (A/CONF.198/11) to increase their Official Development Aid (ODA) "towards the target of 0,7 per cent of gross national product (GNP) as ODA to developing countries and 0,15 to 0,20 per cent of GNP of developed countries to least developed countries". Furthermore, the United Mexican States are disappointed by the result of the Hong Kong Ministerial conference of the World Trade Organization, which once more failed to meet the needs of those, to whom the round was devoted: developing countries and especially African countries, who today, more than ever, are cut off from global trade and prosperity by protectionism.

## Committee History

### Introduction

Originally under the International Penal and Penitentiary Commission (IPPC), the international community has been addressing criminal justice and crime prevention issues since 1885.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> This organ focused on promoting information exchange between experts and states regarding the issue of crime prevention.<sup>4</sup>

In 1992, the UN noted that criminality was increasing at a rate of 5%, even faster than the global population growth.<sup>5</sup> This demonstrated the need for the creation of a more effective body specialized in crime prevention and criminal justice.<sup>6</sup> Responding to GA resolution *46/152*, ECOSOC's resolution *1992/1* created the CCPCJ to replace the CCPC.<sup>7</sup> GA resolution *46/152* articulated the belief that "justice based on the rule of law is the pillar on which civilized society rests" and allows the protection of basic values and rights.<sup>8</sup> It established 13 guiding principles for the CCPCJ that expressed the importance of international cooperation in the field of transnational crime, the connections between crime and development, and the importance of increasing effectiveness in preventing and addressing crime and criminal justice.<sup>9</sup>

The CCPCJ is comprised of 40 Member States.<sup>10</sup> ECOSOC elects the members with a predetermined regional distribution, consisting on twelve African states, nine Asian states, eight Latin American and Caribbean states, four Eastern European states, and seven Western European and other states.<sup>11</sup> Each member remains in office for a term of three years, but elections are staggered so that only 20 members are elected in each election cycle.<sup>12</sup>

### Mandate and Functions of the CCPCJ

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".<sup>13</sup> 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.<sup>14</sup>

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

<sup>1</sup> Clark, *The United Nations Crime Prevention and Criminal Justice Program*, 1994, p. 19.

<sup>2</sup> Clark, *Human Rights and the U.N. Committee on Crime Prevention and Criminal Control*, 1989, pp. 69-70; General Assembly, *A/RES/415*, 1950.

<sup>3</sup> United Nations Department of Public Information, *The United Nations Today*, 2008, p. 71.

<sup>4</sup> United Nations Department of Public Information, *The United Nations Today*, 2008, p. 71.

<sup>5</sup> *New UN Crime Commission Meets in Vienna*, 1992; Clark, *The United Nations Crime Prevention and Criminal Justice Program: formulation of standards and efforts at their implementation*, 1994, p. 31; Bassiouni, *The contributions of specialized institutes and non-governmental organizations to the United Nations criminal justice program*, 1994, p. 30.

<sup>6</sup> *New UN Crime Commission Meets in Vienna*, 1992; Bassiouni, *The contributions of specialized institutes and non-governmental organizations to the United Nations criminal justice program*, 1994, p. 30.

<sup>7</sup> General Assembly, *A/RES/46/152*, 1991; ECOSOC, *RES 1992/1*, 1992.

<sup>8</sup> General Assembly, *A/RES/46/152*, 1991.

<sup>9</sup> General Assembly, *A/RES/46/152*, 1991.

<sup>10</sup> CCPCJ, *Composition of the Commission on Crime Prevention and Criminal Justice as of 1 January 2012*, 2012.

<sup>11</sup> UNODC, *Fact Sheet on Elections and Membership*, 2012.

<sup>12</sup> CCPCJ, *Composition of the Commission on Crime Prevention and Criminal Justice as of 1 January 2012*, 2012.

<sup>13</sup> United Nations, *Charter of the United Nations*, 1945.

<sup>14</sup> UNODC, *The Economic and Social Council and the CND and CCPCJ*.

States.<sup>15</sup> 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.<sup>16</sup> Some of the top priorities of the CCPCJ in recent years have been corruption, human trafficking, illegal migration, treatment of prisoners, and terrorism.<sup>17</sup>

Additionally, the CCPCJ approves the budget for the UN Crime Prevention and Criminal Justice Fund. This fund supports the UN Crime Prevention and Criminal Justice Programme, which consists on the active work done by the CCPCJ.<sup>18</sup> To aid in the effectiveness of states working cooperatively on these issues, the CCPCJ maintains links to the UN Crime Prevention and Criminal Justice Programme Network, which facilitates information exchange, research sharing, training provision, and public education.<sup>19</sup> The Network is made up of specialized crime-focused institutions and interregional and regional groups. This includes the UN Office on Drugs and Crime (UNODC), which is governed by the CCPCJ.<sup>20</sup> The CCPCJ works closely with other UN bodies whose focuses may contain elements of crime prevention and criminal justice. This promotes coordinated, efficient and effective work between each program by avoiding redundancy on operations.<sup>21</sup> In this context, the CCPCJ works closely with the Commission on Narcotic Drugs (CND) to jointly govern the UNODC.<sup>22</sup> The crime program of the UNODC carries out the mandates established by the CCPCJ, whereas the CND mandates the drugs and narcotic segment of the UNODC's work.<sup>23</sup>

### ***International Forums for Crime Prevention and Criminal Justice***

Another task of the CCPCJ is to supervise and provide substantive and organizational guidance for the UN Congress on Crime Prevention and Criminal Justice (Crime Congress), as well as to consider and implement follow-up measures based on the work at these conferences.<sup>24</sup> The Crime Congress serves as a forum for states to discuss policy issues and commit to specified actions.<sup>25</sup> These congresses have been held under UN auspices every five years since 1955.<sup>26</sup> At the Crime Congress, civil society plays an important role in assisting the UN, as official state representatives work together with representatives from non-governmental organizations (NGOs), academics, professionals, policymakers, and experts to “contribute to the formulation of national and international policies on crime prevention and criminal justice.”<sup>27</sup>

The most recent Crime Congress, the Twelfth UN Congress on Crime Prevention and Criminal Justice, was held in Salvador, Brazil, in 2010 under the theme of “Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world.”<sup>28</sup> Members investigated and deliberated on a multitude of themes, some special emphases being youth and crime, terrorism, and criminal justice responses to human trafficking.<sup>29</sup> Guidelines and principles such as the *Minimum Rules for the Treatment of Prisoners* have been adopted at previous Crime Congresses.<sup>30</sup>

In addition to the Crime Congress, the CCPCJ holds an annual meeting every spring in Vienna, in order to discuss pressing international matters related to crime and criminal justice. After this meeting, the CCPCJ reconvenes

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<sup>15</sup> CCPCJ, *Mandate and Functions*; United Nations Department of Public Information, *The United Nations Today*, 2008, p. 210.

<sup>16</sup> CCPCJ, *Mandate and Functions*.

<sup>17</sup> United Nations Department of Public Information, *The United Nations Today*, 2008, p. 209.

<sup>18</sup> CCPCJ, *Mandate and Functions*.

<sup>19</sup> CCPCJ, *Mandate and Functions*.

<sup>20</sup> UNODC, *Institutes of the UN Crime Prevention and Criminal Justice Programme Network*.

<sup>21</sup> ECOSOC, *Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice*, 1992.

<sup>22</sup> United Nations Department of Public Information, *The United Nations Today*, 2008, p. 209.

<sup>23</sup> CCPCJ, *Mandate and Functions*.

<sup>24</sup> CCPCJ, *Mandate and Functions*.

<sup>25</sup> UNODC, *Previous Congresses on the Prevention of Crime and the Treatment of Offenders*.

<sup>26</sup> UNODC, *Previous Congresses on the Prevention of Crime and the Treatment of Offenders*.

<sup>27</sup> National Secretariat of Justice, *Brazil is home to the 12th United Nations Congress on Crime Prevention and Criminal Justice*; UNODC, *Twelfth United Nations Congress on Crime Prevention and Criminal Justice: Factsheets*, 2010.

<sup>28</sup> UNODC, *Twelfth United Nations Congress on Crime Prevention and Criminal Justice*, 2010.

<sup>29</sup> United Nations Congress on Crime Prevention and Criminal Justice, *Report of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice*, 2010.

<sup>30</sup> UNODC, *Previous Congresses on the Prevention of Crime and the Treatment of Offenders*.

towards the end of the year to discuss budget and administrative topics.<sup>31</sup> The themes for the agenda are decided by ECOSOC, having been identified as important international issues and priorities.<sup>32</sup> Experts from around the world in the field of criminal justice and human rights, as well as experienced practitioners working with issues related to crime, attend this conference every year as part of national delegations.<sup>33</sup> Representatives from different UN entities, intergovernmental organizations, and NGOs in consultative status with ECOSOC also participate.<sup>34</sup> The conference serves as a yearly global forum where experts can exchange effective policy practices from varying Member States as well as share research and experience in law development.<sup>35</sup> The outcomes of these annual meetings include draft resolutions and reports that the Commission recommends to ECOSOC for adoption.<sup>36</sup> During its 21<sup>st</sup> session, held in 2012, the CCPCJ addressed the theme of “Violence against migrants, migrant workers and their families.”<sup>37</sup> Looking forward, the theme for the 22<sup>nd</sup> session to be held in 2013 will be on forms of crime with “significant impact on the environment and ways to deal with it effectively.”<sup>38</sup>

### **Conclusion**

As the world becomes more globalized, the need for international cooperation becomes increasingly pressing. When the GA first requested the establishment of the CCPCJ, it tied crime prevention and criminal justice to development, social conditions, insecurity, and democracy, while emphasizing the increasingly international nature of modern crime.<sup>39</sup> These links are still critical today.<sup>40</sup> Moreover, the CCPCJ has to face some remaining shortcomings as meeting rising challenges, lack of effective influence over multilateral strategies to combat crime and disengagement by states, and the ability to collect criminal justice statistics at all levels.<sup>41</sup> As the CCPCJ carries out its work, it will need to address some of its major challenges in order to ensure effective action. Delegates should prepare themselves to tackle some of these challenges in committee, namely, how can the CCPCJ encourage more cooperation between states? How can the Commission engage more countries? Given the abundance of research, how can the CCPCJ ensure that it is shared effectively between states? How to address the issue where there are gaps in research? How can the CCPCJ work with other UN bodies to ensure the most effective and efficient work? Keeping some of these questions in mind will enable delegates to create more effective solutions to the pressing issues discussed by the commission.

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<sup>31</sup> Clark, *The United Nations Crime Prevention and Criminal Justice Program*, 1994, p. 60.

<sup>32</sup> Clark, *The United Nations Crime Prevention and Criminal Justice Program*, 1994, p. 60.

<sup>33</sup> Clark, *The United Nations Crime Prevention and Criminal Justice Program*, 1994, p. 60; ECOSOC, *List of Participants*, 2012.

<sup>34</sup> CCPCJ, *Report on the Twenty-first session of the Commission on Crime Prevention and Criminal Justice*, 2012, p. 91.

<sup>35</sup> General Assembly, *Creation of an effective United Nations crime prevention and criminal justice programme (A/RES/46/152)*, 1991.

<sup>36</sup> CCPCJ, *Report on the Twenty-first session of the Commission on Crime Prevention and Criminal Justice*, 2012.

<sup>37</sup> CCPCJ, *Report on the Twenty-first session of the Commission on Crime Prevention and Criminal Justice*, 2012; UNODC, *Commission on Crime Prevention and Criminal Justice: Twenty-first Session*, 2012.

<sup>38</sup> UNODC, *Commission on Crime Prevention and Criminal Justice: More Information*.

<sup>39</sup> General Assembly, *A/RES/46/152*, 1991.

<sup>40</sup> General Assembly, *A/RES/46/152*, 1991.

<sup>41</sup> International Peace Institute, *Transnational Organized Crime*, 2009, p. 11; Harrendorf, et al., *International Statistics on Crime and Justice*, 2010, pp. 171-172.

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Clark, R. (1989). Human Rights and the U.N. Committee on Crime Prevention and Criminal Control. *Annals of the American Academy of Political and Social Science*. 506 (N.A.): 68-84.

*This article was written by a law professor to inform readers about the UN's work in the field of crime as well as increase visibility for the now-defunct Committee on Crime Prevention and Criminal Control. Although it does not cover any recent developments, it is a helpful resource in understanding the history of international actions and cooperation regarding crime since the 19<sup>th</sup> century, as well as what instruments and developments the UN made in the decades before the inception of the CCPCJ. This article connects the work of the UN related to crime with various rights, and focuses on topics related to rights, such as torture and treatment of prisoners.*

Clark, R. (1994). *The United Nations Crime Prevention and Criminal Justice Program: formulation of standards and efforts at their implementation*. Philadelphia: University of Pennsylvania Press.

*This book was written early in the history of the CCPCJ but provides an in-depth and helpful insight into the history of the UN's work in crime prevention and criminal justice. It delves into the responsibility of the Commission and some of the work it has done, such as by analyzing UN instruments related to crime and their effectiveness. The book discusses international cooperation in crime prevention and criminal justice, and can help clarify what the CCPCJ's role is in the UN.*

United Nations Department of Public Information. (2008). *The United Nations Today*. New York: United Nations Department of Public Information. Retrieved September 1, 2012 from: [http://www.un.org/ar/mat-didactico/UN\\_TODAY\\_BOOK.pdf](http://www.un.org/ar/mat-didactico/UN_TODAY_BOOK.pdf)

*This book published by the UN Department of Public Information is essentially an overview of the UN and its work today. The book provides a wealth of knowledge about the UN and would be greatly beneficial to delegates as a useful background for the UN more generally. Reading through the specific sections on crime prevention and criminal justice will allow delegates to have a greater understanding of what the different UN activities in the field of crime are, and how the different bodies interact with each other. It would also allow delegates to investigate which issues are currently high priorities in this field.*

United Nations Economic and Social Council. (1992). *Resolution 1992/22 (1992)*. Retrieved August 6, 2012 from: [http://www.unodc.org/documents/commissions/CCPCJ/ECOSOC\\_res\\_1992-22.pdf](http://www.unodc.org/documents/commissions/CCPCJ/ECOSOC_res_1992-22.pdf)

*This resolution, "Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice," is a response to the request by the General Assembly to create a more effective program for crime prevention and criminal justice. This document elaborates upon the role of the CCPCJ, explaining its duties to coordinate practical efforts in crime prevention and criminal justice. It clarifies funding, involvement of Member States, coordination activities, priorities, etc. Therefore, in order to clearly understand the role of the CCPCJ, delegates should read this resolution and familiarize themselves with the purpose and functions of the Commission.*

United Nations General Assembly. (1991). *Resolution 46/152*. Retrieved August 6, 2012 from <http://www.un.org/documents/ga/res/46/a46r152.htm>

*This General Assembly resolution "Creation of an effective United Nations crime prevention and criminal justice programme" outlines the necessity of a practical program in the field of crime prevention and criminal justice. The GA emphasizes the importance of this topic on the UN's agenda and the necessity to have a coordinated body that provides Member States with practical assistance. It requests that ECOSOC create a commission on this topic and encourages other states to support the endeavor, and also articulates shared principles to guide the body's work.*

United Nations Office on Drugs and Crime. (2010). *Report of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice*. Retrieved August 7, 2012 from [http://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/A\\_CONF.213\\_18/V1053828e.pdf](http://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/A_CONF.213_18/V1053828e.pdf)

*As the CCPCJ plays an important role in the substance and organization of the UN Congress on Crime Prevention and Criminal Justice and takes much heed of its outcomes, it is important for delegates to be familiar with the role and actions of the congress. The Crime Congress takes place every five years, with this document being the report from the last congress in 2010. This report from the conference details the pressing international issues related to criminal justice and crime prevention that were discussed, as well as recommendations by the body. The document reports findings by international experts on such topics as youth and crime, trafficking, the role of science and technology in crime, and more.*

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## I. Environmental Protection through Criminal Law

*“Global warming, oil spills, massive numbers of extinctions, reduction in bio-diversity, toxic environments, disappearance of Arctic ice, poisonous water, unbreathable air, burning of garbage, clear felling of forests, the list goes on as to how planetary well-being is being destroyed and diminished in so many different ways.”*<sup>42</sup>

### **Introduction**

International environmental crime is one of the fastest-growing and most profitable areas of international crime.<sup>43</sup> In conventional legal terms, transnational environmental crime can be defined in three aspects; acts and omissions that are against the law; crimes including a cross-border transfer on an international or global scale; and crimes relating to pollution and against wildlife.<sup>44</sup> A more expansive definition includes harm against humans, animals and the environment; its consequences transcend societal, geographical and juridical boundaries.<sup>45</sup> A broad classification of environmental crimes, used by the European Union (EU), the International Criminal Police Organization (INTERPOL), the Group of Eight (G8), the UN Environmental Programme (UNEP) and the UN Interregional Crime and Justice Research Institute (UNICRI), consists of five general areas of offense: illegal trade in wildlife; illegal trade in ozone-depleting substances; the dumping and illegal transport of hazardous wastes; illegal, unregulated, or unreported fishing; and illegal logging and trade in timber.<sup>46</sup>

Organized crime is responsible for a significant proportion of transnational environmental crime.<sup>47</sup> The *United Nations Convention against Transnational Organized Crime* (UNTOC) is the only international convention that addresses organized crime, and it deliberately avoids a precise definition so that it is broad enough to cope with evolving and newly emerging types of crime.<sup>48</sup> Environmental crime is such an example, as crimes in carbon trading and water management have recently developed.<sup>49</sup> The damages from criminal environmental activities amount to billions of dollars per year; the World Bank estimates that illegal logging alone costs developing countries US\$15 billion per year in lost revenue and taxes.<sup>50</sup> Current measures to protect the environment are therefore clearly inadequate. To examine how criminal law can provide environmental protection, this guide will explore major documents in the existing environmental regime, and the role of the United Nations (UN) within it. The work of the Commission on Crime Prevention and Criminal Justice (CCPCJ) on this topic will be examined, and current key issues in international environmental crime identified. The recent boom in the illicit ivory trade illustrates gaps and inadequacies in current environmental protection, before guiding questions for further research are presented.

### **Key Mechanisms in the International Environmental Regime**

Governments enter into international agreements intending to resolve problems that they cannot solve unilaterally. The host of international regulatory regimes for the protection and management of the environment against abuses from individuals and companies is an example of this intent.<sup>51</sup> The laws and regulations are as varied as the environmental problems they attempt to solve, and are codified in a variety of international treaties, agreements, and non-legally binding mechanisms. In the 1960s and 1970s, the UN had a central role in creating the international framework of that governs international environmental issues today.<sup>52</sup>

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<sup>42</sup> White, *Introduction: Environmental Crime and Eco-global Criminology*, 2009, p.1.

<sup>43</sup> Brack, *The Growth and Control of International Environmental Crime*, 2004, p. 80; Federation of American Scientists, *International Crime Threat Assessment – Environmental Crimes*, 1996.

<sup>44</sup> White, *Transnational Environmental Crime*, 2011.

<sup>45</sup> White, *Researching Transnational Environmental Harm: Toward an Eco-Global Criminology*, 2009.

<sup>46</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future*, p. 2; Royal Institute of International Affairs, *International Environmental Crime – The Nature and Control of Environmental Black Markets*, 2002, p. 5.

<sup>47</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future* 2008, p. 2; Royal Institute of International Affairs, *The Growth and Control of International Environmental Crime*, 2008, p. 4.

<sup>48</sup> UN Office on Drugs and Crime, *Organized Crime*, 2012.

<sup>49</sup> UN Office on Drugs and Crime, *Organized Crime*, 2012; Interpol, *Fact sheet: Environmental crime*, 2012.

<sup>50</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future*, 2008, p. 2.

<sup>51</sup> Joyner, *Rethinking Environmental Regimes: What Role for Partnership Coalitions?*, 2005, p.89; Brack, *The Growth and Control of International Environmental Crime*, 2004, p. 80.

<sup>52</sup> O’Neill, *The Environment and International Relations*, 2009, p.27.

The UN has organized four global summits on the environment. The UN Conference on the Human Environment (UNCHE) was held in Stockholm in 1972; the UN Conference on Environment and Development (Earth Summit) took place in Rio de Janeiro in 1992; in 2002, Johannesburg hosted the World Summit on Sustainable Development (WSSD) as the ten-year review conference of the Earth Summit and lately, in 2012, Rio de Janeiro hosted its twenty-year review.<sup>53</sup> Key outcomes of these conferences include the establishment of the UNEP at the UNCHE; the adoption of Agenda 21 at the Earth Summit; and the Johannesburg Declaration on Sustainable Development, the Johannesburg Plan of Implementation and the Type2 Partnership Initiatives at the WSSD.<sup>54</sup> Next to these political commitments, a variety of international legal instruments exist.

The *Washington Convention on International Trade in Endangered Species of Fauna and Flora (CITES)* is a multilateral treaty which entered into force in 1975; its aim to ensure that international trade in specimens of wild animals and plants did not threaten the existence of other species in the wild.<sup>55</sup> International wildlife trade is estimated to be worth billions of dollars each year, and includes hundreds of millions of plant and animal specimens.<sup>56</sup> The diverse trade ranges from live animals and plants, to a variety of products derived from wildlife, including medicines, musical instruments, and leather.<sup>57</sup> The trade of some species is so high that their populations are being depleted to the point of extinction in some species.<sup>58</sup> The cross-border scope of wildlife trade makes the international cooperation as agreed in this treaty vital to the survival of wild animal and plant species.<sup>59</sup>

The 1987 *Montreal Protocol on Substances that Deplete the Ozone Layer* was created to stop ozone layer depletion by phasing out the production of harmful substances.<sup>60</sup> The ozone layer acts as a shield in the atmosphere protecting life on earth from the sun's harmful ultraviolet radiation.<sup>61</sup> The effects of ozone depletion are varied. In humans, exposure to UV radiation can lead to skin cancer and cataracts. It also affects the physiological and developmental processes of plants, and disturbs marine ecosystems.<sup>62</sup> The treaty has been revised seven times since it first entered into force in 1989; the last revision being in Beijing in 1999.<sup>63</sup> The *Montreal Protocol* has been widely adopted and implemented, making it known as "perhaps the single most successful international agreement to date."<sup>64</sup>

In 1989, the *Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal* was created to halt the dumping and illegal transport of hazardous waste.<sup>65</sup> The convention was adopted after public outcry in the 1980s after deposits of toxic wastes imported from abroad were discovered in Africa and other parts of the developing world.<sup>66</sup> The convention's objective is the protection of human health and the environment from the adverse effects of hazardous waste.<sup>67</sup> In addition to controlling the movement of hazardous waste between states, the treaty specifically aims to prevent its transfer from developed countries to less developed countries.<sup>68</sup> Furthermore, less developed countries are granted assistance through the *Basel Convention* in the environmentally sound management of any hazardous waste they produce.<sup>69</sup>

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<sup>53</sup> O'Neill, *The Environment and International Relations*, 2009, p.27.

<sup>54</sup> O'Neill, *The Environment and International Relations*, 2009, p.28; UNEP, Post-Johannesburg Key Outcomes, 2002;

<sup>55</sup> International Union for Conservation of Nature, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*, 1973.

<sup>56</sup> United Nations Environment Programme, *What is Cites?*, 2012.

<sup>57</sup> United Nations Environment Programme, *What is Cites?*, 2012.

<sup>58</sup> United Nations Environment Programme, *What is Cites?*, 2012.

<sup>59</sup> United Nations Environment Programme, *What is Cites?*, 2012.

<sup>60</sup> U.S. Environmental Protection Agency, *The Montreal Protocol on Substances that Deplete the Ozone Layer*, 2012.

<sup>61</sup> U.S. Environmental Protection Agency, *Ozone Layer Protection – Basic Information*, 2012.

<sup>62</sup> U.S. Environmental Protection Agency, *Health and Environmental Effects of Ozone Layer Depletion*, 2012.

<sup>63</sup> United Nations Environment Programme, *Montreal Protocol on Substances that Deplete the Ozone Layer*, 1987.

<sup>64</sup> Kofi Annan, *International Day for the Preservation of the Ozone Layer*, September 16, 2005.

<sup>65</sup> United Nations Environment Programme, *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, 1989, supra note 11, art. 9.

<sup>66</sup> Secretariat of the Basel Convention, *The Basel Convention at a Glance*, 2009, p.1.

<sup>67</sup> Secretariat of the Basel Convention, *The Basel Convention - Overview*, 2011.

<sup>68</sup> Secretariat of the Basel Convention, *The Basel Convention - Overview*, 2011.

<sup>69</sup> United Nations Environment Programme, *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, 1989, articles 10 and 13.

### ***The Commission on Crime Prevention and Criminal Justice and the Environment***

Established in its current form in 1992, the CCPCJ coordinates the responsibilities of the United Nations Crime Prevention and Criminal Justice Programme.<sup>70</sup> Its mandate covers the management and development of international crime prevention cooperation and criminal justice standards.<sup>71</sup> Both the ECOSOC and CCPCJ have adopted resolutions recognizing the UNTOC and the *United Nations Convention Against Corruption* (UNCAC).<sup>72</sup> Both of these conventions contain provisions supporting international cooperation in criminal matters and offering ideas for new forms of international cooperation that could be applied in the fields of wildlife and forest crime.<sup>73</sup> Over the years, environmental crime has been added to the mandate of the CCPCJ.<sup>74</sup> The work of the CCPCJ supports a host of international instruments, programs and conferences designed to protect the environment, including CITES and the *Convention on Biodiversity* (CBD), the Reducing Emissions from Deforestation and Forest Degradation framework (REDD+), the *UN Framework Convention on Climate Change* (UNFCCC), the International Tiger Forum, and the 11<sup>th</sup> Asian Regional Partners Forum on Combating Environmental Crime (ARPEC).<sup>75</sup>

In resolution 16/1, on *International cooperation in preventing and combating illicit international trafficking in forest products, including timber, wildlife, and other forest biological resources*, the CCPCJ recognized the role played by United Nations Office on Drugs and Crime (UNODC) in preventing and combating such offences.<sup>76</sup> Furthermore, in 2008 the ECOSOC in its resolution 2008/25 reiterated the need for “holistic and comprehensive national multisectoral approaches to preventing and combating illicit international trafficking in forest products, including timber wildlife, and other forest biological resources.”<sup>77</sup> In 2011, the CCPCJ adopted resolution 20/5 addressing transnational crime committed at sea, allowing Member States and UNODC to tackle wildlife trafficking at sea.<sup>78</sup> In the same year, the CCPCJ also made a recommended that the ECOSOC adopt Resolution 2011/36 that calls upon the UNODC to work with Member States to prevent illicit trafficking in wild flora and fauna.<sup>79</sup>

### ***Consequences of International Environmental Crime***

The consequences of environmental crime have a global impact, such as deforestation, the depletion of the ozone layer, or the extinction of species.<sup>80</sup> Environmental crimes affect the environment and negatively affect human health, for example when hazardous waste is dumped near inhabited areas, and they can also lead to loss of revenue for governments in the form of tax not being paid on smuggled goods.<sup>81</sup> Environmental crimes are often a threat to basic human rights.<sup>82</sup> The full scope of environmental damage caused by environmental crimes remains unknown as negative external effects cannot always be measured, with costs having no direct monetary relationship with the responsible actors.<sup>83</sup>

#### ***Widespread impact***

Besides the immediate impact that environmental crime can have on the environment, the consequences can be farther reaching. Environmental crime harms the livelihoods of many people; oftentimes, it is the world’s poorest that are affected in the highest proportion.<sup>84</sup> For example, the lack of international regulations on fishing leads to overfishing, which in turn depletes fish stocks throughout the world’s oceans. Since millions of people from

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<sup>70</sup> United Nations Association in Canada, *United Nations Commission on Crime Prevention and Criminal Justice*.

<sup>71</sup> United Nations Association in Canada, *United Nations Commission on Crime Prevention and Criminal Justice*.

<sup>72</sup> United Nations Office on Drugs and Crime, *Wildlife and Forest Crime*, 2012.

<sup>73</sup> United Nations Office on Drugs and Crime, *Wildlife and Forest Crime*, 2012.

<sup>74</sup> United Nations Association in Canada, *United Nations Commission on Crime Prevention and Criminal Justice*.

<sup>75</sup> United Nations Office on Drugs and Crime, *Wildlife and Forest Crime*, 2012.

<sup>76</sup> United Nations Association in Canada, *United Nations Commission on Crime Prevention and Criminal Justice*.

<sup>77</sup> United Nations Office on Drugs and Crime, *Wildlife and Forest Crime*, 2012.

<sup>78</sup> United Nations Association in Canada, *United Nations Commission on Crime Prevention and Criminal Justice*.

<sup>79</sup> United Nations Office on Drugs and Crime, *Wildlife and Forest Crime*, 2012.

<sup>80</sup> United Nations Environment Programme, *Environment Crime Now High on the World Agenda*, 2008.

<sup>81</sup> United Nations Environment Programme, *Environment Crime Now High on the World Agenda*, 2008.

<sup>82</sup> United Nations Office on Drugs and Crime, *What does environmental crime have in common with organized crime?*, 2009.

<sup>83</sup> Federal Environment Agency, *Economic Valuation of Environmental Damage: Methodological Convention for Estimates of Environmental Externalities*, 2008, p.8.

<sup>84</sup> World Wildlife Fund, *Unsustainable and illegal wildlife trade*.

developing countries are dependent on fish as their only protein source, overfishing has a great impact on their food stability.<sup>85</sup>

The role of organized crime is often underestimated in certain areas, such as the illicit trade in endangered species.<sup>86</sup> Smuggling routes used by criminals to smuggle wildlife are also often used to smuggle drugs, weapons, and even people.<sup>87</sup> Environmental crimes go hand in hand with other crimes, including money laundering, corruption, and murder.<sup>88</sup> While environmental crimes are by definition carried out by individuals (or companies), organized criminal networks are responsible for a significant amount of all international environmental crimes that are committed, especially wildlife and pollution crimes.<sup>89</sup> The “raw materials” that live and grow freely can be poached or harvested at little cost.<sup>90</sup> Such crimes are currently some of the most profitable types of criminal activity, making them attractive with organized criminal networks.<sup>91</sup> Examples include the illegal shipping of electronic waste from the United States and Europe to West Africa and the Mafia’s illegal dumping and waste disposal business in Italy.<sup>92</sup>

In the same way that individuals engaged in organized crime see environmental crime as an easy option, individuals in positions of power see it as a means to profit.<sup>93</sup> As such, the Financial Action Task Force (FATF), an inter-governmental body established in 1989 with the objectives of setting standards and promoting effective implementation of legal regulatory and operational measures for combating money laundering, terrorist financing and other threats to the integrity of the international financial system, has included environmental crime in its “Designated Categories and Offences.”<sup>94</sup> The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

### ***Challenges in Creating and Enforcing Environmental Criminal Law***

Fighting environmental crime poses a unique challenge to the global community. Whilst the majority of instruments on environmental protection are underpinned by an understanding that states penalize certain behavior, domestic legislation is often inadequate, dedicated agencies to deal with this topic are rare and when they do exist, they lack funding.<sup>95</sup> Despite the increasing proliferation of international courts and tribunals, no such thing exists for international environmental criminal law.<sup>96</sup> At the same time, the environmental protection through criminal law is difficult. One of the main reasons for this is that criminal law is, by its very nature, mainly punitive, thus not preventing the occurrence of environmental harm which should be the fundamental basis of environmental protection regimes.<sup>97</sup> Criminal disputes are primarily settled in court, after an offense has occurred, and requires time and resources.<sup>98</sup>

Several legal scholars have debated whether national courts should be able to pursue international environmental crimes.<sup>99</sup> However, national courts are not sufficiently able to address international environmental problems since transnational issues often require supra-national conflict resolution mechanisms.<sup>100</sup> National courts also require expertise in order to investigate the crime, which is not always available, thus hindering the proceedings. This is

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<sup>85</sup> United Nations Environment Programme, *Overfishing: a threat to marine biodiversity*.

<sup>86</sup> United Nations Office on Drugs and Crime, *Criminals rake in \$250 billion per year in counterfeit goods that pose health and safety risks to unsuspecting public*, 2012.

<sup>87</sup> Interpol Environmental Crime Programme, *Newsletter*, 2012.

<sup>88</sup> Interpol Environmental Crime Programme, *Newsletter*, 2012.

<sup>89</sup> Interpol Environmental Crime Programme, *Newsletter*, 2012.

<sup>90</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future* 2008 p. 2.

<sup>91</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future* 2008, p. 2.

<sup>92</sup> Interpol, *Electronic Waste and Organized Crime Assessing the Links – Phase II Report for the Interpol Pollution Crime Working Group*, 2009, p.2; L’Agence France-Presse, *Mafia’s Waste Disposal Business Flourishes in Italy in 2009*, 2010.

<sup>93</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future* 2008, p. 3.

<sup>94</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future*, 2008, p. 3; Financial Action Task Force, *Who We Are*, 2012.

<sup>95</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future*, 2008p.24.

<sup>96</sup> Avgerinopoulou, *The Role of the International Judiciary in the Settlement of Environmental Disputes*, 2003, p. 3.

<sup>97</sup> Pain, *Criminal Law and Environment Protection – Overview of Issues and Themes*, 1995, p. 4.

<sup>98</sup> Pain, *Criminal Law and Environment Protection – Overview of Issues and Themes*, 1995, p. 4.

<sup>99</sup> Avgerinopoulou, *The Role of the International Judiciary in the Settlement of Environmental Disputes*, 2003, p. 3.

<sup>100</sup> Avgerinopoulou, *The Role of the International Judiciary in the Settlement of Environmental Disputes*, 2003, p. 3.

why, for example, CITES stipulates that a country must have at least one separate scientific body to advise the authority implementing CITES on the status of the species.<sup>101</sup> International tribunals are also in a better position to protect emerging international environmental rights, as well as clarifying the meaning and status of legal doctrines relating to the environment.<sup>102</sup> Although no international body exists to deal specifically with international environmental criminal law, some judicial bodies already handle international environmental disputes, such as the International Court of Justice, the International Tribunal for the Law of the Sea, the World Trade Organization's Dispute Settlement Body, as well as regional courts such as the European Court of Justice, the European Court of Human Rights and the African Court on Human Rights.<sup>103</sup> However, these bodies are not in a position to sanction individual behavior. Including environmental crimes into international criminal law (individual responsibility being the absolute exception in international law) as well as creating a specific body to deal with these issues would be a giant step towards environmental protection through international criminal law.

In addition to legislative and judicial bodies to act as a punitive body for environmental crime, environmental protection could be increased through various executive measures at the domestic level. These include acknowledging that environmental crime is a haven for corruption and that unless it is combatted through administrative reform, environmental protection will be impeded; committing to assisting those countries with the highest prevalence of crime and where the resources are most lacking; developing greater synergy between mechanisms, such as the cooperation between *CITES* and the *Convention against Transnational Crime*; encouraging the application of existing national environmental criminal laws; and by developing new, or participating in existing international, national and regional environmental crime enforcement units to share intelligence to develop investigations and operations targeting criminal networks.<sup>104</sup>

### ***Case Study: The Booming Illicit Ivory Trade***

There is a plethora of cases that illustrate international environmental crime. The case presented here underscores the enormous deficit in the implementation of international environmental law, even when there is an international legal framework in place. The CITES subjects the international trade of chosen species to controls.<sup>105</sup> These controls regulate trade through a licensing system, and it is the responsibility of each party to the Convention to ensure that it has an authority to administer the licensing system and at least one scientific body to monitor the consequences of trade on the status of the species.<sup>106</sup> The degree of protection a species requires is designated by the CITES appendices.<sup>107</sup> Appendix I includes species at risk of extinction, and trade is permitted "only in exceptional circumstances"; Appendix II lists species that are not inevitably threatened with extinction, "but in which trade must be controlled in order to avoid utilization incompatible with their survival."<sup>108</sup> The Asian elephant was added to Appendix I in 1975 and the African elephant in 1989.<sup>109</sup> These additions made the international trade in their ivory illegal, as the mass poaching conducted to fulfill demand for ivory threatened these species with extinction.<sup>110</sup>

In 1997, trade exemptions were made to allow the sale of limited amounts of previously registered stockpiles of ivory in response to pressure by southern African states (Zimbabwe, Botswana, South Africa and Namibia). Accordingly, these four countries became subject to CITES Appendix II, where Footnote 5 determines the specific conditions for this exemption.<sup>111</sup> However, African elephants in and outside these countries today "are being slaughtered for their ivory at a pace unseen since [...] 1989. But the public outcry that resulted in that ban is absent today."<sup>112</sup> Of the five years with the highest levels of illegally trafficked ivory, 2009, 2010 and 2011 rank amongst them (the figures for 2012 are not yet available).<sup>113</sup> Neither is the phenomenon isolated to countries subject to

<sup>101</sup> CITES, *How CITES works*, 2012.

<sup>102</sup> Avgerinopoulou, *The Role of the International Judiciary in the Settlement of Environmental Disputes*, 2003, p. 4.

<sup>103</sup> Avgerinopoulou, *The Role of the International Judiciary in the Settlement of Environmental Disputes*, 2003, p. 5-9.

<sup>104</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future*, 2008, p. 24.

<sup>105</sup> CITES, *How CITES works*, 2012.

<sup>106</sup> CITES, *How CITES works*, 2012.

<sup>107</sup> CITES, *How CITES works*, 2012.

<sup>108</sup> CITES, *How CITES works*, 2012.

<sup>109</sup> International Conservation Union, *The IUCN Red List of Endangered Species: Loxodonta Africana (African elephant)*, 2012.

<sup>110</sup> International Conservation Union, *The IUCN Red List of Endangered Species: Loxodonta Africana (African elephant)*, 2012.

<sup>111</sup> CITES, *Appendices I, II and III of CITES*, 2012.

<sup>112</sup> Science News, *Ivory poaching at critical levels: Elephants on path to extinction by 2020?*, 2008.

<sup>113</sup> CITES, *CITES Secretary-General's testimony at the United States of Americas Senate Foreign Relations Committee Hearing*, 2012; BBC, *Elephant poaching: 'Record year' for ivory seizures*, 2011.

Appendix II, Footnote 5. In Cameroon, over 450 elephants were killed early in 2012, indicating a high level of sophisticated poaching, and highlighting the inadequacy of existing monitoring systems under CITES to prevent such crimes.<sup>114</sup>

A strikingly similar trend has emerged for rhinoceros. In South Africa, 455 rhinos were killed for their horns in 2012, surpassing the 2011 record of 448.<sup>115</sup> For comparison, just 13 rhinos were slaughtered for their horns in 2007.<sup>116</sup> The Environmental Investigation Agency (EIA), an international non-governmental organization dedicated to fight environmental crime, has stated that the sale of previously stockpiled ivory has not stemmed demand or reduced prices to the point of rendering poaching worthless.<sup>117</sup> In fact, it has had the opposite effect.<sup>118</sup> Illegal trafficking has developed into a professionalized billion-dollar industry with estimates for its revenue ranging between US\$ 5 and 20 billion per year.<sup>119</sup> In comparison to other large-scale illegal international trades, these estimates are ten times the value of the illegal trade in diamonds and other gems or in small arms and light weapons.<sup>120</sup> The illegal trade in wildlife is now the third largest global criminal industry.<sup>121</sup> As such, the Executive Director of UNODC raised the topic of wildlife crime at the UN Security Council as an emerging challenge to international peace and security.<sup>122</sup>

The overwhelming majority of buyers of illegal ivory are Chinese citizens looking to supply their own or neighboring countries' markets.<sup>123</sup> The fuel driving the enormous increase in black market prices for ivory and rhino horn is the growing affluence of consumers in these countries, where ivory is used for jewelry and rhino horn for traditional medicinal purposes.<sup>124</sup> There are many examples of the smuggling of ivory or rhino horns on a massive scale from Thailand, Japan and Vietnam, to the Philippines and China.<sup>125</sup> All of these countries are characterized by rising purchasing power in their middle classes, and thus a rising demand for the illicit goods. This leads to high profits in illegal trafficking, which in turn fosters corruption and weak law enforcement. The World Wildlife Fund has issued a report recently on the enforcement of CITES regulations, which underscores the very unequal implementation levels between countries, but also between different illicit wildlife products in one country.<sup>126</sup> The Executive Director of the EIA concludes that, "parties to CITES must recognize that in the current climate of poor enforcement, lack of resources, failure of political will and corruption, there is no likelihood that any form of regulated trade (in ivory) could be workable."<sup>127</sup>

## **Conclusion**

International environmental crime is a time-sensitive issue that poses a global threat.<sup>128</sup> The current international regime forms a patchwork of environmental legislation in a multitude of areas, but a common theme throughout is poor implementation and enforcement as well as a lack of coordination between the various instruments. Domestic criminal legal systems are often ill equipped to tackle the transnational dimension of environmental crime. Questions to guide further research include how current legislation can be effectively implemented to prevent environmental crime. How can individuals be included in the fight against international environmental crime, from both the perspective of a victim and that of a perpetrator? Should there be an international criminal law on

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<sup>114</sup> CITES, *CITES Secretary-General expresses grave concern over reports of mass elephant killings in Cameroon*, 2012.

<sup>115</sup> The Guardian, *Record number of rhinos killed illegally in South Africa in 2012*.

<sup>116</sup> The Observer, *Images that highlight the trade killing our rhinos*, 2012.

<sup>117</sup> Environmental Investigation Agency, *Pro-ivory trade report shows 'shocking' bias*, 2012.

<sup>118</sup> Environmental Investigation Agency, *Pro-ivory trade report shows 'shocking' bias*, 2012.

<sup>119</sup> CITES, *CITES Secretary-General's testimony at the United States of Americas Senate Foreign Relations Committee Hearing*, 2012.

<sup>120</sup> Global Financial Integrity, *Transnational Crime in the Developing World*, 2011.

<sup>121</sup> The Observer, *Images that highlight the trade killing our rhinos*, 2012.

<sup>122</sup> CITES, *CITES Secretary-General expresses grave concern over reports of mass elephant killings in Cameroon*, 2012.

<sup>123</sup> BBC, *The illegal ivory trade threatening Africa's elephants*, 2012.

<sup>124</sup> The Guardian, *Record number of rhinos killed illegally in South Africa in 2012*; The Guardian, *Rhino horn: Vietnam's new status symbol heralds conservation nightmare*, 2012.

<sup>125</sup> National Geographic, *Ivory Worship*, 2012; The Guardian, *Rhino horn: Vietnam's new status symbol heralds conservation nightmare*, 2012.

<sup>126</sup> World Wildlife Fund, *Wildlife Crime Scorecard*, 2012.

<sup>127</sup> Environmental Investigation Agency, *Pro-ivory trade report shows 'shocking' bias*, 2012.

<sup>128</sup> Environmental Investigation Agency, *Environmental Crime – A Threat to our Future*, 2008, p. 24.

environmental crime rather than dealing with these offences in domestic proceedings? What are some of the major obstacles to implementing such an international criminal law concerning offenses against the environment?

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*This paper deals focuses on the individual affected by environmental crime. One of the main problems with environmental crime is that often there is no concrete victim; rather, the consequences of international environmental crime are often not immediately visible. This paper examines this very issue and seeks solutions on an international scale based on the example of the European Union.*

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*This document provides a good overview of various case studies dealing with environmental crime. Each section deals with one particular crime in detail. The report also contains examples of successful enforcement models and raises pertinent questions on what needs to be done in this field.*

Greenpeace. (January 30, 2008). *Illegal Logging*. Retrieved October 19, 2012 from

<http://www.greenpeace.org/international/en/campaigns/forests/threats/illegal-logging/>

*Illegal logging is one of the environmental crimes recognized by the international community. Illegal logging leads to deforestation and economic hardship for legitimate logging businesses. This article offers a comprehensive look at the issues caused by illegal logging and offers insight into this area of international environmental crime.*

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*This report is the result of an environmental crime workshop dealing specifically with how black markets effect the environment. Its main focus is on contraband and how this is produced and smuggled on a global scale. The report discusses various solutions to the problem of black market trade with regard to environmental issues.*

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## II. Establishing International Legal Norms to Counter Maritime Piracy

*“Although piracy manifests itself at sea, the roots of the problem are to be found ashore. This is a complex issue. But in essence, piracy is a criminal offence that is driven by economic hardship, and that flourishes in the absence of effective law enforcement.”*<sup>129</sup>

### **Introduction**

Piracy has existed for centuries; in ancient Roman times, “lawful piracy” was encouraged by states in order to attack foreign vessels.<sup>130</sup> As the importance of international maritime trade increased over time, agreement was reached amongst states that piracy was unlawful, and it became recognized as an international crime during the 19<sup>th</sup> century.<sup>131</sup> Consequently, piracy became the first example of a universal crime punishable by all states.<sup>132</sup> During the 20<sup>th</sup> century, piracy had almost disappeared up until the 1990s. With the end of the Cold War, which led to a decrease in presence of military ships both from the USA and the Soviet Union in international waters, piracy resurfaced in certain areas and is now a contemporary challenge.<sup>133</sup> The regions most affected by cases of piracy are the Indian Ocean and the Southeast Asian Seas.<sup>134</sup> Other so-called hotspots include the Caribbean Sea, the Gulf of Guinea, and the Bay of Bengal.<sup>135</sup> After reaching a peak during the years 1999 to 2003, reported pirate attacks have been continuously rising again since 2006, especially in the Horn of Africa.<sup>136</sup> With a total of more than 400 attacks in 2009, piracy remains a subject of concern.<sup>137</sup> Traditionally, the main cause of piracy is poverty and lack of employment within the local population, but piracy exists on different scales and transnational criminal organizations are also involved in it.<sup>138</sup> Piracy causes economic losses for ship owners, cargo owners, insurers and coastal states as well as posing high physical risks for crew members.<sup>139</sup> Although it is difficult to estimate precisely, the costs of piracy for the maritime industry are estimated to be between US\$1 and US\$16 billion per year.<sup>140</sup>

### **The Legal Framework**

The first internationally agreed definition of piracy was adopted in 1958 with the *Convention on the High Seas* signed in Geneva.<sup>141</sup> However, the most important document codifying international law regarding piracy is the *United Nations Convention on the Law of the Seas (UNCLOS)* signed in 1982. Ratified by a large number of Member States, *UNCLOS* is considered to largely codify existing customary international law.<sup>142</sup> This means that the rules in this convention are considered to be applicable to all states and not only to those that ratified it.<sup>143</sup> Piracy is addressed by *UNCLOS* in its Articles 100-107 and 110.<sup>144</sup> While Article 100 calls for cooperation between all states to combat piracy, Article 101 provides the international definition of piracy:

- a) any illegal acts of violence or detention, or any act of depredation committed for private ends by the crew or the passengers of a private aircraft, and directed:

<sup>129</sup> Ban, *Remarks at Launch of World Maritime Day Theme for 2011: “Piracy: Orchestrating the Response”*, 2011.

<sup>130</sup> Takai, *Suppression of Modern Piracy and the Role of the Navy. NIDS Security Reports, No. 4*, 2003, p 47.

<sup>131</sup> Barrios, *Casting a Wider net : Addressing the Maritime Piracy Problem in Southeast Asia. Boston College International and Comparative Law Review 149*, 2005.

<sup>132</sup> International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast*, 2008, p. 13.

<sup>133</sup> Takai, *Suppression of Modern Piracy and the Role of the Navy. NIDS Security Reports, No. 4*, 2003, p 40.

<sup>134</sup> United Nations Office on Drugs and Crime, *Report on Transnational Organised Crime*, 2009, p.193.

<sup>135</sup> United Nations Office on Drugs and Crime, *Report on Transnational Organised Crime*, 2009, p.193.

<sup>136</sup> International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast*, 2008, p. 13.

<sup>137</sup> United Nations Office on Drugs and Crime, *Report on Transnational Organised Crime*, 2009, p.193.

<sup>138</sup> Dela Pena, *Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concern, Stanford Journal of International Relations, Vol. 10, No 2*, 2009.

<sup>139</sup> Beckman, Davenport, *Enhancing Regional Cooperation on Piracy and Maritime Crimes, Centre for International Law, University of Singapore*, 2010, p.12.

<sup>140</sup> Hallwood, Micelli, “Keystone Cops” Meet “Pirates of the Somali Coast”: *The Failure of International Efforts to Control Maritime Piracy*, .Department of Economics Working Paper Series, University of Connecticut, 2011, p 3.

<sup>141</sup> Convention on the High Seas, 1958. Article 15.

<sup>142</sup> Guilfoyle, *Treaty Jurisdiction Over Pirates: A Compilation of Legal Texts With Introductory Notes. Prepared for the 3<sup>rd</sup> Meeting of the Working Group 2 of the Contact Group on Piracy off the Coast of Somalia*, 2009, p.4.

<sup>143</sup> Barrios, *Casting a Wider net : Addressing the Maritime Piracy Problem in Southeast Asia. Boston College International and Comparative Law Review 149*, 2005. P. 153.

<sup>144</sup> United Nations Convention on the Law of the Seas, 1982.

- (i) on the high seas, against another ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- b) any act of voluntary participation in the operation of a ship or aircraft;
- c) any act of inciting or of intentionally facilitating an act described in subparagraph a) or b)<sup>145</sup>

It is important to note that according to this definition, acts of piracy are limited to acts committed on the high seas. This means that any acts committed within the territorial seas of a state do not fit with the definition of *UNCLOS* and must therefore not be treated as acts of piracy. Territorial seas, according to *UNCLOS*, cannot exceed a distance of 12 nautical miles from the coast of a State.<sup>146</sup> However, the high seas only begin 200 nautical miles off a state's coast, leaving an area in between known as "the exclusive economic zone" as defined by Article 57 of *UNCLOS*.<sup>147</sup> In this area, the coastal state can exercise its sovereignty over the natural resources.<sup>148</sup> Concerning laws related to piracy, Article 58 (2) *UNCLOS* provides that the exclusive economic zone is considered the same as high seas.<sup>149</sup> States can exercise universal jurisdiction over acts of piracy; however, no obligation to do so is stated.<sup>150</sup> This means that there is no duty to act, but any state has the right to arrest pirates anywhere outside the jurisdiction of another country and try them according to its own domestic law.<sup>151</sup>

With the appearance of "modern piracy", it became clear that legislation on piracy was insufficient and could not appropriately manage this new kind of piracy.<sup>152</sup> In 1985, the case of the *Achille Lauro*, an Italian cruise liner hijacked within Egyptian waters by passengers on board of the ship, highlighted the limits of *UNCLOS*.<sup>153</sup> This case could not be considered as piracy under *UNCLOS* for several reasons. First, it did not occur on the high seas; second, the attack did not come from another ship; and third, the apparent reasons for the hijacking were political rather than private.<sup>154</sup> This event led to the adoption of the 1988 *Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention)* and its 2005 Protocol.<sup>155</sup>

The *SUA Convention* mainly targets maritime terrorism and does not address piracy directly, but it is of great relevance regarding acts of piracy.<sup>156</sup> On several questions, the *SUA Convention* goes further than *UNCLOS*. In Article 3, the *SUA Convention* provides a broader definition of unlawful acts, indeed neither the two ships requirement nor the private ends appear anymore.<sup>157</sup> Furthermore, the *SUA Convention* obliges State Parties either to prosecute or extradite captured criminals to competent authorities, and forces State Parties to translate SUA offences into crimes under domestic law.<sup>158</sup> Another issue addressed is the organization of SUA offences ashore, which are also criminalized.<sup>159</sup> However, unlike *UNCLOS*, the *SUA Convention* does not codify customary international law

<sup>145</sup> United Nations Convention on the Law of the Seas, 1982.

<sup>146</sup> United Nations Convention on the Law of the Seas, 1982, article 3.

<sup>147</sup> United Nations Convention on the Law of the Seas, 1982.

<sup>148</sup> United Nations Convention on the Law of the Seas, 1982, article 56.

<sup>149</sup> United Nations Convention on the Law of the Seas, 1982.

<sup>150</sup> United Nations Convention on the Law of the Seas (December 10, 1982), article 105.

<sup>151</sup> Guilfoyle, *Counter-Piracy Law Enforcement and Human Rights, International and Comparative Law Quarterly*, Vol. 59, Issue 1, 2010, p. 144 .

<sup>152</sup> Takai, *Suppression of Modern Piracy and the Role of the Navy. NIDS Security Reports*, No. 4, 2003.

<sup>153</sup> Barrios, *Castig a Wider net : Addressing the Maritime Piracy Problem in Southeast Asia. Boston College International and Comparative Law Review* 149, 2005, p. 154.

<sup>154</sup> Barrios, *Castig a Wider net : Addressing the Maritime Piracy Problem in Southeast Asia. Boston College International and Comparative Law Review* 149, 2005, p.154.

<sup>155</sup> Guilfoyle, *Treaty Jurisdiction Over Pirates: A Compilation of Legal Texts With Introductory Notes. Prepared for the 3<sup>rd</sup> Meeting of the Working Group 2 of the Contact Group on Piracy off the Coast of Somalia*, 2009, p12.

<sup>156</sup> Guilfoyle, *Treaty Jurisdiction Over Pirates: A Compilation of Legal Texts With Introductory Notes. Prepared for the 3<sup>rd</sup> Meeting of the Working Group 2 of the Contact Group on Piracy off the Coast of Somalia*, 2009, p 12.

<sup>157</sup> Guilfoyle, *Treaty Jurisdiction Over Pirates: A Compilation of Legal Texts With Introductory Notes. Prepared for the 3<sup>rd</sup> Meeting of the Working Group 2 of the Contact Group on Piracy off the Coast of Somalia*, 2009, p. 21.

<sup>158</sup> International Maritime Organization, *Convention on the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation*, March 1988, Article 6.

<sup>159</sup> Beckman, Davenport, *Enhancing Regional Cooperation on Piracy and Maritime Crimes, Centre for International Law, University of Singapore*, 2010, p.12.

and therefore only applies to states that have ratified the convention.<sup>160</sup> So far, 156 states have ratified the *SUA Convention*, which still represents a vast majority of the international community.<sup>161</sup>

### ***Challenges in Implementing International Law Relating to Piracy***

#### *Compliance with existing norms*

Despite this framework, the prosecution of pirates remains problematic. States often prefer to adopt the “catch and release” tactic, which consists of disarming arrested pirates and releasing them with sufficient fuel and food in order to reach land.<sup>162</sup> One reason for this behavior is that too many states have not translated acts of piracy into their national legislation, demonstrated in the case of a Danish warship, which set pirates ashore when they could not find a means to prosecute them in 2008.<sup>163</sup> Another barrier is that prosecuting pirates is often a long and expensive procedure, including the transfer of the arrested pirates to countries very distant from the point of arrest.<sup>164</sup> Furthermore, the questioning of witnesses becomes more complicated in such cases. This is the main reason why the trial of five Somali pirates in the Netherlands, after attacking a Turkish freighter in 2009, remains an isolated example.<sup>165</sup> “Catch and release” tactics are counterproductive as they signal to pirates that they can act with impunity without having to fear prosecution.<sup>166</sup> Including acts of piracy within the legislation of every State would be an important measure since it has proven to have a deterring effect on piracy.<sup>167</sup>

#### *Loopholes in the international framework*

In addition to the problems in implementation, the *UNCLOS* and the *SUA Convention* still leave questions open and do not fully address problems related to piracy.<sup>168</sup> Indeed, except for piracy off the coast of Somalia, the vast majority of sea crimes is committed within the territorial seas of a State, and can be treated neither as acts of piracy under *UNCLOS* nor as *SUA* offences.<sup>169</sup> Furthermore, attacks against ships within territorial seas only fall under the jurisdiction of the coastal State.<sup>170</sup> This is why the Piracy Reporting Centre (PRC) of the International Maritime Bureau (IMB) has suggested an alternative definition of piracy that does not differentiate between acts committed on the high seas and those committed within territorial seas; but to this date, no State has recognized this proposed definition.<sup>171</sup> In order to address this problem, the International Maritime Organization (IMO) has proposed a code of practice, which has inspired regional cooperation agreements against piracy.<sup>172</sup> This code of practice calls for the same level of cooperation concerning acts of piracy and similar crimes committed within territorial seas, called “armed robbery against ships.”<sup>173</sup> It aims to codify tasks such as securing evidence, collecting witness testimony, or

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<sup>160</sup> Beckman, Davenport, *Enhancing Regional Cooperation on Piracy and Maritime Crimes*, Centre for International Law, University of Singapore, 2010, p. 25.

<sup>161</sup> International Maritime Organization, *Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation*, 1988.

<sup>162</sup> Guilfoyle, *Counter-Piracy Law Enforcement and Human Rights*, *International and Comparative Law Quarterly*, Vol. 59, Issue 1, 2010, p. 141.

<sup>163</sup> Guilfoyle, *Counter-Piracy Law Enforcement and Human Rights*, *International and Comparative Law Quarterly*, Vol. 59, Issue 1, 2010, p. 142.

<sup>164</sup> Hallwood, Micelli, “Keystone Cops” Meet “Pirates of the Somali Coast”: *The Failure of International Efforts to Control Maritime Piracy*, Department of Economics Working Paper Series, University of Connecticut, 2011, p. 16.

<sup>165</sup> Leeuwen, *Pirates on Trial in the Netherlands*, *International Justice Tribune*, No. 107, 2010, p. 3.

<sup>166</sup> Hallwood, Micelli, “Keystone Cops” Meet “Pirates of the Somali Coast”: *The Failure of International Efforts to Control Maritime Piracy*, Department of Economics Working Paper Series, University of Connecticut, 2011, p. 16.

<sup>167</sup> Zou, *New Developments in the International Law of Piracy*, *Chinese Journal of International Law*, Vol. 8, No. 2, 2009 p. 344.

<sup>168</sup> Beckman, Davenport, *Enhancing Regional Cooperation on Piracy and Maritime Crimes*, Centre for International Law, University of Singapore, 2010, p.7.

<sup>169</sup> Beckman, Davenport, *Enhancing Regional Cooperation on Piracy and Maritime Crimes*, Centre for International Law, University of Singapore, 2010, p.6.

<sup>170</sup> Beckman, Davenport, *Enhancing Regional Cooperation on Piracy and Maritime Crimes*, Centre for International Law, University of Singapore, 2010, p.6.

<sup>171</sup> Zou, *New Developments in the International Law of Piracy*, *Chinese Journal of International Law*, Vol. 8, No. 2, 2009 p. 327.

<sup>172</sup> International Maritime Organization, *Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*, 2000.

<sup>173</sup> International Maritime Organization, *Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*, 2000.

forensic examination, and also encourages inter-agency approaches in order to save time and effort.<sup>174</sup> Furthermore, states are encouraged to facilitate procedures following the reporting of incidents by ships in order to lower costs (especially of time), as this is often a reason why ships fail to alert authorities.<sup>175</sup>

It is evident that efforts to combat piracy have been made. However, the prosecution of pirates remains at the discretion of states and there is no international regime to monitor international law regarding piracy effectively.<sup>176</sup> The lack of a unified enforcement authority as well as multiple jurisdictions complicates the current situation.<sup>177</sup> Furthermore, cooperation between states is handicapped by questions related to sovereignty, as states are not willing to share jurisdiction over their territorial seas.<sup>178</sup>

#### *Case Study: the Strait of Malacca*

The Strait of Malacca connects the Indian and the Pacific Oceans and lies between Thailand, Singapore, Malaysia and Indonesia; it is 550 miles long and 1.7 miles wide at its narrowest point.<sup>179</sup> Due to its complicated geography with many small islands and succeeding territorial seas with almost no high seas (which means that neither *UNCLOS* nor the *SUA Convention* are relevant for this region), it facilitates an environment for piracy.<sup>180</sup> At the same time, it is one of the most important maritime routes on earth with 40% of the world's trade flowing through it.<sup>181</sup> Many countries' resource supplies pass through this strait, as do for instance 80% of China's oil imports.<sup>182</sup> Piracy has risen in this region because of the impoverishment of the populations due to the 1997 financial crisis in Asia.<sup>183</sup>

In order to combat piracy in this region, several agreements between concerned states have been created and implemented, for instance the coordinated air patrols implemented in 2005 by Malaysia, Indonesia and Singapore, known as the "Eyes in the Sky" (*EiS*) plan.<sup>184</sup> Because of such counter-piracy measures, the number of attacks in this area has decreased in the past years.<sup>185</sup> However, it is important to note that piracy in this region occurs in different ways: armed robbery, ship hijacking and kidnapping for ransom.<sup>186</sup> Whilst the first has experienced the biggest decrease, the other two still remain a threat.<sup>187</sup> These two threats are most probably linked to criminal syndicates and are more difficult to combat.<sup>188</sup> The most significant regional agreement concerning the wider Southeast region is the *Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP)*, which entered into force in 2006.<sup>189</sup> Its main role is to function as a platform for information exchange between Member States, facilitating capacity building and enhancing cooperation between Member States.<sup>190</sup> Its most important contribution is the *Information Sharing Centre (ISC)* in Singapore, which facilitates communication and shares costs of monitoring between Member States and regularly produces reports on piracy in the region.<sup>191</sup>

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<sup>174</sup> International Maritime Organization, *Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*, 2000.

<sup>175</sup> International Maritime Organization, *Draft Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships*, 2000.

<sup>176</sup> Hallwood, Micelli, "Keystone Cops" Meet "Pirates of the Somali Coast": *The Failure of International Efforts to Control Maritime Piracy*, Department of Economics Working Paper Series, University of Connecticut, 2011, p.21.

<sup>177</sup> Hallwood, Micelli, "Keystone Cops" Meet "Pirates of the Somali Coast": *The Failure of International Efforts to Control Maritime Piracy*, Department of Economics Working Paper Series, University of Connecticut, 2011, p.21.

<sup>178</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009.

<sup>179</sup> Dela Pena, *Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concern*, *Stanford Journal of International Relations*, Vol. 10, No 2, 2009, p.2.

<sup>180</sup> Dela Pena, *Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concern*, *Stanford Journal of International Relations*, Vol. 10, No 2, 2009, p.2.

<sup>181</sup> Bronson, *Indonesia and the United States: Shared Interests in Maritime Security*, *United States-Indonesia Society*, 2005, p. 1.

<sup>182</sup> Bronson, *Indonesia and the United States: Shared Interests in Maritime Security*, *United States-Indonesia Society*, 2005, p. 1.

<sup>183</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 32.

<sup>184</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 37.

<sup>185</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 32.

<sup>186</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 33.

<sup>187</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 33.

<sup>188</sup> Dela Pena, *Maritime Crime in the Strait of Malacca: Balancing Regional and Extra-Regional Concern*, *Stanford Journal of International Relations*, Vol. 10, No 2, 2009, p.3.

<sup>189</sup> ReCAAP ISC, *Piracy and Sea Robbery Conference 2012 Report*, 2012, p. ii.

<sup>190</sup> ReCAAP ISC, *Piracy and Sea Robbery Conference 2012 Report*, 2012, p. ii.

<sup>191</sup> Raymond, C.Z. *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 38.

Furthermore, it manages reported incidents and coordinates responses.<sup>192</sup> In its last report, it recorded a decrease of 50% in piracy incidents in the Strait of Malacca for the first semester of 2012, in comparison to the same period last year.<sup>193</sup> However, it is important to note that neither Indonesia nor Malaysia are members of this organization.<sup>194</sup> Despite all these efforts, questions related to legal issues, as well as means to directly address organized crime related to piracy, are left aside.

#### *Case Study: Somalia*

The Gulf of Aden is another of the world's most important maritime routes, used by approximately 33,000 merchant ships per year.<sup>195</sup> Piracy off the Somali coast appeared after the country collapsed in 1991.<sup>196</sup> Since then, no government has been able to exercise full control over the country.<sup>197</sup> Poverty and lack of employment have pushed locals into piracy; illegal fishing within Somali waters augmented this situation since the State was not able to control its seas.<sup>198</sup> Initially, fishermen were trying to stop illegal fishing, but piracy eventually became an end in itself as it proved more lucrative than other activities.<sup>199</sup> In 2009, the number of reported attacks off the Somali coast amounted to 217, accounting for more than 50% of worldwide piracy attacks.<sup>200</sup> Piracy off the coast of Somalia consists almost purely of hostage taking for ransom.<sup>201</sup>

Since the number of attacks is growing every year, the international community has taken several measures in order to combat piracy in Somalia. In 2008, the Security Council, acting under Chapter VII of the United Nations Charter, passed Resolution 1816 allowing Member States with the permission of the Transitional Federal Government (TFG) of Somalia, to enter Somali waters in order to pursue pirates.<sup>202</sup> Resolution 1851 even allowed Member States under the same conditions to access Somali soil for the same purposes.<sup>203</sup> It is interesting to note that between 2008 and 2009, therefore after the adoption of these resolutions, the number of attacks outside the Gulf of Aden within high seas went from 19 to 102 and it seems that these measures have led pirates to attack farther away from the coast.<sup>204</sup> The *North Atlantic Treaty Organization* (NATO) is also allowed to enter Somali waters since the adoption of Resolution 1838.<sup>205</sup> Since 2008, the European Union is also present in the region with its first naval operation called *Atalanta*.<sup>206</sup> Up to twenty ships and over 1,800 personnel are mobilized for this operation.<sup>207</sup> In 2009, the *Combined Task Force 151* (CTF-151) was established with an anti-piracy mission in the Gulf of Aden and the Indian Ocean.<sup>208</sup> CTF-151 is a military coalition solely acting in waters of the Indian Ocean region with an anti-piracy mission; more than 20 countries participate in this coalition.<sup>209</sup> All these military measures have brought many countries to patrol in the Gulf of Aden and surrounding areas.<sup>210</sup>

Besides military action, the *Djibouti Code of Conduct*, inspired by the *IMO Code of Practice*, was adopted in 2009 and signed by eleven regional states.<sup>211</sup> As of today, 20 states have signed the Code.<sup>212</sup> This non-binding document aims to adjust legislation of contracting states, to improve communication and also addresses questions related to the

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<sup>192</sup> Raymond, C.Z. *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 38.

<sup>193</sup> ReCAAP ISC, *Half Yearly Report*, January-June 2012, p. 20.

<sup>194</sup> Raymond, *Piracy and Armed Robbery in the Malacca Strait*, *Naval War College Review*, Vol. 62, No. 3. 2009, p. 39.

<sup>195</sup> Ploch, et al. *Piracy off the Horn of Africa*, *Congressional Research Service*, 2011, p. 9.

<sup>196</sup> International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast*, 2008, p. 10.

<sup>197</sup> International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast*, 2008, p. 10.

<sup>198</sup> International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast*, 2008, p. 15.

<sup>199</sup> United Nations Office on Drugs and Crime, *Report on Transnational Organised Crime*, 2009.

<sup>200</sup> United Nations Office on Drugs and Crime, *Report on Transnational Organised Crime*, 2009, p.193.

<sup>201</sup> International Expert Group on Piracy off the Somali Coast, *Piracy off the Somali Coast*, 2008, p. 14.

<sup>202</sup> United Nations Security Council, *Resolution 1816*, 2008.

<sup>203</sup> United Nations Security Council, *Resolution 1851*, 2008.

<sup>204</sup> United Nations Office on Drugs and Crime, *Report on Transnational Organised Crime*, 2009, p. 200.

<sup>205</sup> United Nations Security Council, *Resolution 1838*, 2008.

<sup>206</sup> Ploch et al. *Piracy off the Horn of Africa*, *Congressional Research Service*, 2011, p.5.

<sup>207</sup> Ploch et al. *Piracy off the Horn of Africa*, *Congressional Research Service*, 2011, p.27

<sup>208</sup> Ploch et al. *Piracy off the Horn of Africa*, *Congressional Research Service*, 2011, p.25.

<sup>209</sup> Ploch, et al. *Piracy off the Horn of Africa*, *Congressional Research Service*, 2011, p.25.

<sup>210</sup> Kaur Kang, *Gulf of Aden vs. Malacca Strait- Piracy and Counter-Piracy Efforts*, *IPCS Issue Brief*, No. 135, 2009, p.1.

<sup>211</sup> International Maritime Organization, *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships*, 2009.

<sup>212</sup> International Maritime Organization, *Djibouti Code of Conduct*, 2012.

prosecution and extradition of arrested pirates.<sup>213</sup> Furthermore, the *United Nations Office on Drugs and Crime* (UNODC), via its Counter-Piracy Programme incepted in 2009, supports states willing to prosecute arrested pirates.<sup>214</sup> These states are Kenya, the Seychelles, and Mauritius, which also hold Somali pirates in their prisons.<sup>215</sup> The program's main aims are fair and efficient trials and humane and secure imprisonment.<sup>216</sup> It also provides financial support in order to renovate prisons and to open new courtrooms while the ultimate goal is to imprison pirates in their own country via UNODC's Piracy Prisoner Transfer Programme.<sup>217</sup>

### ***Routes for Solutions and Priorities for Action & Conclusion***

The Commission on Crime Prevention and Criminal Justice (CCPCJ) has addressed piracy at several occasions in the past and has passed a series of resolutions, such as Resolution 19/6 acknowledging the efforts of UNODC.<sup>218</sup> Resolution 20/5 urges Member States to cooperate and to strengthen law enforcement.<sup>219</sup> The latest adopted resolution stresses the need for a coordinated response to piracy and reminds states to criminalize piracy under their domestic law.<sup>220</sup> It is also important to consider guidance that the Security Council has recently issued on the topic of piracy; the idea of mixed or hybrid tribunals have attracted greater attention as suggested by Security Council Resolution 1918.<sup>221</sup> Such tribunals could more easily combine domestic and international law.<sup>222</sup> In addition, they would permit the trial of pirates in the region where the crime was committed.<sup>223</sup> The costs would be shared by the international community, and could facilitate the harmonization of the multiple jurisdictions dealing with piracy.<sup>224</sup>

Furthermore, Security Council Resolution 1950 urged Member States to further investigate international criminal networks involved in piracy off the coast of Somalia. These investigations addressed issues such as human trafficking and illicit financial flows.<sup>225</sup> The Secretary-General's report on piracy off the coast of Somalia has also addressed these issues.<sup>226</sup> Besides highlighting a high number of arrested pirates released without prosecution, it examines possibilities of implementing a tribunal as mentioned above.<sup>227</sup> The CCPCJ can play an active role in this regard. As the UNODC is already supporting states' efforts on judicial aspects of piracy, the CCPCJ could issue recommendations regarding the implementation of a regional or hybrid tribunal based on the experience of states collaborating in the fight against piracy off the coast of Somalia. Delegates should try to think on ways in which the international legal framework on piracy could become more coherent and adapted to the contemporary situation. A revised definition of piracy could be a first step. Identifying important legal aspects that states might include within their domestic legislation and ways to consider the links between piracy and organized crime should also play an important role when researching on this topic.

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<sup>213</sup> International Maritime Organization, *Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships*, 2009.

<sup>214</sup> United Nations Office on Drugs and Crime. *Counter Piracy Programme, Issue Nine*, 2012.

<sup>215</sup> United Nations Office on Drugs and Crime. *Counter Piracy Programme, Issue Nine*, 2012.

<sup>216</sup> United Nations Office on Drugs and Crime. *Counter Piracy Programme, Issue Nine*, 2012, p. 1.

<sup>217</sup> United Nations Office on Drugs and Crime. *Counter Piracy Programme, Issue Nine*, 2012, p. 14.

<sup>218</sup> Economic and Social Council, *Commission on Criminal Justice and Crime Prevention Resolution 19/6*, 2010.

<sup>219</sup> Economic and Social Council, *Commission on Criminal Justice and Crime Prevention Resolution 20/5*, 2010.

<sup>220</sup> Economic and Social Council, *Commission on Criminal Justice and Crime Prevention Resolution 21/2*, 2011.

<sup>221</sup> United Nations Security Council, *Resolution 1918*, 2010.

<sup>222</sup> Lee, *Hybrid Tribunals to Combat Regional Maritime Piracy: Guiding the Rule of Law Through the Rocks and Shoals*, *One Earth Future Foundation Working Paper*, 2010, p. 7.

<sup>223</sup> Lee, *Hybrid Tribunals to Combat Regional Maritime Piracy: Guiding the Rule of Law Through the Rocks and Shoals*, *One Earth Future Foundation Working Paper*, 2010.

<sup>224</sup> Lee, *Hybrid Tribunals to Combat Regional Maritime Piracy: Guiding the Rule of Law Through the Rocks and Shoals*, *One Earth Future Foundation Working Paper*, 2010.

<sup>225</sup> United Nations Security Council, *Resolution 1950*, 2010.

<sup>226</sup> United Nations Security Council, *S/2010/394*, 2010.

<sup>227</sup> United Nations Security Council, *S/2010/394*, 2010.

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*Signed in 1958, this Treaty is the first internationally agreed convention codifying laws on the high sea. Ratified by more states than the United Nations Convention on the Laws of the Sea, it is still the legal reference for some states. Calling for international cooperation on the high seas, it also covers in its articles 14 to 21 questions related to piracy.*

Guilfoyle, D. (2009). *Treaty Jurisdiction Over Pirates: A Compilation of Legal Texts With Introductory Notes*. Prepared for the 3<sup>rd</sup> Meeting of the Working Group 2 of the Contact Group on Piracy off the Coast of Somalia. Retrieved August 6, 2012 from

[http://ucl.academia.edu/DouglasGuilfoyle/Papers/116803/Treaty\\_Jurisdiction\\_over\\_Pirates\\_A\\_Compilation\\_of\\_Legal\\_Texts\\_with\\_Introductory\\_Notes](http://ucl.academia.edu/DouglasGuilfoyle/Papers/116803/Treaty_Jurisdiction_over_Pirates_A_Compilation_of_Legal_Texts_with_Introductory_Notes)

*This paper provides a collection of the most important international legal texts related to piracy. By citing relevant articles and outlining their strengths and weaknesses, this work allows its readers to have a good overview on the international legal framework concerning piracy. Furthermore a list of all the states having ratified the different treaties is provided.*

International Expert Group on Piracy off the Somali Coast (2008). *Piracy off the Somali Coast*. Retrieved August 6, 2012 from <http://www.asil.org/files/SomaliaPiracyIntlExpertsreportconsolidated1.pdf>

*This report is a detailed analysis of the situation in Somalia. It provides a good overview of all problems met when fighting piracy including legal issues. It also addresses concerns about the respect of Human Rights regarding the treatment of prisoners. In its conclusion, the report also makes several recommendations for the future.*

International Maritime Organization, *Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation*. (March 1, 1988). Retrieved August 6, 2012 from

<http://treaties.un.org/doc/db/Terrorism/Conv8-english.pdf>

*The SUA Convention signed in 1988 was an extension of the UNCLOS in order to include to the international legal framework acts of violence not covered by the previous agreements. Internal hijacking was added as an unlawful act. Even if the word piracy does not occur in this Convention, it is an important reference in order to define criminal acts on the high sea.*

International Maritime Organization (2009), *Djibouti Code of Conduct*. Retrieved September 20, 2012 from <http://www.imo.org/ourwork/security/piu/pages/dcoc.aspx>

*The Djibouti Code of Conduct aims to enhance cooperation between states in the region of the Horn of Africa in their fight against piracy. It recommends to participating states to adjust their legislations concerning piracy and to improve communication among them. It also addresses questions related to extradition and prosecution of pirates.*

Lee, A. (2010). *Hybrid Tribunals to Combat Regional Maritime Piracy: Guiding the Rule of Law Through the Rocks and Shoals*, *One Earth Future Foundation Working Paper*. Retrieved August 6, 2012 from

<http://oneearthfuture.org/images/imagefiles/Hybrid%20Tribunals-Andrew%20Lee%20.pdf>

*This paper examines the possible benefits of implementing a hybrid tribunal in order to combat maritime piracy. Such a tribunal would combine elements of domestic and international law and could be more flexible. It also bears the advantage of responding to a lack of resources many countries face while combatting piracy without supplementing the role of concerned states. It could also be effective in the promotion of harmonized domestic laws related to piracy.*

ReCAAP ISC (2012), *Half Yearly Report*. Retrieved September 1, 2012 from

<http://www.recaap.org/Portals/0/docs/Reports/ReCAAP%20ISC%20Half%20Yearly%20Report.pdf>

*This report is a good presentation of the current situation in South East Asia and efforts made against piracy. Case studies of incidents give a clear idea of the nature of piracy attacks and how to address them effectively. Furthermore, a series of statistics shows the trend in this region and the impact of implemented policies.*

Takai, S. (2003). Suppression of Modern Piracy and the Role of the Navy. *NIDS Security Reports*, No. 4, pp. 38-58. Retrieved August 6, 2012 from [http://www.nids.go.jp/english/publication/kiyo/pdf/bulletin\\_e2002\\_2.pdf](http://www.nids.go.jp/english/publication/kiyo/pdf/bulletin_e2002_2.pdf)  
*This article focusses on problems related to piracy in the Malacca Strait and possible solutions. Besides describing the situation in this region the article also provides an overview of the current legal framework and its limitations. Furthermore, the article proposes a series of recommendations to enhance the efficiency of the fight against piracy.*

United Nations Convention on the Law of the Sea. (December 10, 1982). Retrieved August 6, 2012 from [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)  
*This Convention defines the legal framework concerning the use of the seas and is considered customary law. Besides the international definition of piracy (article 101) it also provides the legally accepted distinctions between territorial and high sea. It is the most important international agreement concerning the use of the oceans and has been ratified by a vast majority of states.*

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*This report requested by Security Council Resolution 1918 addresses many of the problems in the fight against piracy off the coast of Somalia. It highlights shortcomings of imprisonment facilities or the lack of prosecution of arrested pirates. Furthermore it examines widely the possibility of a regional juridical regime in order to better address the problem of piracy.*

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### III. Strengthening Prevention Measures and Criminal Justice Responses to Human Trafficking

*“I wasn’t allowed to go anywhere, they locked us in. They didn’t lock us in the house, they locked us in our room. The three of us in a size of room that’s not enough for one person... I guess they rented us out, or landed us, or bought us? I don’t understand what happened. They simply executed us physically, mentally and emotionally during that eight months while I was there. I still am afraid, what will happen if they find me, or when they leave jail. I can’t go through that terror again, what I gone through while I was with them.”<sup>228</sup>*

#### ***Focusing the Problem: Statistics and Effects of Human Trafficking***

Human trafficking is considered to be the third most profitable criminal activity after drug trafficking and illegal trading of arms.<sup>229</sup> In fact, 161 Member States around the globe are affected, either for being a country of origin, transit, or destination for trafficked people.<sup>230</sup> With an estimated existence of 27 million people trafficked around the world, projections show that human trafficking makes a global annual profit of \$31.6 billion.<sup>231</sup> By 2006, 79% of the victims were trafficked for the purpose of sexual exploitation and 18% were subject to forced labor abuse.<sup>232</sup> Approximately 800,000 to 900,000 people are trafficked across international borders for the purpose of exploitation every year.<sup>233</sup> In 2005, 2.5 million victims of both labor and sexual exploitation were reported.<sup>234</sup> Currently, the Asia-Pacific region has the highest rate of forced labor victims with a total of 56%.<sup>235</sup> By 2012, only 10,094 victims of human trafficking were identified in Africa; 5,357 in East Asia and the Pacific; 10,185 in Europe; 1,831 in the Near East; 3,907 in South and Central Asia; and 9,836 in the Americas.<sup>236</sup> Although these statistics are significant, they cannot show the real suffering of victims and their families.

Victims of human trafficking do not only suffer while being trafficked, but also after the crime has ceased.<sup>237</sup> During their captivity, victims are physically punished by traffickers or by third persons.<sup>238</sup> They are normally kept in deplorable conditions and likely to suffer from hunger and dehydration.<sup>239</sup> Moreover, victims are held in custody without the liberty to leave the places where they are kept.<sup>240</sup> Victims trafficked for sexual exploitation are often forced to consume drugs in order to perform their activities.<sup>241</sup> Most of them become addicts or die from the side effects of consuming drugs.<sup>242</sup> For instance, forced labor exploitation involves exposure to high-risk activities. Victims are often impeded to rest and are forced to work in deplorable conditions that permit the spread of diseases.<sup>243</sup> In many cases, victims are forced to handle toxic substances or to work underground. After being trafficked, victims also suffer from psychological traumas that impede their reintegration into society.<sup>244</sup> These include “post-traumatic stress disorder, anxiety, depression, alienation, disorientation, aggression and difficulty concentrating.”<sup>245</sup> Nonetheless, human trafficking does not only affect victims and their families, but also represents a threat to social stability and the rule of law.<sup>246</sup>

<sup>228</sup> Anonymous labor trafficking survivor, cited in: U.S. Department of State, *2012 Trafficking in Persons Report*, 2012, p. 4.

<sup>229</sup> Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking*, p. 46.

<sup>230</sup> UN.GIFT, *Human Trafficking: The Facts*, p. 1.

<sup>231</sup> UN.GIFT, *Human Trafficking: The Facts*, p. 1; Do Something Organization, *11 Facts about Human Trafficking*.

<sup>232</sup> UNODC, *Global Report on Trafficking in Persons*, 2009, p. 50.

<sup>233</sup> Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking*, p. 46.

<sup>234</sup> UN.GIFT, *Human Trafficking: The Facts*, p. 1.

<sup>235</sup> U.S. Department of State, *2012 Trafficking in Persons Report*, 2012, p. 47.

<sup>236</sup> U.S. Department of State, *2012 Trafficking in Persons Report*, 2012, pp. 55-61.

<sup>237</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>238</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 261.

<sup>239</sup> U.S. Department of State, *2012 Trafficking in Persons Report*, 2012, p. 13.

<sup>240</sup> UNODC, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010, p. 13.

<sup>241</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 85.

<sup>242</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 85.

<sup>243</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>244</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>245</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>246</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

Human trafficking falls within the scope of international organized crime. Criminal organizations threaten democratic institutions by violating the laws that protect citizens and constantly challenge the justice system.<sup>247</sup> Furthermore, human trafficking effects often affect several state boundaries.<sup>248</sup> This is due to the fact that the commitment of the crime generally involves an initial country of origin, one or more transit countries, and a final destination country.<sup>249</sup> Thus, the transnational nature of human trafficking represents a threat to international security.<sup>250</sup> In addition, the constant violation of human rights that come along with human trafficking is a primary concern for policy-makers.<sup>251</sup> These consequences have motivated the international community to delineate a system of international instruments designed for combating human trafficking.

### ***International Regulations and Instruments***

Human trafficking is regulated by both the *United Nations Convention against Transnational Organized Crime* (the *Convention*) and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the *Protocol*). These international instruments find their background on the first discussions on organized crime held by the Fifth United Nations Congress on Crime Prevention and Criminal Justice in 1975.<sup>252</sup> These congresses subsequently recognized that organized crime had become a profitable activity for criminal organizations, acquiring a global dimension that included complex systems of international coordination.<sup>253</sup> They also recognized the urgency for the creation of a system that regulated international cooperation in the field of combating transnational criminal activities. Further discussions also recognized the necessity of drafting an instrument on trafficking of minors, women, and migrants.<sup>254</sup> Responding to this, the General Assembly (GA) created an Ad Hoc Committee for achieving such purpose in 1998.<sup>255</sup> After twelve sessions, this committee drafted both the *Convention* and the *Protocol*, as a universal instrument addressing all aspects of trafficking in persons.<sup>256</sup> The *Protocol* requires Member States to criminalize the act, the attempt to commit the crime, the participation as an accomplice, and the organization or direction of human trafficking.<sup>257</sup> Moreover, the main purpose of the *Protocol* is to supplement the *Convention* on specialized human trafficking issues.<sup>258</sup> Currently, 171 Member States of the United Nations (UN) are parties to the *Convention*, and 152 Member States are parties to the *Protocol*.<sup>259</sup>

In order to follow-up the implementation of the *Convention*, a Conference of the Parties to the Convention (the Conference) was established in Article 32.<sup>260</sup> The Conference further created an Open-ended Interim Working Group on the Protocol (The Working Group).<sup>261</sup> The main responsibility of the Working Group is to facilitate the implementation of the *Protocol* and make recommendations on how the parties can implement its provisions in coordination with other relevant international bodies.<sup>262</sup> Since its creation, the Working Group has met four times and has dealt with issues such as labor exploitation, victim's protection, preventive measures, law enforcement, measures to reduce demand, or trafficking with the purpose of removal of organs.<sup>263</sup> The Commission on Crime

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<sup>247</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>248</sup> UNODC, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010, p. 7.

<sup>249</sup> UNODC, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010, p. 13.

<sup>250</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>251</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 9.

<sup>252</sup> UNODC, *Travaux Préparatoires of Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto*, 2006, p. ix.

<sup>253</sup> UNODC, *Travaux Préparatoires of Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto*, 2006, p. x-xii.

<sup>254</sup> UNODC, *Travaux Préparatoires of Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto*, 2006, p. xxiv.

<sup>255</sup> UNODC, *Travaux Préparatoires of Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto*, 2006, p. v.

<sup>256</sup> UNICEF, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, p. 1.

<sup>257</sup> UNODC, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, 2010, p. 11.

<sup>258</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, Article 1.

<sup>259</sup> UN, *United Nations Treaty Collection*, 2012.

<sup>260</sup> General Assembly, *United Nations Convention against Transnational Organized Crime*, 2000, article 32.

<sup>261</sup> UNODC, *Working Group on the Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2012.

<sup>262</sup> UNODC, *Working Group on the Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2012.

<sup>263</sup> Working Group on Trafficking in Persons, *Report on the Meeting of the Working Group*, 2010; Working Group on Trafficking in Persons, *Report on the Meeting of the Working Group*, 2011.

Prevention and Criminal Justice (CCPCJ) coordinates its efforts with the Conference by developing strategies for the implementation of the *Convention* and the *Protocol*.<sup>264</sup>

### ***Conceptualizing Human Trafficking***

Human trafficking is a distinct offence of organized crime, which differs from related concepts such as migrant smuggling. In general terms, human trafficking consists of recruiting and transporting a person for the purpose of exploitation.<sup>265</sup> Article 3 of the *Protocol* provides a narrower definition of trafficking in persons by identifying three elements that configure the crime.<sup>266</sup> These elements are the act, the means, and the purpose.<sup>267</sup> The act refers to what is done by the perpetrator consisting on the “recruitment, transportation, transfer, harboring or receipt of persons.”<sup>268</sup> The means refers to the way that the act is performed and consists of “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.”<sup>269</sup> For the *Protocol*, the consent of the victim is irrelevant if any of these means have been used for trafficking.<sup>270</sup> Finally, the purpose is conceptualized as the exploitation of the victim.<sup>271</sup> Exploitation might include a variety of manifestations and conducts.<sup>272</sup> Among others, these include forcing victims to have sex, working in deplorable conditions without the option to leave, removing organs of victims, forcing persons to beg in streets, compelling victims to sell illegal drugs, recruiting child soldiers, and forcing people to get married.<sup>273</sup>

The definition provided by the *Protocol* differs from the concept of migrant smuggling.<sup>274</sup> While migrant smuggling necessarily involves illegal border crossing, human trafficking does not necessarily involve transnational mobilization.<sup>275</sup> Normally, migrants are not exploited since the relation with the smuggler tends to end after crossing the border.<sup>276</sup> On the contrary, victims of human trafficking are permanently exploited due to the persisting relation with the trafficker during its captivity.<sup>277</sup> While migrants usually consent to being smuggled, consent is irrelevant in the case of human trafficking victims.<sup>278</sup> Frequently, victims of human trafficking are confused with illegal migrants.<sup>279</sup> Instead of being protected, victims are punished due to the confusion and lack of identification.<sup>280</sup> In most of the cases, they are treated as criminals by being arrested and/or deported.<sup>281</sup>

### ***Criminal Justice Responses to Human Trafficking***

Traditionally, criminal justice has focused on the penalization of human trafficking as an illegal act.<sup>282</sup> However, a more comprehensive approach understands criminal justice as a system of principles, rules, practices, and institutions that serve as platform for the application of sanctions against criminal behavior.<sup>283</sup> There are three components of criminal justice, namely laws regulating illicit conduct, procedural regulation, and an organizational structure that ensures the application of law and policies.<sup>284</sup> A criminal justice system normally incorporates organized police forces, effective prosecution services, institutionalized judiciary systems, access to legal defense, and adequate penitentiary systems.<sup>285</sup> Moreover, the concept of restorative justice has delineated modern criminal

<sup>264</sup> UNODC, *The Commission on Crime Prevention and Criminal Justice*, 2012.

<sup>265</sup> UNODC, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010, p. 7.

<sup>266</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, article 3, a).

<sup>267</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 2.

<sup>268</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, article 3.

<sup>269</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 2.

<sup>270</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, article 3, b).

<sup>271</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 2.

<sup>272</sup> UNODC, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010, p. 7.

<sup>273</sup> UNODC, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, 2010, p. 7.

<sup>274</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 4.

<sup>275</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 4.

<sup>276</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 4.

<sup>277</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 4.

<sup>278</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 4.

<sup>279</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008, p. 10.

<sup>280</sup> Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking*, p. 46.

<sup>281</sup> UNODC, *Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings*, 2008.

<sup>282</sup> Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking*, p. 46.

<sup>283</sup> Sung, *Democracy and Criminal Justice in Cross-National Perspective: From Crime Control to Due Process*, 2006, p. 313.

<sup>284</sup> Sung, *Democracy and Criminal Justice in Cross-National Perspective: From Crime Control to Due Process*, 2006, p. 313.

<sup>285</sup> UNODC, *Criminal Justice Reform*, 2012.

justice systems.<sup>286</sup> This concept focuses on a victim-centric approach that looks for the mitigation of the harms caused to victims.<sup>287</sup> Restorative justice practices have been codified in Section II of the *Protocol*, addressing different criminal justice measures regarding the protection of victims.<sup>288</sup> These include the criminalization of human trafficking in domestic law; the protection of victims during legal proceedings; measures to provide physical, psychological and social recovery; compensation for damages suffered; the right to remain in the territory where individuals have been victimized; and rules on repatriation of victims.<sup>289</sup>

The Working Group on Human Trafficking has elaborated substantive reports on criminal justice responses. These reports address issues regarding non-punishment of victims; identification; good practices in management; protection of victims and witnesses; compensation for victims; investigative techniques; and law enforcement. Non-punishment of victims is important since they are normally convicted as criminals in both the destination and origin country due to their irregular migratory status, the use of false documents, or their labor situation.<sup>290</sup> The principle of non-liability of illegal acts committed by victims looks for solving this problem. This recognizes that victims are often constrained to commit illegal acts due to their vulnerable situation.<sup>291</sup> Consequently, victims should not be punished in those cases. Identification techniques are also essential for avoiding treating victims as criminals. Most of the times, victims of human trafficking are confused with migrants and are deported or sanctioned accordingly.<sup>292</sup> In other instances, victims would hide their situation due to the fear of retaliation from offenders and would not seek assistance.<sup>293</sup> In many cases, persons cannot even identify themselves as victims of a crime.<sup>294</sup> These difficulties prevent effective assistance and punish perpetrators. Responding to these difficulties, necessary measures involve coordination between institutions that might be in contact with victims such as police, labor inspectors, and victim service providers.<sup>295</sup> When there is a reasonable suspicion of the existence of a victim, these agencies might activate requests for immediate assistance and support by the proper competent institution.<sup>296</sup>

Once victims are identified, they must have complete access to justice.<sup>297</sup> This includes effective and prompt procedures that avoid secondary traumatization by the provision of repeated unnecessary testimonies.<sup>298</sup> Furthermore, courts dealing with cases of human trafficking should have specialized judges and staff that properly attend traumatized victims.<sup>299</sup> Courtrooms have to also guarantee that there is no contact between the victim and the offender.<sup>300</sup> Once victims or witnesses have decided to accede to justice, they must be completely protected from retaliation. This involves the protection of their families since they are highly vulnerable to threats and intimidation.<sup>301</sup> Justice authorities have to also ensure that restraining orders and other judicial protection mechanisms are monitored and enforced effectively.<sup>302</sup> Coordination and cooperation between courts from different jurisdictions is a cornerstone for victim protection.<sup>303</sup> This shall include exchange of information and aid for protective measures enforcement. The Working Group has also recommended considering the possibility of seizing and confiscating goods obtained by criminal means.<sup>304</sup> Finally, the Working Group recognized that judicial processes might include elements such as compensation for victims as a mechanism to restore justice.<sup>305</sup>

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<sup>286</sup> Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking*, p. 52.

<sup>287</sup> Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking*, p. 52.

<sup>288</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, article 6-8.

<sup>289</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, article 6-8.

<sup>290</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/4*, 2009, pp. 2-3.

<sup>291</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/4*, 2009, pp. 2-3.

<sup>292</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/4*, 2011, p. 3.

<sup>293</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/4*, 2011, p. 3.

<sup>294</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/4*, 2011, p. 3.

<sup>295</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/4*, 2011, p. 3.

<sup>296</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/4*, 2011, p. 3, para. 11.

<sup>297</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 2, para. 5.

<sup>298</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 4.

<sup>299</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 4.

<sup>300</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 5.

<sup>301</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 4.

<sup>302</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 3, para. 6.

<sup>303</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/5*, 2010, p. 3, para. 6.

<sup>304</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/7*, 2010, p. 7.

<sup>305</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/6*, 2010, p. 8.

## ***Crime Prevention Approach***

Preventive measures are normally defined as those intended to reduce the likelihood of crime and the harms that it generates.<sup>306</sup> The *Guidelines for the Prevention of Crime* (the *Guidelines*) adopted by the United Nations Economic and Social Council (ECOSOC) in 2002, define crime prevention measures as those that “seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes.”<sup>307</sup> As recognized by both the *Guidelines* as well as scholarly literature, crime prevention can adopt different approaches.<sup>308</sup> This might include responses intended to improve social conditions, building an environment that reduces the opportunities for crime, deter crime by increasing the risk of being apprehended, and the prevention of recidivism.<sup>309</sup> In this context, crime prevention responses might include policies on law enforcement; social, economic, health, and educational measures; the provision of assistance and information to vulnerable populations; or the promotion of rehabilitation.<sup>310</sup>

Among the different approaches, the concept of situational crime prevention has gained importance during the last decade. This approach looks for the reduction of opportunities to commit crimes and to minimize the benefits of its commitment.<sup>311</sup> The rationale of situational crime prevention rests on the argument that the choice of committing a crime is rationally based on a cost-benefit calculation, but the final decision to commit the offense is determined by the “immediate circumstances and the immediate situation in which an offence is contemplated.”<sup>312</sup> This approach holds that nothing can be done to prevent the crime but measures can be taken to reduce the opportunities for its commitment.<sup>313</sup> An application of a situational crime prevention measure is the provision of information to actual or potential victims.<sup>314</sup> Such information consists on how to identify the crime of human trafficking, the trafficker, and the consequences of being trafficked.<sup>315</sup> Other approaches look for attending the needs of areas or communities where the risk of crime is high.<sup>316</sup> In any case, an effective crime prevention response demands the application of different approaches that could be combined and integrally applied.

In the case of human trafficking, preventive measures include both preventing the commitment of the crime and reducing the conditions that make persons vulnerable to become victims.<sup>317</sup> The *Protocol* recognizes the importance of crime prevention in its Article 9. In fact, this provision states that parties shall establish policies, programs, and measures to prevent and combat trafficking in persons and to protect victims of trafficking from re-victimization.<sup>318</sup> These actions have a variety of applications and could adopt different approaches. One example is a supply-demand approach, which analyzes the impact on the different levels of trafficking along the origin, transit, and destination countries.<sup>319</sup> Fostering the conditions that encourage people to migrate in search of a better future is an available mechanism in order to combat the supply side of human trafficking.<sup>320</sup> This involves combating all kinds of factors that cause vulnerability. A position of vulnerability should be understood as “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.”<sup>321</sup> Examples involve poverty, lack of human rights, dangers from conflict, political instability, social exclusion, or abuse of illegal status.<sup>322</sup> On the other hand, tackling the demand side of this crime is more complex since there are two levels of people that benefit from trafficked people.<sup>323</sup> A comprehensive approach against the demand side of human trafficking must address both the people who make profit from the transaction and those who ultimately benefit from the services of

<sup>306</sup> Sarnecki, *Theoretical Points of Departure for Practical Crime Prevention*, 2005, p. 4.

<sup>307</sup> ECOSOC, *Guidelines for the Prevention of Crime, Resolution 2002/13 Annex*, 2002, para. 3.

<sup>308</sup> Geason and Wilson, *Crime Prevention Theory and Practice*, 1988, p. 4.

<sup>309</sup> ECOSOC, *Guidelines for the Prevention of Crime*, 2002, para.3.

<sup>310</sup> Meško, *Contemporary Conceptions of Crime Prevention*, 2003, p. 8; Kanduè, *Various Faces of Crime Prevention*, 2003, p. 9.

<sup>311</sup> UNODC and ICPC, *Handbook on the Crime Prevention Guidelines: Making them Work*, 2010, p. 13.

<sup>312</sup> Geason and Wilson, *Crime Prevention Theory and Practice*, 1988, p. 4.

<sup>313</sup> Geason and Wilson, *Crime Prevention Theory and Practice*, 1988, p. 4.

<sup>314</sup> UNODC and ICPC, *Handbook on the Crime Prevention Guidelines: Making them Work*, 2010, p. 13.

<sup>315</sup> UNODC and ICPC, *Handbook on the Crime Prevention Guidelines: Making them Work*, 2010, p. 13.

<sup>316</sup> UNODC and ICPC, *Handbook on the Crime Prevention Guidelines: Making them Work*, 2010, p. 13.

<sup>317</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 62.

<sup>318</sup> General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 2000, article 9.

<sup>319</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 64.

<sup>320</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/5*, 2011, p. 4, para. 10.

<sup>321</sup> Clark, Dixon, and Dottridge, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008, p. 65.

<sup>322</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/3*, 2011, p. 5, para. 13.

<sup>323</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/5*, 2011, p. 4, para. 11.

trafficked persons.<sup>324</sup> While the first group involves intermediaries such as pimps, brothel owners, or factory owners, the second group is formed by consumers who pay for the work or service of the victim.<sup>325</sup> In addition, actions may include the implementation of awareness-raising campaigns on understanding and identifying human trafficking.<sup>326</sup>

### ***Combating Human Trafficking – CCPCJ Response and Actions***

In 2010, the GA adopted *The Global Plan of Action to Combat Trafficking in Persons* (the *Global Plan of Action*) in resolution *A/RES/64/293*. This is a cornerstone document for the fight against human trafficking.<sup>327</sup> It addresses both criminal justice measures and crime prevention responses.<sup>328</sup> On crime prevention, the *Global Plan of Action* endorses initiatives for reducing vulnerability; developing research and data collection; implementing awareness-raising campaigns; supporting prevention in countries of origin, transit and destination; and strengthening the capacity of law enforcement.<sup>329</sup> Relating criminal justice responses, it promotes the protection and assistance of victims, the enhancement of prosecution techniques and the implementation of relevant legal instruments; the investigation of the role of corruption on combating human trafficking; and the strengthening of partnerships against trafficking in persons.<sup>330</sup>

In 2011, the CCPCJ adopted resolution *20/3* on the *Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons*. This resolution called on Member States to eliminate the demand of all forms of exploitation with an emphasis of strengthening national laws in order to ensure that criminals are held accountable.<sup>331</sup> Furthermore, it calls upon Member States to monitor and regulate the practices of employment recruitment agencies for preventing them to become a source of trafficking.<sup>332</sup> In order to involve civil society in efforts to combat human trafficking, the CCPCJ recalled the importance of private-public partnerships that help to prevent trafficking. During its nineteenth session, the CCPCJ adopted resolution *19/4*. This resolution encourages states to improve preventive measures focusing on combating demand of human trafficking. These measures may include awareness of the negative impact of clients, consumers, or users of trafficking.<sup>333</sup> In addition, it recognizes that states should apply criminal penalties to consumers or users that “intentionally and knowingly” use the services of victims for exploitation.<sup>334</sup> Finally, it urges governments to adopt measures in order to disrupt operations and prosecute traffickers.<sup>335</sup>

In previous meetings, the CCPCJ discussed several relevant reports of the Secretary-General. In 2005 and 2008, the Secretary-General presented reports *E/CN.15/2005/8* and *E/CN.15/2008/8*. These reports were based on an analysis made of the progress made by Member States in the field of human trafficking. A major concern was that not every country that ratified the *Protocol* has adopted specific legislation for its subsequent implementation.<sup>336</sup> At the same time, many states do not have statistics and details on trafficking cases investigated and prosecuted.<sup>337</sup> The lack of information extends to transnational operations, investigations, and prosecution of offenders. On the positive aspects achieved by Member States, the Secretary-General noted an increasing creation of special police units that deal with cases on the trafficking of persons.<sup>338</sup> This has been accompanied by training of police officers, border control agents, judiciary, and social and health workers.<sup>339</sup> Regarding protection of victims, the initiative of countries such as Croatia and Poland on providing temporary visas for victims has allowed them to cooperate with authorities while

<sup>324</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/3*, 2010, p. 3, para. 8.

<sup>325</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2010/3*, 2010, p. 3, para. 8.

<sup>326</sup> Working Group on Trafficking in Persons, *CTOC/COP/WG.4/2011/5*, 2011, p. 3, para. 9.

<sup>327</sup> UN, *General Assembly Adopts Global Plan of Action to Combat Trafficking in Persons*, 2010.

<sup>328</sup> General Assembly, *UN Global Plan of Action to Combat Trafficking in Persons*, 2010.

<sup>329</sup> General Assembly, *UN Global Plan of Action to Combat Trafficking in Persons*, 2010, para. 12-24.

<sup>330</sup> General Assembly, *UN Global Plan of Action to Combat Trafficking in Persons*, 2010, para. 25-61.

<sup>331</sup> CCPCJ, *Res 20/3*, 2011, para. 5.

<sup>332</sup> CCPCJ, *Res 20/3*, 2011, para. 7.

<sup>333</sup> CCPCJ, *Measures for achieving progress on the issue of trafficking in persons*, 2010, para. 2.

<sup>334</sup> CCPCJ, *Measures for achieving progress on the issue of trafficking in persons*, 2010, para. 3.

<sup>335</sup> CCPCJ, *Measures for achieving progress on the issue of trafficking in persons*, 2010, para. 4.

<sup>336</sup> CCPCJ, *E/CN.15/2008/8*, 2008, p. 3; CCPCJ, *E/CN.15/2005/8*, 2005.

<sup>337</sup> CCPCJ, *E/CN.15/2008/8*, 2008, p. 4; CCPCJ, *E/CN.15/2005/8*, 2005.

<sup>338</sup> CCPCJ, *E/CN.15/2008/8*, 2008, p. 5; CCPCJ, *E/CN.15/2005/8*, 2005.

<sup>339</sup> CCPCJ, *E/CN.15/2008/8*, 2008, p. 6; CCPCJ, *E/CN.15/2005/8*, 2005.

their irregular situation is handled.<sup>340</sup> Nevertheless, processes for repatriation and reintegration of society remain a challenge for Member States. Finally, the necessity of extending these actions to the protection of children and women is another issue that remains an area of improvement for many Member States.<sup>341</sup>

## **Conclusion**

Combating human trafficking requires the cooperation of all Member States affected either by being a source, transit, or destination country. Despite the existence of relevant international instruments on this issue, their implementation on national territories remains incomplete. By combating human trafficking, both criminal justice measures and preventive actions have proved to be essential. In both cases, a victim-centered approach is necessary for mitigating the negative effects of human trafficking. In this context, the CCPCJ has the main responsibility of following up on the implementation of these measures and proposing the adoption of new relevant alternatives. In this regard, there is the need to further discuss issues such as risk assessment in human trafficking investigations; demand reduction of human trafficking and the role of situational prevention; and non-punishment of victims.<sup>342</sup> Moreover, policy makers need to assess the following inquiries: What mechanisms can be implemented in order to apply an integrated response through both criminal justice measures and crime prevention responses? What measures should be adopted for the implementation of the *Global Plan of Action*? How can effective legislation applied by local institutions and authorities be put into place?<sup>343</sup> How could Member States protect victims from re-victimization? How could witnesses be protected more efficiently during criminal proceedings? How can the CCPCJ contribute to the fight against human trafficking? What is the best manner to develop international cooperation? The role of the CCPCJ is to answer all these questions by the implementation of effective policies and action.

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[http://www.unodc.org/documents/human-trafficking/An\\_Introduction\\_to\\_Human\\_Trafficking\\_-\\_Background\\_Paper.pdf](http://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf)

*This publication is probably the most relevant UNODC academic paper on human trafficking related issues. Not only that it provides a comprehensive explanation of the basic concepts of this crime, but also that it addresses the issues on vulnerability and the causes of human trafficking; the effects of the crime; and the implementation of effective actions. The information provided by the authors can serve as a starting point for further research. Although it does not explain explicitly the concepts of criminal justice and crime prevention, it incorporates elements of both concepts.*

Mattar, Y. M. (2009). *Combating Trafficking in Persons. A Handbook for Parliamentarians*. Vienna: United Nations Office on Drugs and Crime and Inter-Parliamentary Union. Retrieved August 8, 2012 from:

[http://www.unodc.org/documents/human-trafficking/UN\\_Handbook\\_engl\\_core\\_low.pdf](http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf)

*This handbook is not only for parliamentarians, as its title suggests, but it addresses all the relevant issues related to human trafficking that guide the work of both practitioners and academics. The UNODC has elaborated this document by materializing the theory around criminal justice measures and crime prevention in the specific case of trafficking in persons. With this document, delegates will find a useful tool that explains the general theory of criminal policy studies. It also provides the international legal background of this topic while explaining how states might nationalize the international regulations.*

United Nations General Assembly. (2010). *United Nations Global Plan of Action to Combat Trafficking in Persons, A/RES/64/293*. Retrieved August 8, 2012 from: [http://www.unodc.org/documents/human-trafficking/United\\_Nations\\_Global\\_Plan\\_of\\_Action\\_to\\_Combat\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf)

<sup>340</sup> CCPCJ, E/CN.15/2008/8, 2008, p. 12; CCPCJ, E/CN.15/2005/8, 2005.

<sup>341</sup> CCPCJ, E/CN.15/2003/3, 2003; CCPCJ, E/CN.15/1997/12, 1997.

<sup>342</sup> Working Group on Trafficking in Persons, CTOC/COP/WG.4/2011/6, 2012.

<sup>343</sup> [Mattar, Combating Trafficking in Persons. A Handbook for Parliamentarians, 2009.](#)

*The United Nations Global Plan of Action to Combat Trafficking in Persons is the most recent and relevant outcome of the General Assembly on this issue. It demonstrates the challenges that remain after almost a decade from the entry into force of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Delegates should study this paper for delineating their strategies while representing their country at the CCPCJ.*

United Nations Office on Drugs and Crime. (2008). *Toolkit to Combat Trafficking in Persons*. New York: United Nations. Retrieved August 5, 2012 from:

[http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375\\_Ebook\[1\].pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf)

*This document presents an overall perspective of human trafficking for legal practitioners and governmental authorities. It provides an analysis on the different sources of international law that regulate the regime of cooperation on combating the trafficking of persons. Additionally, it explores the national framework that member states should build in order to effectively combat this illegal practice. Finally, it analyses several governmental actions such as law enforcement and prosecution, victim protection, reintegration in society and prevention of trafficking in persons.*

United Nations Office on Drugs and Crime and International Centre for the Prevention of Crime. (2010). *Handbook on the Crime Prevention Guidelines: Making them Work*. New York: United Nations. Retrieved September 11, 2012 from: [http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/10-52410\\_Guidelines\\_eBook.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/10-52410_Guidelines_eBook.pdf)

*This handbook incorporates the general concept of crime prevention and explains the rationale behind its implementation. It also explains the different approaches and theories of preventing criminal activity. Moreover, the authors emphasize that those theories are completely applicable in fighting human trafficking. By combining the four existing approaches to crime prevention, the handbook discusses measures such as planning, monitoring and evaluation, the formation of partnerships, the collective work with communities, and the role of government in preventing human trafficking.*

United Nations Office on Drugs and Crime and United Nations Global Initiative to Fight Human Trafficking. (2009). *Global Report on Trafficking in Persons*. N.A.: United Nations. Retrieved August 5, 2012 from: [http://www.unodc.org/documents/human-trafficking/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf)

*The Global Report on Trafficking in Persons acknowledges the current actions of different countries around the globe on crime prevention and criminal justice. It shows statistics on the criminal response to human trafficking as well as the status of the legislation in countries that combat this crime. Finally, this document presents a variety of country profiles on every state in the major regions of the globe. Statistics on each country might be found in this report.*

United Nations Office on Drugs and Crime and United Nations Global Initiative to Fight Human Trafficking. (2010). *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*. Vienna: UNODC. Retrieved September 7, 2012 from: [http://www.unodc.org/documents/human-trafficking/Needs\\_Assessment\\_Toolkit\\_ebook\\_09-87518\\_June\\_2010.pdf](http://www.unodc.org/documents/human-trafficking/Needs_Assessment_Toolkit_ebook_09-87518_June_2010.pdf)

*The theory and practice of criminal justice measures is explored in this paper. All the relevant definitions and concepts of criminal justice are addressed by the author. Delegates will be able to find literature on the legal and regulatory framework, investigations and court proceedings, identification of persons and their treatment, harmonization of protection of victims and prosecution of traffickers, et cetera. Brief section on crime prevention is also explored in accordance with the general theory of criminal justice.*

United Nations Secretary-General. (2008). Report of the Secretary-General: Strengthening International Cooperation in Preventing and Combating Trafficking in Persons and Protecting Victims of Such Trafficking. In: (N.A). *E/CN.15/2008/6 Commission on Crime Prevention and Criminal Justice Seventeenth Session*. Vienna: ECOSOC. Retrieved August 8, 2012 from:

<http://www.unodc.org/unodc/en/commissions/CCPCJ/session/17.html>

*This report is the result of Res E/2006/27 and includes information regarding the actions that Member States took until 2008 on combating human trafficking. Based on such information, the report analyses the problems that States face on this field while acknowledging that there are*

*remaining challenges to be overcome. It also explores the actions taken by member states on assistance and protection of human trafficking victims. Finally, it addresses the assistance provided by the United Nations Office on Drugs and Crime on this matter.*

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*The Department of State of the United States of America has elaborated a comprehensive report with the main concepts and related-issues around human trafficking. This paper is the product of a worldwide investigation that gathers data from all the regions in the world. Although the entire report is divided in different parts due to its extension, delegates will be able to find each country profile with statistics on their efforts to combat human trafficking. This is developed while addressing the global implications and importance of international cooperation.*

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## **Rules of Procedure**

### **Commission on Crime Prevention and Criminal Justice**

#### ***Introduction***

1. These rules shall be the only rules which apply to the Commission on Crime Prevention and Criminal Justice (hereinafter referred to as “the Commission”) and shall be considered adopted by the Commission prior to its first meeting.
2. For purposes of these rules, the Director, the Assistant Director(s), the Under-Secretaries-General, and the Assistant Secretaries-General, are designates and agents of the Secretary-General and Director-General, and are collectively referred to as the “Secretariat.”
3. Interpretation of the rules shall be reserved exclusively to the Director-General or her or his designate. Such interpretation shall be in accordance with the philosophy and principles of the National Model United Nations and in furtherance of the educational mission of that organization.
4. For the purposes of these rules, “President” shall refer to the chairperson or acting chairperson of the Commission.
5. The Commission shall report its substantive decisions to the Economic and Social Council Plenary Session.

#### **I. SESSIONS**

##### **Rule 1 - Dates of convening and adjournment**

The Commission shall meet every year in regular session, commencing and closing on the dates designated by the Secretary-General.

##### **Rule 2 - Place of sessions**

The Commission shall meet at a location designated by the Secretary-General.

#### **II. AGENDA**

##### **Rule 3 - Provisional agenda**

The provisional agenda shall be drawn up by the Director-General and communicated to the Members of the Commission at least sixty days before the opening of the session.

##### **Rule 4 - Adoption of the agenda**

The agenda provided by the Director-General shall be considered adopted as of the beginning of the session. The order of the agenda items shall be determined by a majority vote of those present and voting.

*The vote described in this rule is a procedural vote and, as such, observers are permitted to cast a vote. For purposes of this rule, those present and voting means those Member States and observers, in attendance at the meeting during which this motion comes to a vote. Should the Commission not reach a decision by conclusion of the first night's meeting, the agenda will be automatically set in the order in which it was first communicated.*

##### **Rule 5 - Revision of the agenda**

During a session, the Commission may revise the agenda by adding, deleting, deferring or amending items. Only important and urgent items shall be added to the agenda during a session. Debate on the inclusion of an item in the agenda shall be limited to three speakers in favor of, and three against, the inclusion. Additional items of an important and urgent character, proposed for inclusion in the agenda less than thirty days before the opening of a session, may be placed on the agenda if the Commission so decides by a two-thirds majority of the members present and voting. No additional item may, unless the Commission decides otherwise by a two-thirds majority of the members present and voting, be considered until a commission has reported on the question concerned.

*For purposes of this rule, the determination of an item of an important and urgent character is subject to the discretion of the Director-General, or his or her designate, and any such determination is final. If an item is determined to be of such a character, then it requires a two-thirds vote of the Commission to be placed on the agenda. The votes described in this rule are substantive votes, and, as such, observers are not permitted to cast a*

*vote. For purposes of this rule, —the members present and voting — means members (not including observers) in attendance at the session during which this motion comes to vote.*

***Rule 6 - Explanatory memorandum***

Any item proposed for inclusion in the agenda shall be accompanied by an explanatory memorandum and, if possible, by basic documents.

III. SECRETARIAT

***Rule 7 - Duties of the Secretary-General***

1. The Secretary-General or her/his designate shall act in this capacity in all meetings of the Commission.
2. The Secretary-General, in cooperation with the Director-General, shall provide and direct the staff required by the Commission and be responsible for all the arrangements that may be necessary for its meetings.

***Rule 8 - Duties of the Secretariat***

The Secretariat shall receive, print, and distribute documents, reports, and resolutions of the Commission, and shall distribute documents of the Commission to the Members, and generally perform all other work which the Commission may require.

***Rule 9 - Statements by the Secretariat***

The Secretary-General, or her/his representative, may make oral as well as written statements to the Commission concerning any question under consideration.

***Rule 10 - Selection of the President***

The Secretary-General or her/his designate shall appoint, from applications received by the Secretariat, a President who shall hold office and, *inter alia*, chair the Commission for the duration of the session, unless otherwise decided by the Secretary-General.

***Rule 11 - Replacement of the President***

If the President is unable to perform her/his functions, a new President shall be appointed for the unexpired term at the discretion of the Secretary-General.

IV. LANGUAGE

***Rule 12 - Official and working language***

English shall be the official and working language of the Commission.

***Rule 13 - Interpretation (oral) or translation (written)***

Any representative wishing to address any body or submit a document in a language other than English shall provide interpretation or translation into English.

*This rule does not affect the total speaking time allotted to those representatives wishing to address the body in a language other than English. As such, both the speech and the interpretation must be within the set time limit.*

V. CONDUCT OF BUSINESS

***Rule 14 - Quorum***

The President may declare a meeting open and permit debate to proceed when representatives of at least one third of the members of the Commission are present. The presence of representatives of a majority of the members of the Commission shall be required for any decision to be taken.

*For purposes of this rule, members of the Commission means the total number of members (not including observers)*

*in attendance at the first night's meeting.*

**Rule 15 - General powers of the President**

In addition to exercising the powers conferred upon him or her elsewhere by these rules, the President shall declare the opening and closing of each meeting of the Commission, direct the discussions, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions. The President, subject to these rules, shall have complete control of the proceedings of the Commission and over the maintenance of order at its meetings. He or she shall rule on points of order. He or she may propose to the Commission the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times the representative of each member may speak on an item, the adjournment or closure of the debate, and the suspension or adjournment of a meeting.

*Included in these enumerated powers is the President's power to assign speaking times for all speeches incidental to motions and amendment. Further, the President is to use her/his discretion, upon the advice and at the consent of the Secretariat, to determine whether to entertain a particular motion based on the philosophy and principles of the NMUN. Such discretion should be used on a limited basis and only under circumstances where it is necessary to advance the educational mission of the Conference and is limited to entertaining motions.*

**Rule 16 – Authority of the Commission**

The President, in the exercise of her or his functions, remains under the authority of the Commission.

**Rule 17 – Voting rights on procedural matters**

Unless otherwise stated, all votes pertaining to the conduct of business shall require a majority of the members present and voting in order to pass.

*For purposes of this rule, the members present and voting mean those members (including observers) in attendance at the meeting during which this rule is applied. Note that observers may vote on all procedural votes; they may, however, not vote on substantive matters (see Chapter VI). There is no possibility to abstain on procedural votes.*

**Rule 18 - Points of order**

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote, and the President's ruling shall stand unless overruled by a majority of the members present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

*Such points of order should not under any circumstances interrupt the speech of a fellow representative. They should be used exclusively to correct an error in procedure. Any questions on order arising during a speech made by a representative should be raised at the conclusion of the speech, or can be addressed by the President, sua sponte, during the speech. For purposes of this rule, the members present and voting mean those members (including observers) in attendance at the meeting during which this motion comes to vote.*

**Rule 19 - Speeches**

No representative may address the Commission without having previously obtained the permission of the President. The President shall call upon speakers in the order in which they signify their desire to speak. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

*In line with the philosophy and principles of the NMUN, in furtherance of its educational mission, and for the purpose of facilitating debate, the Secretariat will set a time limit for all speeches which may be amended by the President at his/her discretion. Consequently, motions to alter the speaker's time will not be entertained by the President.*

**Rule 20 - Closing of list of speakers**

Members may only be on the list of speakers once but may be added again after having spoken. During the course of a debate, the President may announce the list of speakers and, with the consent of the Commission, declare the list closed. When there are no more speakers, the President shall declare the debate closed. Such closure shall have the same effect as closure by decision of the Commission.

*The decision to announce the list of speakers is within the discretion of the President and should not be the subject of a motion by the Commission. A motion to close the speakers list is within the purview of the Commission and the President should not act on her/his own motion.*

***Rule 21 - Right of reply***

If a remark impugns the integrity of a representative's State, the President may permit that representative to exercise her/his right of reply following the conclusion of the controversial speech, and shall determine an appropriate time limit for the reply. No ruling on this question shall be subject to appeal.

*For purposes of this rule, a remark that impugns the integrity of a representative's State is one directed at the governing authority of that State and/or one that puts into question that State's sovereignty or a portion thereof. All interventions in the exercise of the right of reply shall be addressed in writing to the Secretariat and shall not be raised as a point of order or motion. The reply shall be read to the Commission by the representative only upon approval of the Secretariat, and in no case after voting has concluded on all matters relating to the agenda topic, during the discussion of which, the right arose.*

***Rule 22 - Suspension of the meeting***

During the discussion of any matter, a representative may move the suspension of the meeting, specifying a time for reconvening. Such motions shall not be debated but shall be put to a vote immediately, requiring the support of a majority of the members present and voting to pass.

***Rule 23 - Adjournment of the meeting***

During the discussion of any matter, a representative may move to the adjournment of the meeting. Such motions shall not be debated but shall be put to the vote immediately, requiring the support of a majority of the members present and voting to pass. After adjournment, the Commission shall reconvene at its next regularly scheduled meeting time.

*As this motion, if successful, would end the meeting until the Commission's next regularly scheduled session the following year, and in accordance with the philosophy and principles of the NMUN and in furtherance of its educational mission, the President will not entertain such a motion until the end of the last meeting of the Commission.*

***Rule 24 - Adjournment of debate***

During the discussion of any matter, a representative may move the adjournment of the debate on the item under discussion. Two representatives may speak in favor of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

***Rule 25 - Closure of debate***

A representative may at any time move the closure of debate on the item under discussion, whether or not any other representative has signified her/his wish to speak. Permission to speak on the motion shall be accorded only to two representatives opposing the closure, after which the motion shall be put to the vote immediately. Closure of debate shall require a two-thirds majority of the members present and voting. If the Commission favors the closure of debate, the Commission shall immediately move to vote on all proposals introduced under that agenda item.

***Rule 26 - Order of motions***

Subject to rule 18, the motions indicated below shall have precedence in the following order over all proposals or other motions before the meeting:

- a) To suspend the meeting;
- b) To adjourn the meeting;
- c) To adjourn the debate on the item under discussion;
- d) To close the debate on the item under discussion.

***Rule 27 - Proposals and amendments***

Proposals and amendments shall normally be submitted in writing to the Secretariat. Any proposal or amendment that relates to the substance of any matter under discussion shall require the signature of twenty percent of the

members of the Commission [sponsors]. The Secretariat may, at its discretion, approve the proposal or amendment for circulation among the delegations. As a general rule, no proposal shall be put to the vote at any meeting of the Commission unless copies of it have been circulated to all delegations. The President may, however, permit the discussion and consideration of amendments or of motions as to procedure, even though such amendments and motions have not been circulated. If the sponsors agree to the adoption of a proposed amendment, the proposal shall be modified accordingly and no vote shall be taken on the proposed amendment. A document modified in this manner shall be considered as the proposal pending before the Commission for all purposes, including subsequent amendments.

*For purposes of this rule, all proposals shall be in the form of working papers prior to their approval by the Secretariat. Working papers will not be copied, or in any other way distributed, to the Commission by the Secretariat. The distribution of such working papers is solely the responsibility of the sponsors of the working papers. Along these lines, and in furtherance of the philosophy and principles of the NMUN and for the purpose of advancing its educational mission, representatives should not directly refer to the substance of a working paper that has not yet been accepted as a draft resolution during formal speeches. After approval of a working paper, the proposal becomes a draft resolution and will be copied by the Secretariat for distribution to the Commission. These draft resolutions are the collective property of the Commission and, as such, the names of the original sponsors will be removed. The copying and distribution of amendments is at the discretion of the Secretariat, but the substance of all such amendments will be made available to all representatives in some form.*

**Rule 28 - Withdrawal of motions**

A motion may be withdrawn by its proposer at any time before voting has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any member.

**Rule 29 - Reconsideration of a topic**

When a topic has been adjourned, it may not be reconsidered at the same session unless the Commission, by a two-thirds majority of those present and voting, so decides. Reconsideration can only be moved by a representative who voted on the prevailing side of the original motion to adjourn. Permission to speak on a motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be put to the vote immediately.

## VI. VOTING

**Rule 30 - Voting rights**

Each member of the Commission shall have one vote.

*This rule applies to substantive voting on amendments, draft resolutions, and portions of draft resolutions divided out by motion. As such, all references to member(s) do not include observers, who are not permitted to cast votes on substantive matters.*

**Rule 31 - Request for a vote**

A proposal or motion before the Commission for decision shall be voted upon if any member so requests. Where no member requests a vote, the Commission may adopt proposals or motions without a vote.

*For purposes of this rule, proposal means any draft resolution, an amendment thereto, or a portion of a draft resolution divided out by motion. Just prior to a vote on a particular proposal or motion, the President may ask if there are any objections to passing the proposal or motion by acclamation, or a member may move to accept the proposal or motion by acclamation. If there are no objections to the proposal or motion, then it is adopted without a vote.*

**Rule 32 - Majority required**

1. Unless specified otherwise in these rules, decisions of the Commission shall be made by a majority of the members present and voting.
2. For the purpose of tabulation, the phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting.

*All members declaring their representative States as "present and voting" during the attendance roll call for the*

*meeting during which the substantive voting occurs, must cast an affirmative or negative vote, and cannot abstain on substantive votes.*

**Rule 33 - Method of voting**

1. The Commission shall normally vote by a show of placards, except that a representative may request a roll call, which shall be taken in the English alphabetical order of the names of the members, beginning with the member whose name is randomly selected by the President. The name of each member shall be called in any roll call, and one of its representatives shall reply “yes,” “no,” “abstention,” or “pass.”

*Only those members who designate themselves as present or present and voting during the attendance roll call, or in some other manner communicate their attendance to the President and/or Secretariat, are permitted to vote and, as such, no others will be called during a roll-call vote. Any representatives replying pass must, on the second time through, respond with either a yes or no vote. A pass cannot be followed by a second pass for the same proposal or amendment, nor can it be followed by an abstention on that same proposal or amendment.*

2. When the Commission votes by mechanical means, a non-recorded vote shall replace a vote by show of placards and a recorded vote shall replace a roll-call vote. A representative may request a recorded vote. In the case of a recorded vote, the Commission shall dispense with the procedure of calling out the names of the members.
3. The vote of each member participating in a roll call or a recorded vote shall be inserted in the record.

**Rule 34 - Explanations of vote**

Representatives may make brief statements consisting solely of explanation of their votes after the voting has been completed. The representatives of a member sponsoring a proposal or motion shall not speak in explanation of vote thereon, except if it has been amended, and the member has voted against the proposal or motion.

*All explanations of vote must be submitted to the President in writing before debate on the topic is closed, except where the representative is of a member sponsoring the proposal, as described in the second clause, in which case the explanation of vote must be submitted to the President in writing immediately after voting on the topic ends.*

**Rule 35 - Conduct during voting**

After the President has announced the commencement of voting, no representatives shall interrupt the voting except on a point of order in connection with the actual process of voting.

*For purposes of this rule, there shall be no communication amongst delegates, and if any delegate leaves the Commission room during voting procedure, they will not be allowed back into the room until the Commission has convened voting procedure.*

**Rule 36 - Division of proposals and amendments**

Immediately before a proposal or amendment comes to a vote, a representative may move that parts of a proposal or of an amendment should be voted on separately. If there are calls for multiple divisions, those shall be voted upon in an order to be set by the President where the most radical division will be voted upon first. If objection is made to the motion for division, the request for division shall be voted upon, requiring the support of a majority of those present and voting to pass. Permission to speak on the motion for division shall be given only to two speakers in favor and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are approved shall then be put to a vote. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

*For purposes of this rule, most radical division means the division that will remove the greatest substance from the draft resolution, but not necessarily the one that will remove the most words or clauses. The determination of which division is most radical is subject to the discretion of the Secretariat, and any such determination is final.*

**Rule 37 - Amendments**

An amendment is a proposal that does no more than add to, delete from, or revise part of another proposal.

*An amendment can add, amend, or delete operative clauses, but cannot in any manner add, amend, delete, or otherwise affect preambulatory clauses.*

***Rule 38 - Voting on amendments***

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the amendment furthest removed in substance from the original proposal shall be voted on first and then the amendment next furthest removed there from, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted on.

*For purposes of this rule, furthest removed in substance means the amendment that will have the most significant impact on the draft resolution. The determination of which amendment is furthest removed in substance is subject to the discretion of the Secretariat, and any such determination is final.*

***Rule 39 - Order of voting on proposals***

If two or more proposals, other than amendments, relate to the same question, they shall, unless the Commission decides otherwise, be voted on in the order in which they were submitted.

***Rule 40 - The President shall not vote***

The President shall not vote but may designate another member of her/his delegation to vote in her/his place.

## VII. CREDENTIALS

***Rule 41 - Credentials***

The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General prior to the opening of a session.

***Rule 42 - Authority of the General Assembly***

The Commission shall be bound by the actions of the General Assembly in all credentials matters and shall take no action regarding the credentials of any member.

## VII. PARTICIPATION OF NON-MEMBERS OF THE COMMISSION

***Rule 43 - Participation of non-Member States***

The Commission shall invite any Member of the United Nations that is not a member of the Commission and any other State, to participate in its deliberations on any matter of particular concern to that State.

A sub-commission or sessional body of the Commission shall invite any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State. A State thus invited shall not have the right to vote, but may submit proposals which may be put to the vote on request of any member of the body concerned.

*If the Commission considers that the presence of a Member invited according to this rule is no longer necessary, it may withdraw the invitation. Delegates invited to the Commission according to this rule should also keep in mind their role and obligations in the commission that they were originally assigned to. For educational purposes of the NMUN Conference, the Secretariat may thus ask a delegate to return to his or her commission when his or her presence in the Commission is no longer required.*

***Rule 45 - Participation of national liberation movements***

The Commission may invite any national liberation movement recognized by the General Assembly to participate, without the right to vote, in its deliberations on any matter of particular concern to that movement.

***Rule 46 - Participation of and consultation with specialized agencies***

In accordance with the agreements concluded between the United Nations and the specialized agencies, the specialized agencies shall be entitled: a) To be represented at meetings of the Commission and its subsidiary organs; b) To participate, without the right to vote, through their representatives, in deliberations with respect to items of

concern to them and to submit proposals regarding such items, which may be put to the vote at the request of any member of the Commission or of the subsidiary organ concerned.

***Rule 47 - Participation of non-governmental organization and intergovernmental organizations***

Representatives of non-governmental organizations/intergovernmental organizations accorded consultative observer status by the Economic and Social Council and other non-governmental organizations/intergovernmental organizations designated on an ad hoc or a continuing basis by the Commission on the recommendation of the Bureau, may participate, with the procedural right to vote, but not the substantive right to vote, in the deliberations of the Commission on questions within the scope of the activities of the organizations.