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## Commission on Crime Prevention and Criminal Justice Background Guide 2019

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Dear Delegates,

Welcome to the 2019 National Model United Nations New York Conference (NMUN•NY)! We are pleased to welcome you to the Commission on Crime Prevention and Criminal Justice (CCPCJ). This year's staff are: Directors Chris Duggan (Conference A) and Samantha L. Hall (Conference B), and Assistant Directors Vikram Sakkia (Conference A) and Anna Rickert (Conference B). Chris is a senior at Florida State University pursuing bachelor degrees in Political Science and International Affairs with a focus on Homeland Security. Samantha received her BA in International Studies at Wright State University and MA in International Affairs: Human Rights and Environmental Affairs at American University. She currently works in the field of international development. Vikram is a senior at American University of Sharjah, attaining his bachelor's degree in Computer Engineering. Anna received her BA in International Relations from the University of Erfurt and is now pursuing an MA in Peace and Conflict Studies at the University of Tübingen.

The topics under discussion for the Commission on Crime Prevention and Criminal Justice are:

1. Criminal Justice Responses to Cybercrime in All Its Forms
2. Improving Coordination in Preventing and Combating Migrant Smuggling
3. Restorative Justice in Criminal Matters

CCPCJ is a subsidiary organ of the United Nations (UN) Economic and Social Council (ECOSOC) and represents the main forum where Member States debate standards and norms in the fields of crime prevention and criminal justice. CCPCJ is also a governing body of the UN Office on Drugs and Crime (UNODC), and it prepares the UN Congress on Crime Prevention and Criminal Justice. Recent threats to international peace and security have made CCPCJ's role even more relevant, while the adoption of the *2030 Agenda for Sustainable Development* has also significantly influenced the work of the Commission.

This Background Guide serves as an introduction to the topics for this committee. However, it is not intended to replace individual research. We encourage you to explore your Member State's policies in depth and use the Annotated Bibliography and Bibliography to further your knowledge on these topics. In preparation for the Conference, each delegation will submit a [Position Paper](#) by 11:59 p.m. (Eastern) on 1 March 2019 in accordance with the guidelines in the [NMUN Position Paper Guide](#).

Two resources, available to download from the [NMUN website](#), that serve as essential instruments in preparing for the Conference and as a reference during committee sessions are the:

1. [NMUN Delegate Preparation Guide](#) - explains each step in the delegate process, from pre-Conference research to the committee debate and resolution drafting processes. Please take note of the information on plagiarism, and the prohibition on pre-written working papers and resolutions. Delegates should not start discussion on the topics with other members of their committee until the first committee session.
2. [NMUN Rules of Procedure](#) - include the long and short form of the rules, as well as an explanatory narrative and example script of the flow of procedure.

In addition, please review the mandatory [NMUN Conduct Expectations](#) on the NMUN website. They include the Conference dress code and other expectations of all attendees. We want to emphasize that any instances of sexual harassment or discrimination based on race, gender, sexual orientation, national origin, religion, age, or disability will not be tolerated. If you have any questions concerning your preparation for the committee or the Conference itself, please contact the Under-Secretaries-General for the Economic and Social Council Department, Estefani Morales (Conference A) and Stéphanie Toschi (Conference B), at [usg.ecosoc@nmun.org](mailto:usg.ecosoc@nmun.org).

We wish you all the best in your preparations and look forward to seeing you at the Conference!

## Conference A

Chris Duggan, Director  
Vikram Sakkia, Assistant Director

## Conference B

Samantha L. Hall, Director  
Anna Rickert, Assistant Director



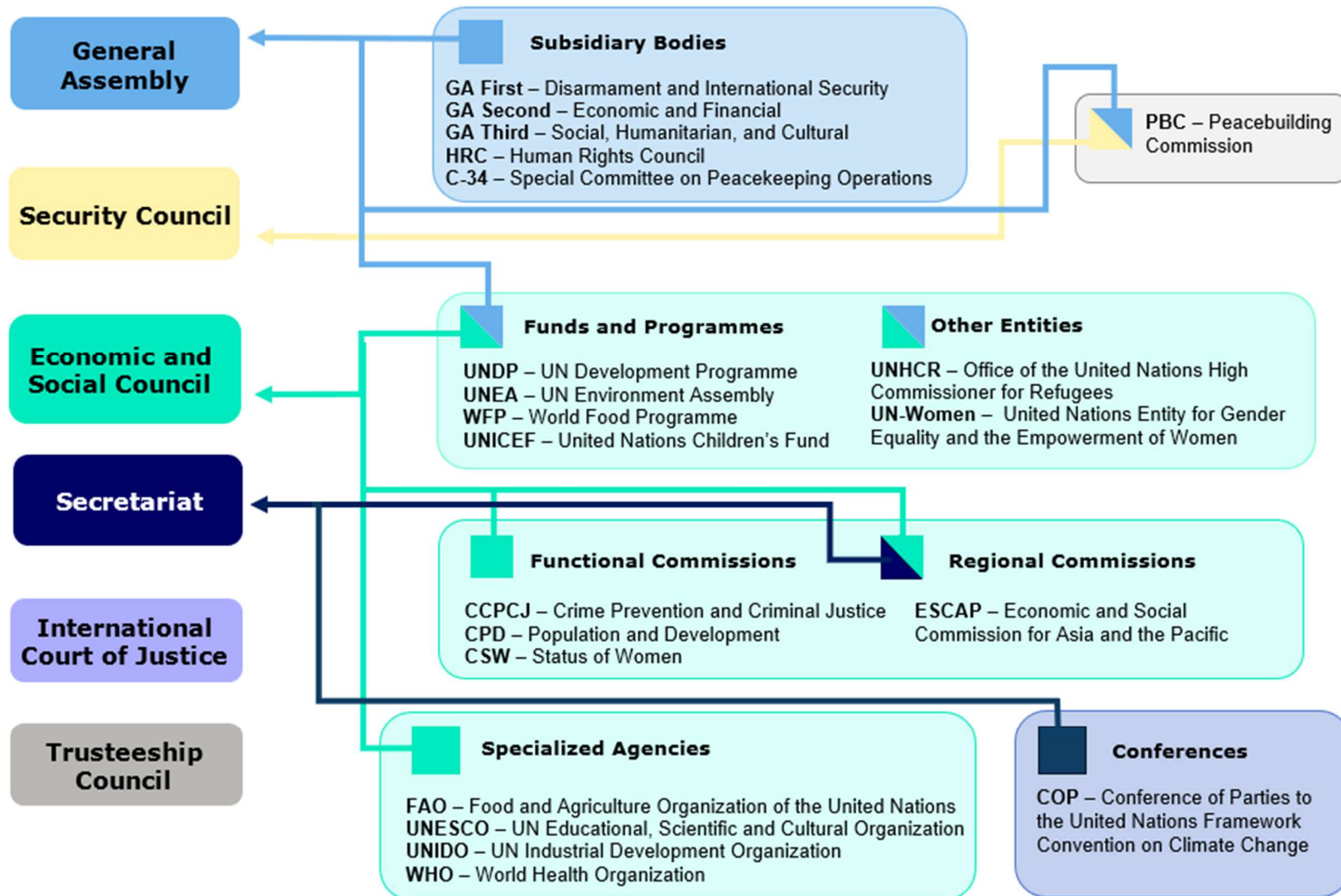
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## United Nations System at NMUN•NY

This diagram illustrates the UN system simulated at NMUN•NY and demonstrates the reportage and relationships between entities. Examine the diagram alongside the Committee Overview to gain a clear picture of the committee's position, purpose, and powers within the UN system.



## Committee Overview

### Introduction

The Commission on Crime Prevention and Criminal Justice (CCPCJ) is the main body within the United Nations (UN) that addresses issues related to crime and justice systems and is the main forum for Member States to debate standards and norms in this area.<sup>1</sup> CCPCJ is a subsidiary organ and functional commission of the Economic and Social Council (ECOSOC).<sup>2</sup> CCPCJ collaborates with other UN bodies working in the field of crime and criminal justice, and it is a significant actor in the efforts for creating conditions for sustainable development, peace, and security.<sup>3</sup> CCPCJ's resolutions are reported to ECOSOC and the Third Committee (Humanitarian and Cultural Affairs) of the UN General Assembly, and adopted through these entities.<sup>4</sup> Together with the Commission on Narcotic Drugs (CND), CCPCJ is part of the UN Office on Drugs and Crime (UNODC).<sup>5</sup> Furthermore, CCPCJ is the preparatory body for the UN Congress on Crime Prevention and Criminal Justice (UN Crime Congress), and it also manages the finances of the UN Crime Prevention and Criminal Justice Fund.<sup>6</sup>

CCPCJ was established and integrated into ECOSOC in order to create a format for the governance of crime prevention and criminal justice matters, as this falls within the scope of CCPCJ's mandate.<sup>7</sup> For this purpose, ECOSOC created the Committee on Crime Prevention and Control (CCPC) in 1971.<sup>8</sup> CCPC was a technical group of appointed experts selected according to their individual capacity.<sup>9</sup> In 1991, the General Assembly adopted resolution 46/152 on the "Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme."<sup>10</sup> This resolution was implemented by ECOSOC resolutions 1992/1, which established CCPCJ to replace CCPC, and 1992/22, which defined CCPCJ's mandate and priorities.<sup>11</sup> The reform of the governance structures integrated CCPCJ fully into the intergovernmental process in 1992.<sup>12</sup>

Since then, the debate in the new Commission has gradually become politicized as diplomats, rather than experts, have become responsible for the deliberations.<sup>13</sup> These changes reflect the growing necessity of governments discussing criminal issues at the international level, especially within the UN system.<sup>14</sup> With the rise in transnational crime in the past 20 years, CCPCJ has assumed a central role in the discussion

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<sup>1</sup> UNODC, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, 2006; UNODC, *CCPCJ*, 2018.

<sup>2</sup> UNODC, *CCPCJ: Mandate and Functions*, 2018.

<sup>3</sup> UNODC, *CCPCJ*, 2018.

<sup>4</sup> UNODC, *Commission on Narcotic Drugs and Commission on Crime Prevention and Criminal Justice: General Information on Draft resolutions and Draft Decisions*.

<sup>5</sup> UNODC, *Commissions*, 2018.

<sup>6</sup> UNODC, *CCPCJ: Mandate and Functions*, 2018.

<sup>7</sup> *Charter of the United Nations*, 1945, Articles 1 (3), 55, 62.

<sup>8</sup> Union of International Association, *Open Yearbook: United Nations Committee on Crime Prevention and Control*, 1992.

<sup>9</sup> Clark, *Human Rights and the U.N. Committee on Crime Prevention and Control*, 1989, pp. 68-69; Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 228.

<sup>10</sup> UN General Assembly, *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (A/RES/46/152)*, 1991; UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/1992/22)*, 1992.

<sup>11</sup> UNODC, *CCPCJ*, 2018; UN ECOSOC, *Establishment of the Commission on Crime Prevention and Criminal Justice (E/RES/1992/1)*, 1992; UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/1992/22)*, 1992.

<sup>12</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 228.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, p. 229.

on the measures to improve international coordination to combat national and transnational crime, and to strengthen criminal justice administration systems.<sup>15</sup>

### **Governance, Structure, and Membership**

CCPCJ consists of 40 Member States, elected by ECOSOC, each serving a three-year term.<sup>16</sup> The members are chosen according to equitable geographical allocation and are composed of 12 African states, nine Asian-Pacific states, four Eastern European states, eight Latin American and Caribbean states, and seven Western European and other states.<sup>17</sup> The body meets biannually at the UNODC headquarters in Vienna to consider administrative and budgetary matters.<sup>18</sup> There are also inter-sessional meetings to finalize the provisional agenda, address formal and substantive matters, and to offer effective policy guidance to UNODC.<sup>19</sup> At each session, CCPCJ approaches a thematic discussion on a priority issue identified at its previous sessions.<sup>20</sup>

The Bureau and Extended Bureau of the Commission assist CCPCJ in organizing and preparing its work thoroughly and in advance of the various sessions.<sup>21</sup> The Bureau's Chairperson, three Vice-Chairpersons, and Rapporteur rotate among Member States after each session, and the Extended Bureau consists of the chairpersons of the five regional groups, the European Union, China, and the Group of 77.<sup>22</sup> The Bureau and Extended Bureau are assisted by the Secretariat to the Governing Bodies (SGB).<sup>23</sup> The SGB serves as a link between CCPCJ and CND, as well as other parts of UNODC, and as an administrative link to the General Assembly and ECOSOC.<sup>24</sup> Also, the SGB offers substantial support to CCPCJ when required and assists in preparing the UN Crime Congresses.<sup>25</sup>

Due to the great variety of topics covered by CCPCJ, the Commission has several experts and working groups.<sup>26</sup> These include a standing open-ended intergovernmental working group paired with CND on improving governance and establishing stable funding for UNODC, an expert group on protection against trafficking in cultural property, and a group on standard minimum rules for the treatment of prisoners.<sup>27</sup> Other expert group meetings have also been held in Vienna and in other Member States; one was held in 2014 on gender-related killings of women and girls, while another was held in 2013 on strengthening access to legal aid in criminal justice systems.<sup>28</sup>

CCPCJ is reliant on funding by Member States, the amount of which is largely at each state's own discretion.<sup>29</sup> While UNODC's administrative infrastructure and core normative work are financed through a

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<sup>15</sup> UNODC, *CCPCJ*, 2018.

<sup>16</sup> UN General Assembly, *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (A/RES/46/152)*, 1991.

<sup>17</sup> New Zealand, *Ministry of Foreign Affairs and Trade, United Nations Handbook 2017-2018*, 2017, pp. 165-168.

<sup>18</sup> UNODC, *CCPCJ: Regular and Intersessional Meetings of the Commission*, 2016; UNODC, *Documentation*, 2016; UN ECOSOC, *Frequency and Duration of the Reconvened Sessions of the Commission on Narcotic Drugs and the Commission on Crime Prevention and Criminal Justice (Decision 2009/251)*, 2009.

<sup>19</sup> UNODC, *CCPCJ: Meetings*, 2018.

<sup>20</sup> *Ibid.*

<sup>21</sup> UNODC, *CCPCJ. Bureau and Extended Bureau*, 2018.

<sup>22</sup> *Ibid.*

<sup>23</sup> UNODC, *Secretariat to the Governing Bodies*, 2018.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> UNODC, *CCPCJ: Expert Groups and Working Groups*, 2018.

<sup>27</sup> UNODC, *Standard Minimum Rules for the Treatment of Prisoners*, 2018; UNODC, *Standing Open-Ended Intergovernmental Working Group on Improving the Governance and Financial Situation of the United Nations Office on Drugs and Crime*, 2016; UNODC, *Third Meeting of the Open-Ended Intergovernmental Expert Group on Protection Against Trafficking in Cultural Property, Vienna, 15-17 January 2014*, 2016.

<sup>28</sup> UNODC, *Open-Ended Intergovernmental Expert Group Meeting on Gender-Related Killing of Women and Girls*, 2014, pp. 11-13; UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2013.

<sup>29</sup> UNODC, *2016 Annual Appeal*, 2016, p. 5.

regular budget, the largest part of its budget is made up of extra-budgetary resources.<sup>30</sup> 80-85% of the total budget is comprised of special-purpose funds, and donations by Member States are most important.<sup>31</sup> A limited budget can hinder efficient and strategic planning and the conduct of adequate empirical research on crime.<sup>32</sup> In 2016, the UNODC published a report, *UNODC Annual Appeal 2016*, which provides Member States and donors a detailed list of programs, projects, and initiatives that CCPCJ and CND are currently working on as a means to garner more financial support.<sup>33</sup>

### **Mandate, Function, and Powers**

CCPCJ is mandated to approach issues of national, transnational, and financial crime; to promote the implementation of criminal law and all forms of crime prevention measures; and to assist in the management and improvement of criminal justice and related systems, particularly in strengthening national capacities in developing and implementing policies.<sup>34</sup> CCPCJ's mandate was further expanded in 2006, making CCPCJ a governing body of UNODC, and giving the Commission the responsibility to approve the general budget of the UN Crime Prevention and Criminal Justice Fund, which consists of the financial resources allocated to provide technical assistance in crime-related issues.<sup>35</sup> CCPCJ is also mandated to coordinate with other UN agencies and Member States to hold preparatory meetings in the lead up to the UN Crime Congress, which has been held every five years since 1955 to consider specific crime-related topics.<sup>36</sup> The Congress influences national and international crime prevention and criminal justice practices through the sharing of information, the formulation of policy recommendations, and by mobilizing public opinion for crime and justice reforms.<sup>37</sup> Through the preparation of the congresses, CCPCJ has contributed to international soft law in the form of guidelines and other recommendations, and encouraged the establishment of national and regional preparatory committees.<sup>38</sup> Furthermore, CCPCJ's actions have also contributed to strengthening hard law through the consolidation of the UN crime program, for instance by initiating the deliberations on the *United Nations Convention against Transnational Organized Crime* (2000).<sup>39</sup>

The functions of CCPCJ are congruent with its mandate.<sup>40</sup> As one of ECOSOC's functional commissions, CCPCJ's role is to consider and make recommendations to ECOSOC through a deliberative process in its

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<sup>30</sup> UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187)*, 2013.

<sup>31</sup> Bewley-Taylor & Trace, *The Funding of the United Nations Office on Drugs and Crime: An Unfinished Jigsaw*, 2006, pp. 2-6; UNODC, *Fundraising Strategy 2012-2015*, 2012, pp. 33-34; UN CCPCJ, *Improving the Governance and Financial Situation of the United Nations Office on Drugs and Crime: Recommendations of the Standing Open-Ended Intergovernmental Working Group on Improving the Governance and Financial Situation of the United Nations Office on Drugs and Crime (Resolution 24/2)*, 2013.

<sup>32</sup> Bewley-Taylor & Trace, *The Funding of the United Nations Office on Drugs and Crime: An Unfinished Jigsaw*, 2006, p. 13.

<sup>33</sup> UNODC, *2016 Annual Appeal*, 2016.

<sup>34</sup> UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/1992/22)*, 1992.

<sup>35</sup> UN General Assembly, *Questions Relating to the Programme Budget for the Biennium 2006–2007 (A/RES/61/252)*, 2006; UNODC, *CCPCJ*, 2016.

<sup>36</sup> UN ECOSOC, *Establishment of the Commission on Crime Prevention and Criminal Justice (E/1992/1)*, 1992; UN ECOSOC, *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/1992/22)*, 1992; UNODC, *United Nations Crime Congresses*; UNODC, *Fourteenth United Nations Congress on Crime Prevention and Criminal Justice - About*, 2018.

<sup>37</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 229; UN General Assembly, *Follow-up to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and Preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (A/RES/72/192)*, 2018.

<sup>38</sup> UN CCPCJ, *Four transitions in the United Nations Crime Program*, 2017; UNODC, *2019 Regional Preparatory Meetings*, 2018.

<sup>39</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 229.

<sup>40</sup> New Zealand, Ministry of Foreign Affairs and Trade, *United Nations Handbook 2017-2018*, 2017, pp. 165-168.



fields of expertise and responsibility.<sup>41</sup> General Assembly resolution 46/152 of 1991 establishes five main functions to be fulfilled by the CCPCJ: to offer policy guidance in the area of crime prevention and criminal justice; to design, monitor, and review the UN crime program's implementation; to enable and coordinate assistance for UN entities for the prevention of crime and treatment of offenders; to help Member States become aligned and active for the goals of the program; and to plan and manage the UN Crime Congresses.<sup>42</sup> CCPCJ also cooperates with the UN Interregional Crime and Justice Research Institute (UNICRI), and invites the institute to report on issues related to its work.<sup>43</sup> Together with UNICRI and other UN bodies, CCPCJ is part of the UN Crime Prevention and Criminal Justice Programme Network.<sup>44</sup>

### **Recent Sessions and Current Priorities**

At the Commission's 27<sup>th</sup> session in May 2018, debates focused on preventing and countering cybercrime through criminal justice responses and strengthened national and international cooperation.<sup>45</sup> During the 27<sup>th</sup> session, CCPCJ adopted several resolutions on countering the trafficking of persons, children, and cultural property through strengthened measures and international cooperation.<sup>46</sup> Resolution 27/2 and resolution 27/3 encourage Member States to develop specialized training for law enforcement and criminal justice practitioners and effective responses to trafficking of persons and children "facilitated by the criminal misuse of information and communication technologies."<sup>47</sup> For CCPCJ's 28<sup>th</sup> session, the committee will discuss preventing and encountering crime motivated by intolerance or discrimination of any kind.<sup>48</sup>

CCPCJ's work has been significantly influenced by the *2030 Agenda for Sustainable Development*, in particular by Sustainable Development Goal (SDG) 16 to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."<sup>49</sup> In addition to its involvement in this field, CCPCJ works to promote and achieve many other SDGs and regularly contributes to the debate of the High-Level Political Forum on Sustainable Development (HLPF).<sup>50</sup> At the 2018 HLPF session, CCPCJ provided an update to the committee's substantive contributions in implementing the SDGs into their work and resolutions.<sup>51</sup> In particular, CCPCJ highlighted the outcome document from the Thirteenth Congress on Crime Prevention

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<sup>41</sup> UNODC, *CCPCJ*, 2016; Guide to UN Documentation, Dag Hammarskjöld Library at Uppsala University, *Functional Commissions*, 2018.

<sup>42</sup> UN General Assembly, *Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (A/RES/46/152)*, 1991.

<sup>43</sup> UN CCPCJ, *Strengthening Crime Prevention and Criminal Justice Responses to Counterfeiting and Piracy (Decision 19/1)*, 2010.

<sup>44</sup> UNODC, *Institutes of the UN Crime Prevention and Criminal Justice Programme Network (PNI)*, 2016.

<sup>45</sup> UNODC, *CCPCJ: Thematic Discussions*, 2018.

<sup>46</sup> UN CCPCJ, *Preventing and Combating Trafficking in Persons Facilitated by the Criminal Misuse of Information and Communications Technologies (Resolution 27/2)*, 2018; UN CCPCJ, *Improving the Protection of Children Against Trafficking in Persons, Including by Addressing the Criminal Misuse of Information and Communications Technologies (Resolution 27/3)*, 2018; UN CCPCJ, *Strengthening Measures Against Trafficking in Persons (Resolution 27/4)*, 2018; UN CCPCJ, *International Cooperation Against Trafficking in Cultural Property (Resolution 27/5)*, 2018.

<sup>47</sup> UN CCPCJ, *Preventing and Combatting Trafficking in Persons Facilitated by the Criminal Misuse of Information and Communication Technologies (Resolution 27/2)*, 2018; UN CCPCJ, *Improving the Protection of Children Against Trafficking in Persons, Including by Addressing the Criminal Misuse of Information and Communication Technologies (Resolution 27/3)*, 2018.

<sup>48</sup> UNODC, *CCPCJ: Thematic Discussions*, 2018.

<sup>49</sup> UN General Assembly, *Transforming Our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015; UN CND & UN CCPCJ, *Contribution by UNODC in Implementing the 2030 Agenda for Sustainable Development, and a Proposed Role of the CND and CCPCJ in Reviewing the Progress of the SDGs*, 2016, p. 1.

<sup>50</sup> UN CCPCJ, *Note on the Contribution of the Commission on Crime Prevention and Criminal Justice to the 2016 High-level Political Forum on Sustainable Development on "Ensuring that No One is Left Behind"*, 2016, pp. 1-2.

<sup>51</sup> *Ibid.*, p. 2.



and Criminal Justice, the *Doha Declaration* (2015), which acknowledges the strong linkages between sustainable development and the rule of law.<sup>52</sup> The *Doha Declaration* reaffirms Member States' commitment to fair and effective criminal justice systems and recommends that states share best practices and policies of legal systems to achieve this goal.<sup>53</sup> CCPCJ also brought attention to the theme of the Fourteenth UN Crime Congress, "Advancing Crime Prevention, Criminal Justice, and the Rule of Law: Towards the Achievement of the 2030 Agenda," which will be held in Japan in 2020.<sup>54</sup>

### Conclusion

CCPCJ plays a significant role in the promotion of the rule of law, a continually pertinent international topic, particularly in light of the post-2015 development agenda.<sup>55</sup> While CCPCJ cannot formulate binding decisions for Member States directly, it influences the evolution of soft and hard international law.<sup>56</sup> Crime has a significant direct impact on the lives of millions of people.<sup>57</sup> Therefore, the combination of political deliberations that bring attention to the issues discussed by CCPCJ, and the expertise and actions that CCPCJ can undertake, is key to finding comprehensive solutions to pressing challenges.<sup>58</sup> It is important to remember CCPCJ's position within the UN crime prevention program and to consider with which other UN entities it can work with effectively in order to realize the potential that the Commission offers to Member States and the global community.<sup>59</sup>

### Annotated Bibliography

United Nations, Commission on Crime Prevention and Criminal Justice. (2018). Contribution Submitted by the Chair of the Commission on Crime Prevention and Criminal Justice to the 2018 High Level Political Forum on Sustainable Development Theme: "Transformation Towards Sustainable and Resilient Societies" [Report]. Retrieved 6 July 2018 from: [http://www.unodc.org/documents/commissions/ECOSOC/HLPF2018/CCPCJ\\_ECOSOC\\_2018\\_11\\_May.pdf](http://www.unodc.org/documents/commissions/ECOSOC/HLPF2018/CCPCJ_ECOSOC_2018_11_May.pdf)

*CCPCJ's contribution report to the HLPF outlines the actions the commission has taken toward implementing the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) within policy-making programs and initiatives that focus on crime prevention and criminal justice. CCPCJ reaffirms its commitment to the 2030 Agenda by detailing the agenda items for future UN Congress on Crime Prevention and Criminal Justice, and adopting resolutions and guidelines, such as resolution 27/2, to include aspects of the SDGs and recent development of new UN standards and forms that align with the SDGs. Delegates can use this report to learn more about the current work CCPCJ does to fully implement the 2030 Agenda and the SDGs within its own work and in UNODC's work.*

United Nations, Commission on Crime Prevention and Criminal Justice. (2018). *Report on the Twenty-seventh Session (E/2018/30)*. Retrieved 6 July 2018 from: <http://undocs.org/E/2018/30>

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<sup>52</sup> UN CCPCJ, *Note on the Contribution of the Commission on Crime Prevention and Criminal Justice to the 2016 High-level Political Forum on Sustainable Development on "Ensuring that No One is Left Behind"*, 2016, p. 2.

<sup>53</sup> UNODC, *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and Promote the Rule of Law at the National and International Levels, and Public Participation*, 2015.

<sup>54</sup> UN CCPCJ, *Note on the Contribution of the Commission on Crime Prevention and Criminal Justice to the 2016 High-level Political Forum on Sustainable Development on "Ensuring that No One is Left Behind"*, 2016, p. 2.

<sup>55</sup> *Ibid.*, pp. 1-2.

<sup>56</sup> Van Dijk, *Criminological Research in the Framework of the United Nations*, 2009, p. 228.

<sup>57</sup> UN Office of the President of the General Assembly, *Thematic Debate of the 66<sup>th</sup> Session of the United Nations General Assembly on Drugs and Crime as a Threat to Development: On the Occasion of the UN International Day Against Drug Abuse and Illicit Trafficking*, 2012.

<sup>58</sup> UNODC, *Commission on Crime Prevention and Criminal Justice*, 2018.

<sup>59</sup> UN CCPCJ, Commission on Crime Prevention and Criminal Justice, 2018; UNICRI, *United Nations Crime Prevention and Criminal Justice Programme Network*.

*This report details the work CCPCJ completed during the 27<sup>th</sup> session, including adopted resolutions and decisions. Some of the important resolutions and decisions that CCPCJ adopted focus on preventing human trafficking through tackling the misuse of information and communication technologies, as well as strengthening international cooperation against human trafficking. Delegates can read this report to see the resolutions, decisions, and the work CCPCJ has undertaken in addressing human trafficking. Furthermore, this report will give delegates an idea how CCPCJ writes their resolutions for recommendation to ECOSOC.*

United Nations, Economic and Social Council. (1992). *Implementation of General Assembly Resolution 46/152 Concerning Operational Activities and Coordination in the Field of Crime Prevention and Criminal Justice (E/RES/1992/22)* [Resolution]. Retrieved 23 August 2018 from:

<http://www.undocs.org/E/RES/1992/22>

*ECOSOC adopted this resolution in 1992 in order to replace CCPC with CCPCJ, and expand the mandate and priorities of the body. Reading this resolution, delegates will be able to understand CCPCJ's mandate and thus the scope of their possible actions. Further, the Annex also helps to contextualize the mandate and clarify its focal points. Understanding CCPCJ's role in the broader UN crime program is paramount for realizing the full potential of CCPCJ as a functional commission of ECOSOC. It also helps in envisioning possible and realistic cooperation with other UN entities.*

United Nations Office on Drugs and Crime. (2006). *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* [Compendium]. Retrieved 18 July 2018 from:

[https://www.unodc.org/pdf/criminal\\_justice/Compendium\\_UN\\_Standards\\_and\\_Norms\\_CP\\_and\\_CJ\\_English.pdf](https://www.unodc.org/pdf/criminal_justice/Compendium_UN_Standards_and_Norms_CP_and_CJ_English.pdf)

*This Compendium, published for the first time in 1992 and revised in 2006, contains the most relevant resources, standards, and international norms related to crime prevention and criminal justice. The Compendium is organized by topic, and every section mentions the specific resolution that created the norm. Despite the fact that national criminal justice systems may significantly differ from each other, these norms represent the commonly accepted standards to consider and follow when reforming criminal justice systems. This document also refers to the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the General Assembly in 2015 through resolution 70/175. Delegates will be able to understand the standards and norms CCPCJ has established for the international community to follow when implementing crime prevention and criminal justice measures.*

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*The UNODC Annual Appeal 2016 highlights the various works the UNODC, the commissions, and subsidiary bodies conduct through their programs and initiatives. This report is an appeal to Member States and other donors to increase financial support to UNODC and its supporting bodies. A section of interest to delegates is the Organized Crime and Illicit Trafficking Branch, as CCPCJ is heavily involved in a number of programs focused on combating organized crime and illicit trafficking of humans and illicit goods. Delegates will be able to understand not only the work of UNODC, CCPCJ, and CND, but also gain an understanding of the importance of financial support for these entities to operate and strengthen criminal justice and legal systems.*

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## I. Criminal Justice Responses to Cybercrime in All Its Forms

*“From online exploitation and abuse to ransomware and trafficking on darknet markets, cybercrime imperils health and safety, violates human rights, and impedes sustainable development.”<sup>60</sup>*

### **Introduction**

Cybercrime is an evolving form of transnational crime that is of growing importance to the United Nations (UN), and specifically the Commission on Crime Prevention and Criminal Justice (CCPCJ) and the United Nations Office on Drugs and Crime (UNODC).<sup>61</sup> Cybercrime generates an estimated \$1.5 trillion in revenue per year, and as with many crimes, it often targets the most vulnerable, with identity theft, credit card fraud, and phishing of online data being three of the most common online crimes committed.<sup>62</sup> Cybercriminal activity takes place within the confines of cyberspace and is amplified by the involvement of individuals and groups specializing in coordinated crime such as fraud and money-laundering.<sup>63</sup> Because of the remote nature of cybercrime, perpetrators and victims of cybercrime can be, and typically are, located in different regions at the moment of attack.<sup>64</sup> Despite the seriousness of cybercrime and its relation to other forms of organized crime, there is no internationally recognized definition of cybercrime.<sup>65</sup>

While there is no internationally agreed upon definition of cybercrime, the UNODC working description of cybercrime is “cyber-dependent and cyber-enabled offences, including serious human rights violations through online child exploitation and abuse.”<sup>66</sup> With cyber-dependent crimes, information and communications technology (ICTs) infrastructure is often used to support malware, attacks on infrastructure, and data overloads or distributed denial-of-service (DDOS) attacks, designed to take a website offline.<sup>67</sup> Cyber-enabled offenses can also occur offline but be facilitated by ICT, and often revolve around fraud, online drug exchange, and money-laundering.<sup>68</sup> The wide range of offenses that can fall under cybercrime has also facilitated its use in transnational organized crime and other large criminal enterprises, including causing damage to a Member States’ security infrastructure.<sup>69</sup> As indicated by UNODC, malicious cyber-based offenses such as fraud, drug exchange, and money-laundering typically circulate around “offences against confidentiality, integrity, and availability of computer data and systems, computer-related crimes, content-related offences, and offences tied to infringement of copyright and related rights.”<sup>70</sup>

### **International and Regional Framework**

Cybercrime in all its forms does not just impact a single entity, but often targets a collection of individuals, organizations, and governments, thus impeding upon social progress and better standards of life.<sup>71</sup> Many facets of cybercrime activities involve the exploitation of people in regions susceptible to human trafficking and child exploitation, crimes in direct violation of the *Universal Declaration of Human Rights* (UDHR) (1948).<sup>72</sup> Articles 3, 4, and 5 attest that everyone has the right to “security of person,” to be free from

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<sup>60</sup> UNODC, *Remarks at the Opening of the 27<sup>th</sup> Session of the Commission on Crime Prevention and Criminal Justice by Yury Fedotov, Director General/Executive Direction*, 2018.

<sup>61</sup> UNODC, *Cybercrime*, 2018.

<sup>62</sup> UN DPI, “*Much work to do and no time to waste*” in *cybercrime fight, says UN chief*, 2018.; ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 15.

<sup>63</sup> UNODC, *Cybercrime*, 2018.

<sup>64</sup> *Ibid.*

<sup>65</sup> UNODC, *Global Programme on Cybercrime*, 2018.

<sup>66</sup> *Ibid.*

<sup>67</sup> IT Knowledge Exchange, *Cloud Network Architecture and ICT*, 2011.; UNODC, *Global Programme on Cybercrime*, 2018.

<sup>68</sup> UNODC, *Global Programme on Cybercrime*, 2018.

<sup>69</sup> UNODC, *Southeast Asia and Pacific*, 2018.

<sup>70</sup> UNODC, *Global Programme on Cybercrime*, 2018.

<sup>71</sup> UNODC, *Southeast Asia and Pacific*, 2018; *Charter of the United Nations*, 1945, Preamble.

<sup>72</sup> UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.



slavery or servitude, and to be free from cruel or degrading treatment.<sup>73</sup> Cybercrimes such as fraud and child exploitation are in direct violation of these principles and present a grave challenge to the protection of human rights.<sup>74</sup>

In 2010, the 12<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice produced the *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, on crime prevention and criminal justice systems.<sup>75</sup> The declaration recommends CCPCJ and UNODC collaborate with relevant international organizations in the private sector to strengthen technical assistance in the prevention, detection, investigation, and prosecution of cybercrime in all its forms.<sup>76</sup> Additionally, the Salvador Declaration calls for the gathering of an open-ended intergovernmental expert group to study issues of cybercrime and responses by Member States, to support prevention and prosecution mechanisms.<sup>77</sup> Recent resolutions adopted by CCPCJ in its 27<sup>th</sup>, namely resolution 27/2 (2018) and resolution 27/3 (2018), place an emphasis on the use of ICTs in the prevention of human trafficking and child exploitation.<sup>78</sup> The two resolutions call upon Member States to take effective legislative action in the misuse of information technologies, while also cooperating with businesses to address the risk of human trafficking when goods and services are exchanged online.<sup>79</sup>

At the regional level, cybercrime has been addressed by several bodies. The *Convention on Cybercrime of the Council of Europe* (2001), known as the Budapest Convention, is the first multilateral treaty on crimes committed over cyberspace and additional computer entities.<sup>80</sup> The Convention focuses on cybercrimes pertaining to “copyright infringement, computer fraud, child exploitation, and network security violations.”<sup>81</sup> The main objective of the Convention is to “pursue common criminal policy to protect society from cybercrime, particularly through the adoption of appropriate legislation and international cooperation,” and is considered not just the first legally binding document on cybercrime to be adopted by European states, but by the international community as a whole.<sup>82</sup> Another regional framework on cybercrime is the *African Union Convention on Cyber Security and Personal Data Protection* (2014), which addresses several facets of cybercrime.<sup>83</sup> This includes, but is not limited to “creating definitions of cyber technology and several malicious attacks carried out through cyberspace, electronic transactions, protection of personal data, promotion of cyber security and combating cybercrime, criminal justice responses to cybercrime, and provisions to be taken by the African Union (AU).”<sup>84</sup> The Convention also highlights areas of concern including “gaps in intellectual property law, absence of e-service legislation, and definitions of child exploitation online,” such as child pornography.<sup>85</sup>

UN efforts to combat cybercrime are also consistent with the *2030 Agenda for Sustainable Development* (2015).<sup>86</sup> Response to cybercrime, although not explicitly mentioned, fall within objectives of the Sustainable Development Goals (SDGs), particularly Goal 16 to create peaceful and inclusive societies

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<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> UN Congress on Crime Prevention and Criminal Justice, *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, 2010.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> UN CCPCJ, *Report on the twenty-seventh session (8 December 2017 and 14-18 May 2018)* (E/2018/30), 2018, pp. 13-18.

<sup>79</sup> Ibid., pp. 13-18.

<sup>80</sup> Council of Europe, *Convention on Cybercrime*, 2001.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> AU, *African Union Convention on Cyber Security and Personal Data Protection*, 2014.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development* (A/RES/70/1), 2015.

for sustainable development with access to justice and effective, accountable, and inclusive institutions.<sup>87</sup> Exploitation of children, equal access to justice for all, and combatting all forms of organized crime are covered in SDG targets 16.2 and 16.4.<sup>88</sup> Though these targets do not explicitly discuss cybercrime, cybercrime plays a role in the exploitation and trafficking of children, asset theft, and other facets of organized crime, all of which are mentioned in SDG 16.<sup>89</sup>

### **Role of the International System**

CCPCJ acts as the primary body in the UN system responsible for drafting policy in the sphere of cybercrime prevention and criminal justice.<sup>90</sup> CCPCJ has traditionally held a theme with its yearly sessions, with 2018 gearing toward cybercrime.<sup>91</sup> In their twenty-sixth session, the CCPCJ adopted resolution 26/4 (2017) “Strengthening international cooperation to combat cybercrime,” placing an emphasis on a comprehensive study to be conducted by the open-ended intergovernmental Expert Group on Cybercrime.<sup>92</sup> The resolution also aims to build upon chapters three through eight of CCPCJ resolution 22/7 “Strengthening international cooperation to combat cybercrime” (2013), with legislation, criminalization, law enforcement, electronic evidence, and criminal justice, being of high priority.<sup>93</sup>

CCPCJ spent a majority of its most recent session discussing criminal justice responses and counteracting cybercrime, focusing on strengthening cooperation at national and international levels.<sup>94</sup> The session resulted in six resolutions, with two involving communications technologies and the trafficking of persons online.<sup>95</sup> The first adopted by CCPCJ, resolution 27/2 (2018) “Preventing and combating trafficking in persons facilitated by the criminal misuse of information and communications technologies,” encourages the development and adaptation of technologies to raise awareness of human trafficking and those responsible.<sup>96</sup> The resolution also calls for cooperation among Member States and academic research into the impact of ICTs on the trafficking of persons, as well as the inclusion of crime prevention measures with regard to misuse of information.<sup>97</sup> CCPCJ resolution 27/3 (2018) “Improving the protection of children against trafficking in persons, including by addressing the criminal misuse of information and communications technologies,” encourages Member States to implement measures to prevent children falling victim to crimes conducted through communications technology over the internet through cell phones and other devices.<sup>98</sup> The resolution also encourages actors to work in accordance with existing legal frameworks to develop comprehensive strategies to protect those who may fall victim to trafficking.<sup>99</sup>

UNODC has focused on long-term capacity-building in the fight against cybercrime.<sup>100</sup> UNODC specifically utilizes specialized expertise on criminal justice system responses to aid in capacity-building, raising awareness, prevention, cooperation, data collection, and research on cybercrime.<sup>101</sup> UNODC has

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<sup>87</sup> Ibid.

<sup>88</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1)*, 2015.

<sup>89</sup> UN CCPCJ, *Improving the protection of children against trafficking in persons, including by addressing the criminal misuse of information and communications technologies (Resolution 27/3)*, 2018.

<sup>90</sup> UNODC, *The Commission on Crime Prevention and Criminal Justice*, 2018.

<sup>91</sup> UNODC, *CCPCJ Thematic Discussion*, 2018.

<sup>92</sup> UN CCPCJ, *Strengthening international cooperation to combat cybercrime (Resolution 26/4)*, 2017.

<sup>93</sup> UN CCPCJ, *Strengthening international cooperation to combat cybercrime (Resolution 26/4)*, 2017; UN CCPCJ, *Strengthening international cooperation to combat cybercrime (resolution 22/7)*, (2013).

<sup>94</sup> UNODC, *CCPCJ Thematic Discussion*, 2018.

<sup>95</sup> UNODC, *CCPCJ Crime-Related Resolutions and Decisions*, 2018.

<sup>96</sup> UN CCPCJ, *Preventing and combating trafficking in persons facilitated by the criminal misuse of information and communications technologies (Resolution 27/2)*, 2018.

<sup>97</sup> Ibid.

<sup>98</sup> UN CCPCJ, *Improving the protection of children against trafficking in persons, including by addressing the criminal misuse of information and communications technologies (Resolution 27/3)*, 2018.

<sup>99</sup> Ibid.

<sup>100</sup> UNODC, *Cybercrime*, 2018.

<sup>101</sup> Ibid.

established measures to combat cybercrime in all its forms through the creation of the Global Programme on Cybercrime and Cybercrime Repository, which provides technical assistance and a comprehensive database on effective legislative and criminal justice measures.<sup>102</sup> The repository is comprised of three databases, “Case Law, Legislation, and Lessons Learned,” aiming to facilitate Member States’ efforts against cybercrime.<sup>103</sup> In the Case Law Database, information is compiled regarding effective law enforcement measures and operations against cybercrime.<sup>104</sup> This provides users the ability to see how Member States are handling matters of cybercrime, the criminal justice outcomes, and operation of their courts.<sup>105</sup>

The General Assembly has also addressed cybercrime in recent sessions; its key resolutions on the topic include resolution 58/32 (2003), “Developments in the field of information and telecommunications in the context of international security,” and resolution 64/211 (2010), “Creation of a global culture of cybersecurity and taking stock of national efforts to protect critical information infrastructures.”<sup>106</sup> The resolutions call on states to engage in multilateral cooperation and share best practices on combating cyber threats to international security.<sup>107</sup>

The International Telecommunication Union (ITU) is also engaged in issues concerning information and communications technology (ICTs).<sup>108</sup> The ITU launched a framework for international cooperation in 2007 entitled the ITU *Global Cybersecurity Agenda* (GCA).<sup>109</sup> The GCA was produced to enhance confidence and security measures in the information society by building on the success of existing efforts and encouraging collaboration and information sharing between Member States to improve processes and systems.<sup>110</sup> The GCA is based on five main pillars: “legal measures, technical and procedural measures, organizational structures, capacity-building, and international cooperation.”<sup>111</sup>

### **Responses to Cybercrime**

The information many see online, such as social media and online retail outlets, are only visible on the clearnet and make up roughly 4% of the Internet that is discoverable by search engine.<sup>112</sup> The deep web, an area of the internet undiscoverable by search engine, contains password-protected information from many diverse sources.<sup>113</sup> The deep web, also known as the darknet, is a collection of websites that use anonymity tools to encrypt web traffic.<sup>114</sup> Such anonymity allows criminals to act without being easily detected, and has made the darknet a growing platform for the illicit trade of weapons, drugs, human trafficking, identity theft, and the sexual exploitation of children.<sup>115</sup> Long-term and sustainable capacity-building through international and regional frameworks is the first line of defense to cybercrime, and the prevention of such activity.<sup>116</sup>

### **Coordination & Investigation**

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<sup>102</sup> Ibid.

<sup>103</sup> UNODC, *Cybercrime Repository*, 2018.

<sup>104</sup> Ibid.

<sup>105</sup> Ibid.

<sup>106</sup> UN General Assembly, *Developments in the field of information and telecommunications in the context of international security (A/RES/58/32)*, 2003; UN General Assembly, *Creation of a global culture of cybersecurity and taking stock of national efforts to protect critical information infrastructures (A/RES/64/211)*, 2010.

<sup>107</sup> Ibid.

<sup>108</sup> ITU, *About International Telecommunication Union (ITU)*, 2018.

<sup>109</sup> ITU, *Global Cybersecurity Agenda (GCA)*, 2018.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> UNODC, *Global Programme on Cybercrime*, 2018.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> UNODC, *Cybercrime*, 2018.

Acts of cybercrime traditionally affect those most vulnerable, but are not exclusive to one individual or entity.<sup>117</sup> Cybercrimes can affect governments, non-governmental organizations (NGOs), businesses, and individuals.<sup>118</sup> These crimes can also have devastating consequences on a Member State's economy, national security, and society.<sup>119</sup> Criminals can infiltrate economic systems, national security systems, and other critical ICT infrastructure critical to modern communities.<sup>120</sup> Therefore, appropriate security measures need to be taken by Member States to assure security and the well-being of its citizens.<sup>121</sup> Once such measures are taken, regional and international coordination and cooperation in these efforts, as highlighted by the GCA, are important to close gaps legal and procedural gaps and loopholes.<sup>122</sup> Coordination of investigative techniques is key in responding to cybercrime, as threats can occur anywhere around the world and cybercrime often occurs remotely.<sup>123</sup> Certain techniques, such as data retention, provide a viable means of gathering online data that can be used by law enforcement.<sup>124</sup> Even where appropriate tools exist, there remain ethical and legal challenges to full implementation. For example, some comprehensive monitoring programs presents the chance of interfering with the rights of innocent civilians, and could therefore be deemed unlawful in several Member States.<sup>125</sup> The benefits of these mechanisms and complex barriers to their implementation will continue to be explored as these technologies develop further.<sup>126</sup>

### *Monitoring, Data Collection, & Legal Action*

From a security standpoint, a lack of law enforcement mechanisms in some developing states has provided for weak legislation enforcement, specifically with monitoring and data collection.<sup>127</sup> Some developing countries may have a lack of appropriate and updated legislation, whereas in other states appropriate legislation is not supported by strong enforcement mechanisms.<sup>128</sup> Enforcement mechanisms require financial investment and technical capacity, and many developing countries struggle to allocate appropriate resource to cybersecurity investigation and enforcement in the face of other pressing domestic issues.<sup>129</sup> In response, numerous stakeholders have established computer incident response teams (CIRTs) to detect, analyze, collect data, and investigate potential cyber threats.<sup>130</sup> One such example is the Finnish National Computer Emergency Response Team developed by the Finnish Communications Regulatory Authority (FICORA), which gathers data and issues cybersecurity vulnerability reports.<sup>131</sup> With the information and data compiled between ICT regulatory bodies and response teams, legislation can be drafted to address the threat of cybercrime.<sup>132</sup> These CIRTs are also key for coordinating cybercrime response at the international and regional levels by sharing best practices and coordinating joint action between different actors and entities.<sup>133</sup>

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<sup>117</sup> UN DPI, *"Much work to do and no time to waste" in cybercrime fight, says UN chief*, 2018.

<sup>118</sup> *Ibid.*

<sup>119</sup> UN DPI, *Potential Security Impacts of Cyberspace Misuse Considered in First Committee, as Speakers Warn of Arms Race, Emergence of New Theatre of Warfare (GA/DIS/3537)*, 2015; UN DESA, *Cybersecurity: A Global Issue Demanding a Global Approach*, 2011.

<sup>120</sup> *Ibid.*

<sup>121</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 2.

<sup>122</sup> *Ibid.*, p. 2.

<sup>123</sup> *Ibid.*, p. III.

<sup>124</sup> *Ibid.*, p. 95.

<sup>125</sup> *Ibid.*, p. 83.

<sup>126</sup> *Ibid.*, p. 83.

<sup>127</sup> Kshetri, *Diffusion and Effects of Cyber-crime in Developing Economies*, 2010, p. 5; UN Centre for Social Development and Humanitarian Affairs, *United Nations Manual On The Prevention And Control Of Computer-related Crime*, 1994, p. 4.

<sup>128</sup> UN Centre for Social Development and Humanitarian Affairs, *United Nations Manual On The Prevention And Control Of Computer-related Crime*, 1994.

<sup>129</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, pp. 83-84.

<sup>130</sup> *Ibid.*, p. 103.

<sup>131</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 103; Valtiole, *Finnish Communications Regulatory Authority*, 2018.

<sup>132</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 103.

<sup>133</sup> *Ibid.*, p. 103.



## **Prevention, Law Enforcement, and Criminal Justice**

### *Legislative Approaches*

According to the United Nations Conference on Trade and Development (UNCTAD), 72% of countries have some form of cybercrime legislation enacted, with 9% having draft legislation.<sup>134</sup> Some form of legislation is vital, but its effectiveness and ability to hold those committing cybercrimes accountable is often lacking.<sup>135</sup> Criminal justice responses to cybercrime are presented with an array of challenges.<sup>136</sup> The primary challenge is the delay in recognizing potential for abuse of cyberspace and the enactment of effective legislation to combat it.<sup>137</sup> Until new legislation is drafted by a Member State, law enforcement of a computer-based offense cannot take place.<sup>138</sup> Therefore, the process must begin with drafting of effective legislation that aims to make the cost of engaging in cybercrime higher than the gain, while setting standards that govern individual actions.<sup>139</sup> Monitoring the effectiveness of legislation and adjusting to new and changing developments in cybercrime is critical to keeping legislation applicable and allowing enforcement bodies the appropriate mandates and tools.<sup>140</sup> However, creation of legislation at the national and local level is difficult without international cooperation, as rapid expansion of networks and structure cause overlap or even duplication of criminal justice responses.<sup>141</sup> The global and disparate nature of cybercrime requires close cooperation between states to provide a united front against cybercrime.<sup>142</sup> Where there are significantly different mechanisms and approaches between states, those perpetrating cyber-attacks can operate out of states with weak legislation and enforcement while continuing to attack to the entire international community.<sup>143</sup> To effectively combat and reduce cybercrime, unification and cooperation of legislative efforts among Member States is needed.<sup>144</sup>

### *Prevention & Awareness*

Low awareness of cybercrime and cybersecurity infrastructure in the law enforcement community and general public continues to present a challenge to preventing and combating cybercrime.<sup>145</sup> Tools, such as the *Convention on Cybercrime of the Council of Europe* have the most significant reach when it comes to prevention and overall awareness on cybercrime.<sup>146</sup> Despite its importance only one Member State outside of Europe, the United States of America, has ratified the Convention.<sup>147</sup> Several others have used the Convention as a model, although it is uncertain to what extent the Convention has been emulated and what measures states have taken that specifically apply to their needs.<sup>148</sup> Increasing awareness of proactive measures they can take online through public awareness campaigns is a viable start, and can be done so through the creation of dedicated awareness websites, within local communities, or through non-profit organizations.<sup>149</sup>

In the realm of national security, many developed states have placed a large emphasis on the protection of securing information online.<sup>150</sup> Cyberwarfare and cyberterrorism are very real threats to international

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<sup>134</sup> UNCTAD, *Cybercrime Legislation Worldwide*, 2018.

<sup>135</sup> Organization of American States, *OAS Cybersecurity Capacity Building Efforts: Are We Ready in Latin America and the Caribbean?*, 2016.

<sup>136</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 82.

<sup>137</sup> *Ibid.*, p. 82.

<sup>138</sup> *Ibid.*, p. 82.

<sup>139</sup> Organization of American States, *OAS Cybersecurity Capacity Building Efforts: Are We Ready in Latin America and the Caribbean?*, 2016.

<sup>140</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 82.

<sup>141</sup> *Ibid.*, p. 82.

<sup>142</sup> *Ibid.*, p. 4.

<sup>143</sup> *Ibid.*, p. 78.

<sup>144</sup> *Ibid.*, p. 82.

<sup>145</sup> Kshetri, *Diffusion and Effects of Cyber-crime in Developing Economies*, 2010, p. 5.

<sup>146</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 124.

<sup>147</sup> *Ibid.*, p. 124.

<sup>148</sup> *Ibid.*, p. 124.

<sup>149</sup> UNODC, *Comprehensive Study on Cybercrime*, 2013, p. 234.

<sup>150</sup> UN DPI, *Potential Security Impacts of Cyberspace Misuse Considered in First Committee, as Speakers Warn of Arms Race, Emergence of New Theatre of Warfare (GA/DIS/3537)*, 2015.

peace and security, and due to the increasing interconnection of states and online networks, an attack on one state could undermine the security of all states.<sup>151</sup> Additionally, the magnitude and risks of cyber-attacks on security systems could have significant implications for international peace and security.<sup>152</sup> Critical national security mechanisms, such as nuclear weapons systems, rely on modern ICTs and are therefore subject to hacking and attack.<sup>153</sup> The vulnerability of these systems to malware, viruses, and sabotage cannot be addressed by national efforts alone; international cooperation is key to coordinating responses to eliminate serious threats to nuclear weapons systems, among other defense infrastructures.<sup>154</sup>

### ***Cybercrime and its Effect on Children and Youth***

With the rapid expansion of online platforms and technology, children and youth are especially vulnerable to the risks and consequences of cybercrime.<sup>155</sup> With ease of accessibility to ICTs, youth have garnered access to technology unavailable to previous generations.<sup>156</sup> Because of this and the rapidly changing landscape of these ICTs and networks, the opportunities for exploitation have been exacerbated, spurring higher vulnerability.<sup>157</sup> Offenders of cybercrime have found that youth tend to be more trusting, while also naive, curious, eager for attention; children and youth have also historically been viewed as less credible witnesses in justice systems.<sup>158</sup> Because of this, many youth fall victim to crimes such as cyberstalking, cyberbullying, sexual exploitation, and human trafficking with little legal recourse.<sup>159</sup>

In response, several international legal instruments are in place, calling upon Member States to take measures to protect children and youth.<sup>160</sup> While the international community has adopted instruments on preventing the exploitation of children, these instruments do not specify the coordination of criminal justice responses, much less the role of the internet in such cases.<sup>161</sup> While many states have enacted legislation particular to cyber-exploitation of children and youth, such as the criminalization of child pornography, other states have not.<sup>162</sup> The lack of such specific legislation makes enforcement more challenging in these cases, as the tools and mechanisms needed to investigate and prosecute these offenses are not explicitly mandated or supported by legislation and material support.<sup>163</sup> Furthermore, the investigation of such crimes can be technically demanding and time-consuming; states without appropriate cyber-investigating units often lack the necessary skills and resources to adequately address these types of crimes.<sup>164</sup>

States and civil society organizations (CSOs) are also advocating for individual action and protection to combat cybercrime targeting children and youth.<sup>165</sup> A UNODC study on this topic found that education and psychosocial methods of prevention can be very effective in educating children and families of the dangers of ICT use.<sup>166</sup> In addition to education and prevention, some CSOs and private entities have also established hotlines to report abuse, apps to track and restrict harmful content, and other similar tools.<sup>167</sup>

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<sup>151</sup> Ibid.

<sup>152</sup> Unal & Lewis, *Cybersecurity of Nuclear Weapons Systems: Threats, Vulnerabilities and Consequences*, 2018, pp. 3-6.

<sup>153</sup> Ibid., pp. 3-6.

<sup>154</sup> Ibid., pp. 3-6.

<sup>155</sup> UNODC, *Cybercrime: Protecting Children from Online Abuse and Exploitation*, 2018.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> United States of America, *Internet Crimes Against Children*, 2005.

<sup>159</sup> UNODC, *Cybercrime: Protecting Children from Online Abuse and Exploitation*, 2018.

<sup>160</sup> Ibid.

<sup>161</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012.

<sup>162</sup> UNODC, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, 2015, pp. 39-40, 46.

<sup>163</sup> Ibid., pp. 39-40, 46.

<sup>164</sup> Ibid., pp. 39-40, 46.

<sup>165</sup> Ibid., p. 54.

<sup>166</sup> Ibid., p. 54.

<sup>167</sup> Ibid., pp. 53-54

More consistent and targeted, coordinated legislation, in addition to other innovative approaches, will be helpful in lessening the harmful impacts of ICTs on children and youth.<sup>168</sup>

### **Conclusion**

The international community has taken important steps to respond to cybercrimes in all its forms, but significant challenges remain.<sup>169</sup> Criminal justice responses to cybercrime will require a global approach.<sup>170</sup> Every day people across the world fall victim to cybercrime, and victims of such activities include individuals large business, and even governments.<sup>171</sup> The nature of the crimes have evolved, and now provide a tremendous amount of illicit revenue to individuals and cybercrime networks.<sup>172</sup> International and regional frameworks are in place to address the issue, but meetings of the CCPCJ and open-ended intergovernmental expert groups have called for an increase in research, coordination, and capacity-building techniques due to the rapid expanse and development in communications technology.<sup>173</sup> Coordination, information-sharing, and collaboration between Member States may be able to curb the effects of cybercrime and develop resilient legislation.<sup>174</sup> Criminal justice responses to cybercrime vary depending on the Member State, but it would be in the best interest of developed states to assist developing states with their cybersecurity infrastructure, as the integrity of one state's security effects the security of all.<sup>175</sup>

### **Further Research**

Delegates should consider the following questions when conducting their research: What can CCPCJ do to spur collaboration on criminal justice and cybercrime? What challenges lie ahead for Member States with struggling cybersecurity infrastructure if developed Member States do not share effective prevention techniques? What are Member States with stronger security infrastructures able to do to assist developing states? How can CCPCJ address the effects of cybercrime with respect to security and youth? How can CCPCJ build upon existing criminal justice frameworks to improve capacity among all Member States?

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*The Convention, adopted by the AU in 2014, served to establish a framework with respect to cybercrime and data protection by African states. The document is separated into several chapters addressing specific action to be taken with respect to cyber security, including electronic commerce, personal data, combatting cybercrime, and the responsibilities of AU Member States. Delegates will find this Convention of use as it provides an example of regional attempts to address cybercrime and identifies potential responses to such crimes.*

Council of Europe. (2001). *Convention on Cybercrime*. Retrieved 15 August 2018 from: <https://www.coe.int/en/web/conventions/full-list>

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<sup>168</sup> UNODC, *Cybercrime: Protecting Children from Online Abuse and Exploitation*, 2018.

<sup>169</sup> UNESCO, *Activities of the United Nations Office on Drugs and Crime (E/CN.15/2018/2)*, 2018.

<sup>170</sup> ITU, *Understanding cybercrime: Phenomena, challenge and legal response*, 2012, p. 3.

<sup>171</sup> Weedon, NGOs: Fighting Human Rights Violations and, Now, Cyber Threat Groups, *FireEye*, 2014.

<sup>172</sup> UNODC, *Global Programme on Cybercrime*, 2018.

<sup>173</sup> UN CCPCJ, *Strengthening international cooperation to combat cybercrime (Resolution 26/4)*, 2017; UNODC, *Session 27 of the CCPCJ*, 2018; UNODC, *The Commission on Crime Prevention and Criminal Justice*, 2018.

<sup>174</sup> UNODC, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, 2015.

<sup>175</sup> UN DPI, *Potential Security Impacts of Cyberspace Misuse Considered in First Committee, as Speakers Warn of Arms Race, Emergence of New Theatre of Warfare (GA/DIS/3537)*, 2015.

*The Convention serves as one of the first regional efforts to address cybercrime, its terms, national measures needed to address the activity, international cooperation, and future action. The framework goes into specific detail in its second chapter, with sections varying from data interference and copyright infringement, to sexual exploitation of children and abetting of criminals. Delegates will find this resource useful as it provides a detailed example of regional framework and specific criminal justice responses to cybercrime outlined by the Council of Europe.*

Tanwar, K. (2016). *Cybercrime & its Criminal Justice Response*. Retrieved 6 July 2018 from: <http://rsisinternational.org/3ICMRP-2016/466-467.pdf>

*This report was published in 2016 by Professor Umesh Kumar Tanwar for the 3<sup>rd</sup> International Conference on Multidisciplinary Research and Practice for the Research and Scientific Innovation Society (RSIS). The report discusses cybercrime at the international level and is divided into detailed sections, including cybercrime markets, security without borders, and cybercrimes. Cybercrimes receive a strong focus, as common crimes such as phishing, online stalking, credit card fraud, and online piracy are highlighted. Delegates will find this information useful when researching cybercrime and criminal justice responses, including legislation at a national level.*

United Nations, Commission on Crime Prevention and Criminal Justice. (2017). *Strengthening international cooperation to combat cybercrime (Resolution 26/4)*. Retrieved 7 July 2018 from: <https://www.undocs.org/26/4>

*This is a document adopted by CCPCJ and highlighted by UNODC. The resolution calls for strengthening international cooperation measures to combat cybercrime. This includes increased use of the Open-ended Intergovernmental Expert Group through future meetings and attention to legislation, criminalization, law enforcement, criminal justice responses, cooperation at the international level, and overall prevention. The resolution tasks the group with conducting comprehensive studies on cybercrime and examining criminal justice approaches. Delegates will find the resolution helpful due to the outline and plan of action set forth by the CCPCJ, as well as its request to further utilize existing international frameworks.*

United Nations Congress on Crime Prevention and Criminal Justice, Twelfth session. (2010). *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (A/CONF.213/17)*. Retrieved 7 July 2018 from: <https://www.undocs.org/a/CONF.213/17>

*This is a declaration from the Congress of Crime Prevention and Criminal Justice that highlights crime prevention and criminal justice responses to cybercrime. Cybercrime is explicitly noted in several clauses, with an emphasis on strengthening and coordination of existing measures nationally, as well as preventing such activity and strengthen criminal justice responses internationally. The Declaration requests UNODC provide technical assistance and training to states to build adequate legislation and capacity. Delegates can make use of this resource as it provides the foundation for not just criminal justice responses to cybercrime, but other crime and violations fundamental rights as well.*

United Nations Office on Drugs and Crime. (2013). *Comprehensive Study on Cybercrime [Report]*. Retrieved 7 July 2018 from: [https://www.unodc.org/documents/organized-crime/UNODC\\_CCPCJ\\_EG.4\\_2013/CYBERCRIME\\_STUDY\\_210213.pdf](https://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.4_2013/CYBERCRIME_STUDY_210213.pdf)

*Published in February of 2013, this comprehensive study of cybercrime by UNODC gives a basic background of cybercrimes and their impacts; the also study aims to provide a better understanding of cybercrime and its effect on the international system. The study provides detailed information on legislation, criminal justice responses, prevention, and international cooperation. Delegates will find the resource useful when compiling initial information on cybercrime, defining acts, past action, and recommended actions for Member States.*



United Nations Office on Drugs and Crime. (2015). *Cybercrime: protecting children from online abuse and exploitation* [Website]. Retrieved 8 July 2018 from: <https://www.unodc.org/unodc/en/frontpage/2015/July/cybercrime-protecting-children-from-online-abuse-and-exploitation.html>

*This resource is a webpage housed within the United Nations Office on Drugs and Crime specializing on the protection of children from cybercrime. The page makes note of current technological advances, access by children, and youth's particular susceptibility to cybercrimes such as online abuse, stalking, and sexual exploitation. An additional resource located on the page contains a publication entitled "Study on the Effects of New Technologies on the Abuse and Exploitation of Children," conducted and written by several international organizations, law enforcement, and other specialists. Delegates will find this resource helpful as they explore the effects of cybercrime on children and youth.*

United Nations Office on Drugs and Crime. (2018). *Crime Prevention and Criminal Justice* [Website]. Retrieved 6 July 2018 from: <http://www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuinside>

*Provided by UNODC, this webpage discusses the efforts of UNODC on issues of crime prevention and criminal justice. The webpage focuses on sustainable responses in crime prevention, reform, human rights, and protection of children. Additionally, projects such as the Thematic Programme on Crime Prevention and Criminal Justice within the resource provide examples of past action taken by UNODC on issues of criminal justice reform and crime prevention, including cybersecurity. Delegates will see this webpage complimentary in research focused on criminal justice responses by the international community and their incorporation into cybersecurity.*

United Nations Office on Drugs and Crime. (2018). *Global Programme on Cybercrime* [Website]. Retrieved 7 July 2018 from: <http://www.unodc.org/unodc/en/cybercrime/global-programme-cybercrime.html>

*Mandated to assist with the fight against cybercrime, the Global Programme on Cybercrime is designed to fit the needs of Member States. The program looks to build efficiency and cooperation among Member States and law enforcement, and increase public knowledge of the risks associated with cybercrime. The program identifies types of cybercrime and highlights CCPCJ resolutions and past actions. Delegates will find the resource useful as it better defines cybercrime and further interne- related crime.*

Weedon, J. (2014, April 24). *NGOs: Fighting Human Rights Violations and, Now, Cyber Threat Groups.* FireEye. Retrieved 15 August 2018 from: <https://www.fireeye.com/blog/threat-research/2014/04/ngos-fighting-human-rights-violations-and-now-cyber-threat-groups.html>

*This resource discusses the impact of cybercrime on NGOs. The article highlights the importance of donations to NGOs, but also their susceptibility to fraudulent activity, as many rely on the use of electronic funds transfer. NGOs retain information that cybercriminals value, are weaker targets than governmental agencies due to their weaker cyber infrastructure, and fall victim to hacking and fraud. The article also provides statistics and trends of cybercrime activity on NGOs. Delegates will find this resource helpful when researching the effects of cybercrime as a whole, particularly on a larger scale rather than against individuals.*

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## II. Improving Coordination in Preventing and Combating Migrant Smuggling

*“Migrant smuggling is, in fact, the textbook example of the “wicked problem”: one that is hard to define, that keeps changing, and that fails to present a clear solution because of pre-existing factors that are themselves highly resistant to change.”<sup>176</sup>*

### **Introduction**

More than 3% of the world’s population does not reside in their country of birth, and approximately 14% of people are actively looking to flee their own countries.<sup>177</sup> The factors contributing toward this migration include migrating due to violence in home countries, human rights abuses, and in order to seek better economic and social opportunities, among other factors.<sup>178</sup> More than half of these individuals pursuing migration are seeking to move due to human rights violations, and in desperation many hopeful migrants resort to smuggling practices to cross borders.<sup>179</sup> In 2013, the International Organization for Migration (IOM) found that the human-smuggling industry is worth \$35 billion per year and involves the deaths of at least 2,360 migrants.<sup>180</sup>

Irregular migration is the practice of crossing the border through unofficial means.<sup>181</sup> One type of this migration is human trafficking, which is when an individual is smuggled across an international border without their full knowledge and/or consent.<sup>182</sup> Migrant smuggling, on the other hand, is facilitating illegal entry from one Member State into another for the purposes of financial gain or material benefit.<sup>183</sup> While migrants who travel this way do so with their consent, migrant smugglers take advantage of the desperation of migrants and identify weaknesses in borders to exploit them for their benefit.<sup>184</sup> Smugglers are often shielded from the risk of arrest or prosecution.<sup>185</sup>

The Commission on Crime Prevention and Criminal Justice (CCPCJ) was established in large part to develop national and international strategies to combat transnational crime, including migrant smuggling.<sup>186</sup> Although most Member States have passed domestic laws against acts of migrant smuggling, the issue persists.<sup>187</sup> CCPCJ has worked with other organizations and committees to address this issue.<sup>188</sup> Multiple frameworks have been established to criminalize the act of benefiting from migrant smuggling.<sup>189</sup> These frameworks work to ensure that the criminals, and not the migrants themselves, are prosecuted and punished for the crime.<sup>190</sup> Combating the issue of migrant smuggling requires a comprehensive approach including raising awareness of the dangers of migrant smuggling, strengthening capacity-building strategies, and developing methods to combat organized criminal groups.<sup>191</sup>

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<sup>176</sup> Gallagher & Jørgen, *Migrant Smugglers Are Winning. Here's Why*, 2017.

<sup>177</sup> IOM, *GMDAC Data Briefing – Measuring Global Migration Potential, 2010-2015*, 2017.

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

<sup>180</sup> IOM, *It's Time to Take Action and Save Lives of Migrants Caught in Crisis*, 2013.

<sup>181</sup> UNODC, *A Comprehensive Strategy to Combat Trafficking in Persons and Smuggling of Migrants*, 2015.

<sup>182</sup> *Ibid.*

<sup>183</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime: Protocol against the Smuggling of Migrants by Land, Sea and Air (A/RES/55/25)*, 2000.

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> UN General Assembly, *Creation of an effective United Nations crime prevention and criminal justice programme (A/RES/46/152)*, 1991.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

## ***International and Regional Framework***

The *United Nations Convention against Transnational Organized Crime* (UNTOC) (2000), sometimes referred to as the Palermo Convention, is a multilateral treaty against transnational crime.<sup>192</sup> It has three supplementary protocols: *the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, and the *Protocol against the Illicit Manufacturing and Trafficking in Firearms*.<sup>193</sup> The Smuggling of Migrants Protocol (2000) is the first major framework that addresses issues related to migrant smuggling and the techniques used, and provides suggestions for regional legal frameworks.<sup>194</sup> Article 6 of the Protocol requires Member States to ensure that appropriate laws to criminalize smuggling are established and enforced.<sup>195</sup> The protocol also calls on States parties to undertake preventive measures including strengthening border control, ensuring the validity of travel documents, and information sharing among states, among other measures.<sup>196</sup>

In 2003, the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* entered into force after being adopted years earlier in 1990.<sup>197</sup> The Convention aims to take a more comprehensive stance on migration and in better understanding migration flows internationally.<sup>198</sup> It explicitly identifies different types of migrants and creates specific terms for each category.<sup>199</sup> The Convention underscores established human rights and guarantees migrants' equality of treatment.<sup>200</sup> The Convention asserts these rights for all migrants regardless of their country of origin.<sup>201</sup>

In 2010, the 12<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice adopted the *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World* (Salvador Declaration).<sup>202</sup> The Declaration calls on Member States to implement appropriate legislation and awareness-raising campaigns to combat migrant smuggling in close cooperation with relevant civil society organizations (CSOs).<sup>203</sup> The Declaration also calls on states to protect the rights and safety of migrants, regardless of their legal status.<sup>204</sup> In 2010, the General Assembly adopted the *United Nations Global Plan of Action to Combat Trafficking in Persons* (the Global Plan of Action), in resolution 64/293 (2010).<sup>205</sup> In the pursuit of crime prevention, the Global Plan of Action endorses initiatives for reducing vulnerability, developing research, implementing awareness-raising campaigns, and supporting prevention.<sup>206</sup> While the Global Plan of Action is predominantly focused on human trafficking rather than migrant smuggling, it does also call on all Member States to strengthen coordination and cooperation among states to combat migrant smuggling and related crimes and criminal enterprise.<sup>207</sup>

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<sup>192</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime* (A/RES/55/25), 2000.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime: Protocol against the Smuggling of Migrants by Land, Sea and Air* (A/RES/55/25), 2000, Art. 6.

<sup>196</sup> *Ibid.*

<sup>197</sup> UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (A/RES/45/158), 1990.

<sup>198</sup> *Ibid.*

<sup>199</sup> *Ibid.*

<sup>200</sup> *Ibid.*

<sup>201</sup> *Ibid.*

<sup>202</sup> UN Congress on Crime Prevention and Criminal Justice, *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, 2010.

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

<sup>205</sup> UN General Assembly, *UN Global Plan of Action to Combat Trafficking in Persons* (A/RES/64/293), 2010.

<sup>206</sup> *Ibid.*

<sup>207</sup> *Ibid.*

To bolster international cooperation, the Economic and Social Council (ECOSOC) adopted resolution 2014/23 on “Strengthening international cooperation in addressing the smuggling of migrants” in 2014.<sup>208</sup> The resolution encourages Member States to target smuggling organizations by strengthening national frameworks to facilitate an appropriate criminal response.<sup>209</sup> Furthermore, it reminds Member States that migrant smuggling involves a common and shared global responsibility.<sup>210</sup>

During the UN Summit for Refugees and Migrants in 2016, numerous Member States met to discuss the complications associated with borders, refugees, and regular and irregular migration.<sup>211</sup> This led to the creation of the *New York Declaration for Refugees and Migrants* (2016).<sup>212</sup> The Declaration recognizes the human rights of all migrants and refugees, and acknowledges the vulnerability of migrants to trafficking and exploitation.<sup>213</sup> The Declaration also calls on states to address the root causes of such migration and to improve data collection and monitoring, humanitarian financing, and disrupt such criminal networks through regional and multilateral cooperation.<sup>214</sup>

Following the adoption of the New York Declaration, the General Assembly developed a *Global Compact for Safe, Orderly, and Regular Migration* (2018).<sup>215</sup> The process for this compact approach to international migration began in April of 2017, and required over 18 months of negotiation and discussion becoming the first-ever UN global agreement on a common approach to international migration.<sup>216</sup> It is comprised of 23 clear objectives aimed toward reducing some of the reasons that lead migrants to seek migration, including structural factors of inequality, the socioeconomic effects of violence, and lack of education, among other factors.<sup>217</sup>

The Sustainable Development Goals (SDGs), established in the *2030 Agenda for Sustainable Development* (2015), are also relevant to this topic.<sup>218</sup> SDG 8 on decent work asserts the need for individuals to have access to fair and decent unemployment opportunities; lack of such opportunities is a central driver in irregular migration, and many of these migrants continue to struggle with fair and decent work once they arrive in their host country.<sup>219</sup> SDG 10 explicitly calls for safe, regular, and responsible migration.<sup>220</sup> It also focuses on social protection, which is especially relevant to this topic as many migrants face persistent lack of social protections in their host state without proper documentation, depriving them of education and medical care, among other critical services.<sup>221</sup> Finally, SDG 16 on peace, justice, and strong institutions reinforces the need for Member States to create strong legislation and enforcement mechanisms to combat smuggling and to prosecute the criminal organizations responsible.<sup>222</sup>

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<sup>208</sup> UN ECOSOC, *Strengthening international cooperation in addressing the smuggling of migrants (E/RES/2014/23)*, 2014.

<sup>209</sup> UN CCPCJ, *Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons (RES 20/3)*, 2011.

<sup>210</sup> UN ECOSOC, *Strengthening international cooperation in addressing the smuggling of migrants (E/RES/2014/23)*, 2014.

<sup>211</sup> UN General Assembly, *New York Declaration for Refugees and Migrants (A/RES/71/1)*, 2016.

<sup>212</sup> *Ibid.*

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, 2018.

<sup>216</sup> UN Refugees and Migrants, *Global Compact for Migration*, 2018.

<sup>217</sup> *Ibid.*

<sup>218</sup> Overseas Development Institute, *Migration and the 2030 Agenda for Sustainable Development*, 2018.

<sup>219</sup> *Ibid.*, p. 34.

<sup>220</sup> *Ibid.*, p. 5.

<sup>221</sup> *Ibid.*, pp.116-117.

<sup>222</sup> Overseas Development Institute, *Migration and the 2030 Agenda for Sustainable Development*, 2018, p. 8.



## ***Role of the International System***

The *Toolkit to Combat Smuggling of Migrants* (2010) was designed by the United Nations Office on Drugs and Crime (UNODC) to aid Member States in implementing the Palermo Protocol.<sup>223</sup> This toolkit provides Member States with recommendations for implementing best practices on the use appropriate resources, and combating problems associated with migrant smuggling.<sup>224</sup> It provides suggestions on establishing legislative and criminal measures to be taken against those who are in violation of domestic and international law, including greater cooperation between law enforcement and justice institutions between Member States.<sup>225</sup> In 2015, UNODC introduced a joint initiative called *Global Action against Trafficking and the Smuggling of Migrants* (GLO.ACT) (2015) in partnership with the European Union (EU), IOM, and the United Nations Children’s Fund (UNICEF).<sup>226</sup> It was developed to enhance the implementation of the Palermo Protocol along with UNTOC by providing further suggestions for national strategies and policies, legislative frameworks, victim assistance services, and ways to enhance transnational cooperation on this topic.<sup>227</sup> Since migrants who are smuggled are often vulnerable to the dangers of being trafficked, it is important to note UNODC’s multi-stakeholder initiative in 2007 to launch the UN Global Initiative to Fight Human Trafficking (UN.GIFT).<sup>228</sup> This initiative is designed bring together governments, business, academia, civil society, and the media to create common tools against trafficking and smuggling.<sup>229</sup> The aim is to establish an effective model of interagency collaboration, by using each entity involved to support the other entities.<sup>230</sup> This framework increases collaboration internally, and looks to increase international collaboration on the issue.<sup>231</sup>

The General Assembly created a policy forum in 2007 known as the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) to “improve coordination and cooperation between UN agencies and other international organizations to combat trafficking and smuggling in persons.”<sup>232</sup> It includes 17 different organizations in a combined effort against trafficking and smuggling in persons, including intergovernmental organizations such as the IOM.<sup>233</sup> The IOM works alongside the UN and its committees in combating migrant smuggling among other migration issues, including working with victims who have not consented to their migration or who have been exploited during the process.<sup>234</sup> It also includes the International Criminal Police Organization (INTERPOL), which has made efforts toward combating smuggling in persons.<sup>235</sup> INTERPOL created the Human Smuggling and Trafficking Message (2006), which provides law enforcement with a “standardized format” to improve communication across borders comprising of multiple languages in an effort to improve international cooperation.<sup>236</sup>

The United Nations High Commissioner for Refugees (UNHCR) worked with the Food and Agricultural Organization of the United Nations (FAO) to implement some of the principles of the New York Declaration in September 2016.<sup>237</sup> They worked in Tehran for the Solutions Strategy for Afghan Refugees, the objectives of which included introducing livestock rearing, fishing, and nutritional projects in schools attended by refugees. Following their success, they looked forward to targeting refugees and local communities across South Sudan as well.<sup>238</sup>

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<sup>223</sup> UNODC, *Toolkit to Combat Smuggling of Migrants*, 2010, pp. 27-45.

<sup>224</sup> UNODC, *Toolkit to Combat Smuggling of Migrants*, 2010, pp. 27-45; UNODC, *Toolkit to Combat Smuggling of Migrants*, 2010, p. 70-82; UNODC, *Toolkit to Combat Smuggling of Migrants*, 2010, pp. 136-140.

<sup>225</sup> UNODC, *Toolkit to Combat Smuggling of Migrants*, 2010, pp. 214-224.

<sup>226</sup> UNODC, *GLO.ACT Overview*, 2015.

<sup>227</sup> *Ibid.*

<sup>228</sup> UNODC & UN.GIFT, *Human Trafficking: An Overview*, 2008.

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.*

<sup>232</sup> UN General Assembly, *Improving the coordination of efforts against trafficking in persons (A/RES/61/180)*, 2006.

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> UNODC, *An Analytical Review 10 Years on from the Adoption of the UN Trafficking in Persons Protocol*, 2010.

<sup>236</sup> *Ibid.*

<sup>237</sup> UN General Assembly, *New York Declaration for Refugees and Migrants (A/RES/71/1)*, 2016.

<sup>238</sup> *Ibid.*

## ***Preventing the Smuggling of Migrants***

Reasons for migration vary, but one overarching motivation is the search for better social and economic opportunities in other Member States.<sup>239</sup> The process for migration through legal means often involves preparing documents, taking medical examinations, obtaining a visa, and securing a job before migrating.<sup>240</sup> This process can create barriers for low-income or uneducated people searching for enhanced social and economic opportunities in other Member States.<sup>241</sup> To overcome these barriers, some choose to migrate irregularly, without valid travel documentation.<sup>242</sup> However, this kind of migration can be dangerous for migrants.<sup>243</sup> Migrants seeking to undertake these journeys are often unaware of the risks associated with smuggling, both physical and legal.<sup>244</sup> Smugglers often operate on unreliable sources of information, since they often do not have reliable sources within the border control between Member States.<sup>245</sup> This increases the risks that migrants will be caught and/or prosecuted for illegal entry.<sup>246</sup>

Raising awareness of the dangers of migrant smuggling and promoting cooperation between Member States can help prevent migrant smuggling.<sup>247</sup> Educating migrants about the possible dangers of migrant smuggling can also reinforce existing policies and laws against fraud, bribery, and other related charges.<sup>248</sup> This may help deter illegal practices such as the falsification of documents and identify possible existing loopholes in legislation border control.<sup>249</sup> To further facilitate the spread of knowledge, UNODC launched several guides, a toolkit, and websites to serve as foundational material for other Member States to follow in implementing new policies and programs.<sup>250</sup> The UNODC toolkit also endorses awareness-raising campaigns and public service announcements to discourage potential migrants from consenting to smuggling.<sup>251</sup>

Many migrant smugglers have managed to circumvent many of the policies and barriers to prevent smuggling, and therefore it is important the root causes are also addressed.<sup>252</sup> The UNODC toolkit provides suggestions to tackle the root cause of migrant smuggling, which often involves job opportunities and economic stability in their countries of origin and bureaucratic barriers to regular migration methods.<sup>253</sup> An example program in place is the *EURES: the European Employment and Job Mobility Network*, which creates an international labor market available to all looking to apply for jobs, or companies looking to announce vacancies.<sup>254</sup> In the African continent, the Regional Conference on Refugee Protection and International Migration in West Africa identified that enhancing legal migration opportunities could also reduce the incentive for people to partake in irregular migration.<sup>255</sup>

Migrant women are particularly vulnerable to victimization, since they are subject to abuse, sexual assault, and discrimination.<sup>256</sup> Preventing crimes of this nature requires the intervention of multiple

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<sup>239</sup> UN-Women, *Women Migrant Workers' Journey Through the Margins: Labour, Migration and Trafficking*, 2016, p. 36.

<sup>240</sup> *Ibid.*, p. 37.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

<sup>243</sup> IOM, *Glossary on Migration, International Migration Law Series No. 25*, 2011.

<sup>244</sup> Jervais, Human smuggling tragedy illustrates risks immigrants are willing to take, *USA Today*, 2017.

<sup>245</sup> OECD, *Can we put an end to human smuggling?*, 2015.

<sup>246</sup> Jervais, Human smuggling tragedy illustrates risks immigrants are willing to take, *USA Today*, 2017.

<sup>247</sup> UNODC, *Toolkit to Combat Smuggling of Migrants: Understanding the Smuggling of Migrants*, 2010.

<sup>248</sup> *Ibid.*

<sup>249</sup> OECD, *Can we put an end to human smuggling?*, 2015.

<sup>250</sup> UNODC, *Toolkit to Combat Smuggling of Migrants: Understanding the Smuggling of Migrants*, 2010.

<sup>251</sup> *Ibid.*

<sup>252</sup> *Ibid.*, p. 3.

<sup>253</sup> *Ibid.*

<sup>254</sup> *Ibid.*, p. 10.

<sup>255</sup> *Ibid.*, p. 11.

<sup>256</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (A/RES/55/25)*, 2000; UN

agencies, both governmental and non-governmental, as stated in the *Handbook on the Crime Prevention Guidelines: Making them Work*.<sup>257</sup>

### **Strengthening Capacity-Building and Border Security**

Although most *Member States* have developed a system to combat migrant smuggling, a number of states lack the ability or the resources to effectively implement similar strategies.<sup>258</sup> This deficit is known as a “lack of capacity” for the Member State.<sup>259</sup> This lack of capacity is often exploited by transnational organized criminal groups.<sup>260</sup> A major issue regarding migrant smuggling is that *it is significantly easier for Member States to apprehend the migrants themselves, and whereas they may lack the capacity to investigate and prosecute migrant smugglers.*<sup>261</sup> This lack of capacity leaves a country vulnerable to an inefficient, ineffective, and unsustainable system of migration management.<sup>262</sup> Organizations such as the Pacific Immigration Directors’ Conference have worked with INTERPOL, IOM, and other related UN agencies to help strengthen capacity-building by devoting funds for research and training.<sup>263</sup> Such entities have also been helpful in analyzing existing policies and systems by developing summarized sources of the practices utilized in different areas and identifying the gaps in the systems of specific Member States.<sup>264</sup>

Border security is another key factor in determining the capacity of a Member State to mitigate migrant smuggling.<sup>265</sup> Smugglers have found different methods to overcome restricted borders, and the size and porosity of the border may present additional challenges for Member States.<sup>266</sup> Studies and simulations have shown that the more restrictive the border, the more profitable the migrant smuggling process is for the smugglers, and the riskier the journey for the migrants.<sup>267</sup> The Cross-Border and Migration Management Program (CBMM) is an intergovernmental organization focused on increasing capacity to eliminate irregular migration.<sup>268</sup> The CBMM was introduced by the IOM in 2009 and was originally designed as a 26-month program.<sup>269</sup> It is meant to foster cooperation between internal institutions within state governments and entities providing external aid.<sup>270</sup> It established a permanent training unit in order to increase border management forces within participating Member States.<sup>271</sup> It also helped to update laws pertaining to smuggling and migration.<sup>272</sup> The CBMM also provides certain Member States with continued support toward drafting adequate laws and rules to govern and prosecute migrant smuggling.<sup>273</sup>

### **Combating Smuggling Criminal Networks**

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General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women: Optional Protocol (A/RES/54/4)*, 1999.

<sup>257</sup> UNODC, *Handbook on the Crime Prevention Guidelines: Making them Work*, 2010.

<sup>258</sup> UNODC, *Toolkit to Combat Smuggling of Migrants: Understanding the Smuggling of Migrants*, 2010, p. 19.

<sup>259</sup> *Ibid.*

<sup>260</sup> *Ibid.*

<sup>261</sup> UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, 2010.

<sup>262</sup> *Ibid.*

<sup>263</sup> UNODC, *Toolkit to Combat Smuggling of Migrants: Understanding the Smuggling of Migrants*, 2010, p. 65.

<sup>264</sup> *Ibid.*, p. 65.

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

<sup>267</sup> *Ibid.*

<sup>268</sup> IOM, *Cross-Border & Migration Management*, 2009.

<sup>269</sup> *Ibid.*

<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

Transnational organized criminal groups are some of the main instigators of migrant smuggling.<sup>274</sup> It was estimated that In 2005, out of 5,836 immigrants in the Netherlands, more than 97% of them had taken the assistance of a professional smuggler.<sup>275</sup> Organized criminal groups offering services to smuggle migrants from Asia through West Africa make the migrants pay sums of 12,000-18,000 Euros, which is beyond the reach of many prospective migrants.<sup>276</sup> Migrant smuggler criminal networks have a basic structure of leaders who coordinate activities along a given route with organizers and personal contacts to assist, as well as lower level facilitators who recruit migrant participants.<sup>277</sup> These networks thrive when there is a high profit to be gained with a low risk of being captured or criminally prosecuted.<sup>278</sup> The siloed nature and independent operation of domestic border and law enforcement operations often prevent the arrest and prosecution of smugglers, and therefore greater international cooperation is required.<sup>279</sup> To this end, law enforcement agencies would need to move toward developing an interconnected system, just as criminal organizations are becoming more interconnected.<sup>280</sup> There are multiple methods to deal with transnational organized criminal groups, both domestically and internationally.<sup>281</sup>

The main aim of transnational organized criminal organizations is to make a profit.<sup>282</sup> The UNODC estimates up to \$6.7 billion is made due to the smuggling of migrants from African nations to Europe, and from South American to North America.<sup>283</sup> Tackling the profit being gained by smugglers is essential in eliminating organized smuggling networks.<sup>284</sup> In order to reduce profits and increase the risks associated with migrant smuggling, the smugglers' current business model must be disrupted.<sup>285</sup> Making legal migration easier is one method that has been used with some effectiveness.<sup>286</sup> Enhancing the capabilities of law enforcement agencies to tackle money-laundering and identifying the trail of profit has also proved useful in combating criminal networks, but more work remains to be done.<sup>287</sup>

Enhanced cooperation between law enforcement agencies across borders can also increase the detection, apprehension, and prosecution of migrant smugglers and their networks.<sup>288</sup> To combat transnational organized criminal groups on the international level, Member States have utilized tools such as extradition and have developed mutual legal assistance treaties.<sup>289</sup> Member States also hold the ability to obtain the testimony of witnesses of crimes, financial records, and other evidence from other Member States.<sup>290</sup> The formation of a mutual assistance treaty would be an important tool in handling international

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<sup>274</sup> National Criminal Justice Reference Service, *Measures to Control Transnational Organized Crime*, 2000.

<sup>275</sup> UNODC, *The role of organized crime in the smuggling of migrants from West Africa to the European Union*, 2011, p. 13.

<sup>276</sup> UNODC, *The role of organized crime in the smuggling of migrants from West Africa to the European Union*, 2011, p. 13.

<sup>277</sup> National Criminal Justice Reference Service, *Measures to Control Transnational Organized Crime, Summary*, 2000, p. 2; Europol and INTERPOL, *Migrant Smuggling Networks: Joint Europol-INTERPOL Report*, 2016.

<sup>278</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: EU Action Plan against migrant smuggling (2015-2020)*, 2015.

<sup>279</sup> National Criminal Justice Reference Service, *Measures to Control Transnational Organized Crime: Summary*, 2000, p. 14.

<sup>280</sup> Ohr, *Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes*; Wechsler, *Combating Transnational Organized Crime*, 2012.

<sup>281</sup> Ohr, *Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes*, p. 46

<sup>282</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: EU Action Plan against migrant smuggling (2015-2020)*, 2015.

<sup>283</sup> INTERPOL, *People Smuggling*.

<sup>284</sup> INTERPOL, *People Smuggling*; Europol and INTERPOL, *Migrant Smuggling Networks: Joint Europol-INTERPOL Report*, 2016.

<sup>285</sup> European Commission, *EU Action Plan against migrant smuggling*, 2015.

<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.*

<sup>288</sup> UNODC, *Smuggling of migrants: the harsh search for a better life*.

<sup>289</sup> Ohr, *Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes*, p. 58.

<sup>290</sup> *Ibid.*



criminal activities, however, the lack of political will to this current point has stalled such efforts and could lead to an incomplete or inadequate mutual assurance treaty.<sup>291</sup>

### **Conclusion**

Combating the smuggling of migrants requires the continued international cooperation of Member States.<sup>292</sup> Despite the various international instruments that address this issue, their implementation and impact remain incomplete in tackling migrant smuggling.<sup>293</sup> Increasing cooperation would synchronize the flow of information and create a more cohesive system to combat migrant smuggling.<sup>294</sup> The strengthening of capacity-building measures and border security requires an exchange of intelligence and technical expertise to be effective.<sup>295</sup> Tackling transnational organized crime organizations requires a multipronged approach and can be successful with implementation at different levels.<sup>296</sup> Cooperation between regional agencies, governmental agencies, and international agencies, as well as domestic efforts at raising awareness, could support progress in the elimination of migrant smuggling.<sup>297</sup>

### **Further Research**

As delegates proceed with their research, they should consider the following questions: What mechanisms can be implemented to prevent the smuggling of migrants? How can the CCPCJ continue promoting the *Palermo Protocol*? How can effective capacity-building measures be implemented? How should Member States combat transnational organized crime? What measures can be adopted to increase the assistance provided in accordance with the GLO.ACT? What is the best method to achieve international cooperation for border security?

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*This document illustrates examples of current border management techniques in place in many states. It details specific cases of border management techniques in different parts of the world such as EU and Mauritius. It also suggests implementing certain policies to strengthen borders and manage migration, such as facilitating the growth of legal migration and protecting the rights of migrants. Delegates will learn specific details of existing border control systems and also learn about some targeted solutions to improve them.*

United Nations, Congress on Crime Prevention and Criminal Justice, Twelfth session. (2010). *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*. Retrieved 11 August 2018 from:

[https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador\\_Declaration/Salvador\\_Declaration\\_E.pdf](https://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf)

*Adopted in 2010, the Salvador Declaration dictates the final conclusions of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice. It focuses on the areas of youth and crime, migrant smuggling, trafficking in persons, money-laundering, and cybercrime. It helps delegates identify how the money-laundering process could be*

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<sup>291</sup> Ibid.

<sup>292</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime (A/RES/55/25)*, 2000.

<sup>293</sup> IOM, *How Should Migrant Smuggling be Confronted?*, 2017.

<sup>294</sup> National Criminal Justice Reference Service, *Measures to Control Transnational Organized Crime, Summary*, 2000.

<sup>295</sup> Ibid.

<sup>296</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime (A/RES/55/25)*, 2000.

<sup>297</sup> Ibid.

*tracked, how youth migrant smuggling takes place, and the relevant dangers to migrant smuggling.*

United Nations, General Assembly, Fifty-fifth session. (2000). *United Nations Convention against Transnational Organized Crime (A/RES/55/25)* [Resolution]. Retrieved 8 August 2018 from: <http://undocs.org/A/RES/55/25>

*Adopted by the General Assembly in 2000, this Convention is a highly important document when conducting research on this topic. Still prevalent to this day, the principles and recommendations are valuable to understanding and tackling this topic. It discusses the major issues regarding transnational crimes and heavily focuses on the issue of migrant smuggling, focusing on the need to develop a legal framework. This document provides the foundation for delegates to build their research on following on with the supplementary material to this Convention.*

United Nations, General Assembly, Fifty-fifth session. (2000). *United Nations Convention against Transnational Organized Crime: Protocol against the Smuggling of Migrants by Land, Sea and Air (A/RES/55/25)* [Resolution]. Retrieved 8 July 2018 from: <http://undocs.org/A/RES/55/25>

*Adopted by the UN General Assembly in 2000, this treaty is one of the three Palermo Protocols aimed at combatting trafficking and smuggling globally. It aims at the protection of migrants and reduction of organized crime and traffickers. It suggests legal frameworks that Member States can adopt to tackle the issue and also provides border security suggestions. The protocol also calls for international cooperation in order to alleviate the socioeconomic issues causing the migration. The Protocol does not provide a legal regime to prevent migrant smuggling, but instead proves a web of rights, obligations, and responsibilities.*

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*This resolution identifies the negative impact of trafficking and migrant smuggling on human dignity, rights, and development. The report emphasizes that migrant smuggling not only reduces economic development, but is also caused due to a lack of socioeconomic opportunities. In addition to restating previously published resolutions, this resolution 65/230 recalls all the benefits gained from collaborating with different intergovernmental agencies and endorsed future collaboration as well.*

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*This document presents an overall perspective of migrant smuggling for legal practitioners and governments of Member States. It analyzes the different sources of international law that regulate cooperation to combat the smuggling of migrants. Additionally, it addresses the national framework suggesting legislative rules that Member States should form in order to effectively combat smuggling of migrants. Finally, it provides an analysis of previously implemented governmental actions such as criminal justice, victim assistance, reintegration into society and prevention of smuggling of migrants. Delegates can use this toolkit to identify previously implemented solutions and determine what to use and what not to use.*

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*The 10 year review is an important document in identifying the key organizations involved in the issue of irregular migration. This document lists intergovernmental organizations, law enforcement organizations, and NGOs. It specifies key actions taken previously and identifies the most successful methods implemented in combatting human trafficking and*

*migrant smuggling. It illustrates the different agencies, such as the IOM, INTERPOL, and the steps taken by these agencies toward combatting migrant smuggling.*

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*This website serves as the base of the United Nations Global Action against Trafficking and the Smuggling of Migrants, which has already been successful in aiding migrants in and from 13 different countries. The GLO.ACT is a 4-year joint initiative designed to address trafficking and smuggling in persons. This website contains the details of the objectives, the methods used, and the final goals of the initiative. It also includes information on how migrant smuggling is addressed throughout the 2030 Agenda.*

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*This website is the ideal starting point for anyone unfamiliar with this topic and its development in the international system. It provides readers with a brief introduction to migrant smuggling and explores the main causes and concerns regarding this issue. This website details the multiple protocols established by the UNODC regarding trafficking, including the Protocol against the Smuggling of Migrant by Land, Sea and Air. It also gives an overview of what the UNODC has done.*

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*This handbook integrates the concept of crime prevention and criminal justice and also describes the different approaches and theories of preventing criminal activity. 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. The report provides a comprehensive evaluation of the methods used to combat criminal organizations. It can provide delegates with the most effective methods to combat specific parts of transnational organized criminal organizations.*

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### III. Restorative Justice in Criminal Matters

#### *Introduction*

Criminal justice systems can serve a range of different purposes, including offender punishment, crime deterrence, crime prevention, adherence to the rule of law, maintenance of public order, and support for crime victims.<sup>298</sup> Conventional Western criminal justice practices, which have formed the basis for other many justice systems internationally, are largely punitive and based on the notion that crimes are violations of the laws of a state, and therefore regarded as offenses against the state itself.<sup>299</sup> Authorities are consequently required to hold criminal offenders accountable by punishing them.<sup>300</sup> Victims and their needs after experiencing harm are secondary to this offender-centered approach.<sup>301</sup> Excessive court caseloads, high incarceration costs, overcrowded prisons, and high rates of crime reoccurrence are additional shortcomings of conventional justice systems.<sup>302</sup> As of 2015, 10.35 million people were imprisoned around the world, and among them, over one million children.<sup>303</sup>

Restorative justice recognizes that crimes have victims, whether those be direct victims or the community at large.<sup>304</sup> It focuses on the needs of victims and the gives offenders the responsibility of making amends to victims and the broader community affected.<sup>305</sup> Furthermore, research suggests that involved communities experience important benefits from restorative justice processes, such as reduced reoffending rates, increased safety, and a stronger sense of community.<sup>306</sup> Reconsiderations of contemporary understandings of the relationships between offenders, victims, communities, and the state have gained more traction internationally in recent years.<sup>307</sup> As a response, the Commission on Crime Prevention and Criminal Justice (CCPCJ) recognized the need to draft basic principles and agreed on a definition in 2002:

“Restorative process’ means any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing and sentencing circles.”<sup>308</sup>

Restorative justice is a promising approach to criminal justice reform, but there are ongoing challenges in its current structure and implementation.<sup>309</sup> In order to make restorative justice more accessible and be implemented more broadly, the international community should consider challenges such as victim-

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<sup>298</sup> University of Portsmouth, *Functions and Aims of the Criminal Justice System*, 2003.

<sup>299</sup> Zehr & Gohar, *The Little Book of Restorative Justice*, 2002, p. 19.

<sup>300</sup> Umbreit, *Restorative Justice in the Twenty-First Century: A Social Movement Full of Opportunities and Pitfalls*, 2005, p. 254.

<sup>301</sup> UN CCPCJ, *Report of the Meeting of the Group of Experts on Restorative Justice (E/CN.15/2002/5/Add.1)*, 2002, p. 5.

<sup>302</sup> Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, 2007, p. 11.

<sup>303</sup> Walmsley, *World Prison Population List*, 2016, p. 2; UNICEF, *Justice for Children: Detention as a Last Resort: Innovative Initiatives in the East Asia and Pacific Region*, 2004, p. 4.

<sup>304</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006, p. 6.

<sup>305</sup> Ames, *Restorative Justice: Including Victims, Offenders and Communities in Criminal Justice Dialogue*, 2007.

<sup>306</sup> Beck, *Transforming Communities: Restorative Justice as a Community Building Strategy*, 2012; Community Justice Network of Vermont, *Benefits of Restorative Justice*, 2018.

<sup>307</sup> UN CCPCJ, *Report of the Meeting of the Group of Experts on Restorative Justice (E/CN.15/2002/5/Add.1)*, 2002, p. 5.

<sup>308</sup> UN ECOSOC, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (E/RES/2002/12)*, 2002.

<sup>309</sup> Office of the Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children*, 2013, pp. 35-38.

offender relations, application to serious crimes, gaps in monitoring and evaluation processes, and discrepancies between normative claims and practical implementation.<sup>310</sup>

### ***International and Regional Framework***

The *Universal Declaration of Human Rights* (UDHR), which was adopted by the UN General Assembly in 1948, centers on upholding the dignity and equality of all human beings and their inherent and inalienable fundamental rights.<sup>311</sup> Articles 9, 10, and 11 of the UDHR explicitly recognize that suspected or convicted criminal offenders are entitled to be treated in accordance with these rights; specifically, they are entitled to a fair trial, freedom from arbitrary detention or arrest, and the presumption of innocence until proven otherwise.<sup>312</sup> Building on these fundamental rights, the United Nations (UN) Congress on the Prevention of Crime and the Treatment of Offenders adopted the *UN Standard Minimum Rules for the Treatment of Prisoners* in 1955 to ensure humane treatment for people being detained.<sup>313</sup> While outlining the basic idea behind incarcerating criminal offenders to protect society against crime, as in Article 58, Article 60.2 also emphasizes the necessity of reintegrating prisoners into society after their release.<sup>314</sup> In response to increasing prison populations and prison overcrowding, the UN General Assembly adopted in 1990 the *UN Standard Minimum Rules for Non-Custodial Measures* (Tokyo Rules) in order to ensure humane treatment and to promote alternatives to imprisonment.<sup>315</sup> The outlined non-custodial measures are built upon the foundation of restorative justice.<sup>316</sup> Among them is the goal to promote a sense of responsibility among offenders toward society, as in Article 1.2, and the need to respect the rights of offenders, victims, and the concerns of society alike, outline in Article 1.4.<sup>317</sup> The Tokyo Rules list standards and requirements that are essential to consider in the implementation process of non-custodial measures, including rules for community participation and guidance for scientific research.<sup>318</sup>

Concerning the victims of criminal offenses, Article 8 of the UDHR recognizes their right to an effective judiciary, entitling victims to a fair process.<sup>319</sup> The 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* further elaborates on this human right by focusing on the victim's perspective.<sup>320</sup> The Declaration also recognizes alternative measures to traditional criminal justice by suggesting, where appropriate, the use of informal mechanisms to facilitate central elements of restorative justice, such as conciliation and redress for victims.<sup>321</sup> Although none of these instruments refer to restorative justice as such, the principles discussed in these documents are consistent with the core values of restorative justice.<sup>322</sup> These normative frameworks paved the way for a victim-included approach, revealed concern about isolating offenders from society, and have been used by guiding bodies to advance restorative justice.<sup>323</sup>

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<sup>310</sup> Lyubansky & Shpungin, *Challenging Power Dynamics in Restorative Justice*, 2015; Wood & Suzuki, *Four Challenges in the Future of Restorative Justice*, 2016; Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, 2007.

<sup>311</sup> UN General Assembly, *Universal Declaration of Human Rights (A/RES/217 A (III))*, 1948.

<sup>312</sup> *Ibid.*, Art. 9-11.

<sup>313</sup> UN Congress on the Prevention of Crime and Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners (A/CONF.6/L.5)*, 1955.

<sup>314</sup> *Ibid.*, Art. 58, 60.

<sup>315</sup> UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) (A/RES/45/110)*, 1990.

<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.*

<sup>318</sup> *Ibid.*, Art. 17, 21.

<sup>319</sup> *Ibid.*, Art. 8.

<sup>320</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34)*, 1985.

<sup>321</sup> *Ibid.*, Art. 7.

<sup>322</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006, pp. 7-11.

<sup>323</sup> UN ECOSOC, *Restorative Justice in Criminal Matters (E/CN.15/2018/L.5)*, 2018; UN ECOSOC, *Restorative Justice in Criminal Matters (E/RES/2016/17)*, 2016.

The UN General Assembly adopted the *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century* (Vienna Declaration) in 2000.<sup>324</sup> The Vienna Declaration encourages Member States to introduce restorative justice practices as mechanisms for action plans in support of crime victims and to develop appropriate policies and programs "that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties."<sup>325</sup> In response, the Economic and Social Council (ECOSOC) adopted the *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (Basic Principles) in 2002 to establish the foundation for a common understanding of restorative justice and to provide guidance in the implementation process.<sup>326</sup> Attempting to assess the use and application of the Basic Principles in 2016, ECOSOC adopted resolution 2016/17 on "Restorative Justice in Criminal Matters."<sup>327</sup> The resolution requests the Secretary-General to seek comments from relevant stakeholders and convene a meeting of experts to exchange best practices and review new developments in the area of restorative justice.<sup>328</sup> The resolution also calls for Member States to assist each other in the implementation process by providing technical support to developing countries.<sup>329</sup>

Over time, the international community recognized the importance of restorative justice mechanisms, which is reflected by the outcome documents of both the 12<sup>th</sup> and the 13<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice, the *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World* adopted in 2010, and the *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation* adopted in 2015.<sup>330</sup> Both outcome documents reaffirmed Member States' and CCPCJ's commitment to reviewing and reinforcing restorative justice practices.<sup>331</sup>

The *2030 Agenda for Sustainable Development* (2015) established the Sustainable Development Goals (SDGs), including Goal 16 on the commitment to build effective, accountable and inclusive institutions at all levels.<sup>332</sup> Goal 16 also sets the targets of ensuring inclusive and participatory decision-making at all levels, providing equal access to justice for all, and promoting peaceful and inclusive societies for sustainable development, all of which correspond with the central tenants of restorative justice.<sup>333</sup>

Regionally, the Committee of Ministers of the Council of Europe adopted *Recommendation No. R (99) 19 on Mediation in Penal Matters in 1999*.<sup>334</sup> This recommendation was highly influential in promoting the practical foundations of victim-offender mediation.<sup>335</sup> In response to the increased application of restorative justice in some of its Member States, the Council of Europe recently adopted

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<sup>324</sup> UN General Assembly, *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century* (A/RES/55/59), 2000.

<sup>325</sup> *Ibid.*, Art. 28.

<sup>326</sup> UN ECOSOC, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (E/RES/2002/12), 2002.

<sup>327</sup> UN ECOSOC, *Restorative Justice in Criminal Matters* (E/RES/2016/17), 2016.

<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*

<sup>330</sup> UN Congress on Crime Prevention and Criminal Justice, *Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, 2010; UN Congress on Crime Prevention and Criminal Justice, *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation*, 2015.

<sup>331</sup> *Ibid.*

<sup>332</sup> UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development* (A/RES/70/1), 2015.

<sup>333</sup> *Ibid.*

<sup>334</sup> Council of Europe, *Recommendation No. R (99) 19 of the Committee of Ministers to Member States Concerning Mediation in Penal Matters*, 1999.

<sup>335</sup> *Ibid.*

*Recommendation CM/Rec(2018)8 Concerning Restorative Justice in Criminal Matters* as a means to promote revised standards and encourage Member States to develop innovative approaches to restorative justice.<sup>336</sup>

### **Role of the International System**

At its 27<sup>th</sup> session in May 2018, CCPCJ discussed restorative justice and adopted resolution 27/6 on “Restorative Justice in Criminal Matters.”<sup>337</sup> The resolution encourages Member States to exchange best practices and provide assistance to one another in the development and implementation of research and training in restorative justice practices.<sup>338</sup> CCPCJ works closely with the UN Office on Drugs and Crime (UNODC), which plays a key role in providing sustained technical assistance to Member States on a national and regional level.<sup>339</sup> In order to guide the implementation of restorative justice mechanisms, UNODC published its *Handbook on Restorative Justice Programmes* in 2006.<sup>340</sup> This handbook provides definitions of key concepts, introduces several types of programs, discusses strategies for implementation, and illustrates potential risks and pitfalls of restorative justice programs.<sup>341</sup> Together with the Basic Principles, this document serves as the foundation of the CCPCJ’s and UNODC’s work to guide the development and implementation of restorative justice in criminal matters.<sup>342</sup>

Partnering with the Office of the Special Representative of the Secretary-General on Violence against Children and the Office of the High Commissioner for Human Rights, UNODC published a report in 2012 on the *Prevention of and Response to Violence against Children within the Juvenile Justice System*.<sup>343</sup> This report highlights restorative justice as an important mechanism to keep children out of the criminal justice system.<sup>344</sup> The report advocates for the necessity to reduce the number of incarcerated children and recommends strategies to prevent children from experiencing violence in the juvenile justice system, including through the application of restorative justice.<sup>345</sup> Following this report, the Office of the Special Representative of the Secretary-General on Violence against Children released a report on *Promoting Restorative Justice for Children* (2013), which examines the opportunities and challenges of restorative justice for children involved experiencing crime as victims, offenders, or witnesses.<sup>346</sup>

The UN Children’s Fund (UNICEF) has also supported projects on restorative justice, including the Children’s Chance for Change project in Serbia and Montenegro that focused on reforming the juvenile justice system to reduce juvenile incarceration.<sup>347</sup> In South Africa, the UN Development Programme (UNDP) and the Government of South Africa launched the Child Justice Project to promote access to non-custodial measures for children and reduce the number of children in correctional facilities.<sup>348</sup>

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<sup>336</sup> Council of Europe, *Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States Concerning Restorative Justice in Criminal Matters*, 2018.

<sup>337</sup> UN ECOSOC, *Restorative Justice in Criminal Matters (E/CN.15/2018/L.5)*, 2018.

<sup>338</sup> *Ibid.*

<sup>339</sup> UN ECOSOC, *Use and Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice (E/CN.15/2013/11)*, 2013.

<sup>340</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006.

<sup>341</sup> *Ibid.*

<sup>342</sup> UN ECOSOC, *Restorative Justice in Criminal Matters (E/CN.15/2018/L.5)*, 2018.

<sup>343</sup> UN HRC, *Joint Report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on Prevention of and Responses to Violence against Children within the Juvenile Justice System (A/HRC/21/25)*, 2012.

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.*

<sup>346</sup> Office of the Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children*, 2013.

<sup>347</sup> UNICEF, *Introduction of the Restorative Justice Concept and Victim-offender Mediation Practice in Serbia and Montenegro within the “Children’s Chance for Change” Project: A Juvenile Justice Reform Initiative in Serbia and Montenegro*.

<sup>348</sup> Del Buono & Raunch, *Capacity Building in the Area of Child Justice (The Child Justice Project) SAF/97/034: Report of the Final Evaluation Mission*, 2003.



Prison Fellowship International (PFI) is a Christian civil society organization (CSO) that aims to improve the situation of incarcerated offenders.<sup>349</sup> With restoration and rehabilitation as their core goal, PFI operates a website called Centre of Justice and Reconciliation to promote restorative justice by providing information, resources, and educational tools on the subject.<sup>350</sup> Another important regional CSO in this field is the European Forum for Restorative Justice (EFRJ), which organizes training courses and conducts research projects to enhance the understanding, use, and effectiveness of restorative justice processes throughout Europe.<sup>351</sup> In addition, the EFRJ aims to raise public awareness about restorative practices and promotes dialogue between researchers, practitioners, and policymakers.<sup>352</sup>

### ***Overcoming Challenges in Implementing and Adapting Restorative***

There are many obstacles Member States face when implementing restorative justice, including public perception of what restorative justice means and entails.<sup>353</sup> Some perceive restorative justice merely as a resort for criminal offenders to avoid punitive criminal justice measures, while other community members have safety concerns and consider restorative justice processes to be unfairly lax on perpetrators.<sup>354</sup> Rule 1.4 of the Tokyo Rules emphasizes the importance of balancing "the rights of individual offenders, the rights of victims, and the concerns of society for public safety and crime prevention" when implementing the Tokyo Rules.<sup>355</sup> As community participation is crucial to the implementation of non-custodial measures, concerns of the public have to be persistently addressed and considered.<sup>356</sup>

Disseminating accurate information and raising awareness about the operating methods of restorative justice is another precondition to a successful implementation and application.<sup>357</sup> In most cases, the media has an important role to play in its position as a transmitter of information.<sup>358</sup> Thus, the necessity for governments to cooperate with the media by regularly forwarding data and research results, as well as providing updates on new developments, cannot be overestimated.<sup>359</sup> However, not all Member States have effective monitoring mechanisms and regular evaluation programs in place, even though the results are vital for addressing both public concern, as well as sensational and inaccurate press coverage of restorative justice.<sup>360</sup> Moreover, analyzing accumulated data supports evidence-based policies and creates programs adapted to individual Member States' needs.<sup>361</sup>

Although restorative justice measures are characterized by their informality in contrast to conventional criminal justice responses with their standardized procedures, their implementation requires firm and clear legislation in order to eliminate risks and safeguard the rights of victims, offenders, and any other individuals or community members that may be involved in a restorative process.<sup>362</sup> However, many

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<sup>349</sup> Prison Fellowship International, *Who We Are*, 2018.

<sup>350</sup> Centre for Justice & Reconciliation, *About Us*, 2018.

<sup>351</sup> European Forum for Restorative Justice, *About the Forum*.

<sup>352</sup> *Ibid.*

<sup>353</sup> Office of the Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children*, 2013, p. 35.

<sup>354</sup> *Ibid.*

<sup>355</sup> UN General Assembly, *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)* (A/RES/45/110), 1990.

<sup>356</sup> *Ibid.*

<sup>357</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006, p. 78.

<sup>358</sup> UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, 2013, p. 42.

<sup>359</sup> UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, 2007, p. 78.

<sup>360</sup> UNODC, *Handbook on Strategies to Reduce Overcrowding in Prisons*, 2013, p. 42.

<sup>361</sup> *Ibid.*, p. 43.

<sup>362</sup> Fellegi, *Meeting the Challenges of Introducing Victim-Offender Mediation in Central and Eastern Europe*, 2003, p. 74; Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children*, 2013, pp. 36-39.

Member States have introduced restorative justice practices without implementing adequate legislation, due to lack of experience, expertise, practicability, or replicability.<sup>363</sup>

### ***Ensuring Victim-centered Justice***

Although the involvement of crime victims in restorative processes is fundamental to restorative justice itself, practical application does not always reflect this core feature.<sup>364</sup> While some Member States lack resources to create a right of access to restorative justice services, others do not allocate existing resources to inform, prepare, and support victims.<sup>365</sup> When decision-makers, governments, or judiciaries decide to undertake restorative justice primarily for reasons of court relief, reduced prison population, and reduced prison costs, victim relief becomes an objective of low priority.<sup>366</sup> Research suggests that lack of preparation and information can result in victims' misconceptions on the intended goals and potential risks of restorative justice, thus leading to difficulties in achieving restorative outcomes, as well as victim absence due to lack of interest.<sup>367</sup>

This may increase the risk for secondary victimization through the judicial system.<sup>368</sup> If restorative justice processes are insensible to victim-offender relations, reproduced power imbalances can dominate face-to-face interactions with perpetrators.<sup>369</sup> The Basic Principles insist on the need to consider power imbalances in addition to the ability to withdraw from the process at any time; providing ample information about restorative justice and its possible outcomes may help prevent secondary victimization.<sup>370</sup> Yet, evidence suggests that some victims still feel coerced to participate prior to the process, intimidated during the process, and afraid of re-victimization after the process.<sup>371</sup>

As a consequence, some Member States have established clear criteria and limitations to the application of restorative justice.<sup>372</sup> The 2011 *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence* (Istanbul Convention) prohibits "mandatory alternative dispute resolution processes" in cases of violence against women.<sup>373</sup> Extensive facilitator training is necessary to adequately prepare crime victims for restorative processes and to understand and identify the dynamics of violence, domination, and power.<sup>374</sup> Routinization and bureaucratization of restorative processes, however, may lead to the inability to adapt to the victim's needs and address their individual concerns.<sup>375</sup> In order to serve the needs of victims in these processes, it will be helpful for states to consider the challenges and potential problems with victim participation as restorative processes are developed.<sup>376</sup>

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<sup>363</sup> Office of the Special Representative of the Secretary-General on Violence Against Children, *Promoting Restorative Justice for Children*, 2013, pp. 35-36.

<sup>364</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006, pp. 6, 69.

<sup>365</sup> Council for Penological Co-operation, *Commentary to Recommendation CM/Rec (2018) XX of the Committee of Ministers to Member States Concerning Restorative Justice in Criminal Matters*, 2018, p. 4.

<sup>366</sup> Mika et al., *Listening to Victims - A Critique of Restorative Justice: Policy and Practice in the United States*, 2004, p. 4.

<sup>367</sup> Wood & Suzuki, *Four Challenges in the Future of Restorative Justice*, 2016, p. 155.

<sup>368</sup> European Forum for Restorative Justice, *Victims and Restorative Justice: An Empirical Study of the Needs, Experience and Position of the Victim within the Restorative Justice Practices: Country Reports*, 2015, p. 134.

<sup>369</sup> Cossins, *Restorative Justice and Child Sex Offences: The Theory and the Practice*, 2008, p. 364.

<sup>370</sup> UN ECOSOC, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (E/RES/2002/12)*, 2002.

<sup>371</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006, p. 70.

<sup>372</sup> UN CCPCJ, *A Summary of Comments Received on the Use and Application of the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (E/CN.15/2017/CRP.1\*)*, 2017.

<sup>373</sup> Council of Europe, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, 2011.

<sup>374</sup> UNODC, *Handbook on Restorative Justice Programmes*, 2006, p. 70.

<sup>375</sup> *Ibid.*, p. 69.

<sup>376</sup> *Ibid.*, pp. 69-70.

## Conclusion

Within the last decades, the application of restorative justice programs increased significantly around the world.<sup>377</sup> Restorative justice elements have become a supplement to standard criminal proceedings.<sup>378</sup> This can be traced back to restorative justice's capacity to meet the conceptual shortcomings of more established notions of criminal justice, in particular a focus on punitive measures, such as offender-centeredness.<sup>379</sup> In addition, the application of restorative justice promises to counter practical problems, such as overcrowded prisons and recidivism rates.<sup>380</sup> CCPCJ and UNODC have provided an important impact on the development and implementation of restorative justice by setting guidelines, providing training assistance, facilitating the exchange of best practices and by making the topic an indispensable part of its agenda.<sup>381</sup> The constantly evolving nature of the field eventually has led to an increased diversification of restorative justice programs, offering further possibilities as well as creating new challenges.<sup>382</sup> Victim-offender relations, the use of restorative justice in serious crimes, and the systematic collection and evaluation of data are repeatedly cited as key challenges to the effective application and future development of restorative justice in criminal matters.<sup>383</sup>

## Further Research

With the increasing implementation and diversification of restorative justice in criminal matters, these questions should be considered in order to reach a deeper understanding of the topic: What can CCPCJ do to support Member States in implementing restorative justice? How can CCPCJ help Member States determine when restorative justice is appropriate? How can UNODC guide the systematic collection and evaluation of data on restorative justice initiatives? How can CCPCJ revise and update basic standards of restorative justice in cooperation with Member States and CSOs? What are the main barriers to implementing restorative justice and how can CCPCJ assist and encourage Member States to overcome them? How can CCPCJ ensure that restorative justice approaches are not solely used for and focused on practical problems such as prison overcrowding? How can Member States safeguard the rights of and reduce risks for both victims and offenders? How can Member States preserve the flexibility and informal nature of restorative justice despite formal legalization into criminal law? What role do CSOs play in the implementation of restorative justice?

## Annotated Bibliography

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*This essay was written prior to the adoption of the Basic Principles and released in 2002 by the British Journal of Criminology. In this essay, Braithwaite discusses the conflict between the bottom up nature of restorative justice and the necessity to set standards from top down. Braithwaite classifies standards in three different categories (constraining, maximizing, and emerging) and proposes a set of principles for every dimension respectively. Although this essay is highly theoretical in its approach to restorative justice, it provides guidance for the further evolution of standards. In addition, it contextualizes the discussion around the formation of the Basic Principles and may help delegates understand the nature of standards, their effect, and their utility.*

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<sup>377</sup> Miers, *An International Review of Restorative Justice*, 2001, p. 5.

<sup>378</sup> Llewellyn & Howse, *Restorative Justice - A Conceptual Framework*, 1998, p. 22.

<sup>379</sup> Gavrielides, *Restorative Justice Theory and Practice: Addressing the Discrepancy*, 2007, p. 11.

<sup>380</sup> Zehr & Gohar, *The Little Book of Restorative Justice*, 2002, p. 10.

<sup>381</sup> UNODC, *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, 2016, pp. 79-95.

<sup>382</sup> European Forum for Restorative Justice, *Victims and Restorative Justice: An Empirical Study of the Needs, Experience and Position of the Victim within the Restorative Justice Practices: Country Reports*, 2015, p. 98.

<sup>383</sup> Wood & Suzuki, *Four Challenges in the Future of Restorative Justice*, 2016.

Gavrielides, T. (2007). *Restorative Justice Theory and Practice: Addressing the Discrepancy*. Helsinki, Finland: Hakapaino Oy. Retrieved 11 August 2018 from: [https://www.peacepalacelibrary.nl/ebooks/files/HEUNI\\_8oiteshk6w.pdf](https://www.peacepalacelibrary.nl/ebooks/files/HEUNI_8oiteshk6w.pdf)

*This book deals with the repeatedly cited disconnection between theory and practice in the field of restorative justice. Theo Gavrielides provides not only a detailed record of the evolution of restorative justice, but also analyzes the gap between restorative justice theory and practice and presents findings on the application of restorative justice in cases of hate crimes and sexual offenses. Delegates should especially engage with chapter one which offers comprehensive information on the most important documents and influential programs that shaped the understanding and application of restorative justice.*

United Nations, Commission on Crime Prevention and Criminal Justice. (2017). *A Summary of Comments Received on the Use and Application of the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (E/CN.15/2017/CRP.1\*)* [Conference Paper]. Retrieved 9 July 2018 from:

[https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_26/E\\_CN15\\_2017\\_CRP1\\_e\\_V1703590.pdf](https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/E_CN15_2017_CRP1_e_V1703590.pdf)

*This document summarizes comments made by Member States and other stakeholders about national experiences and best practices concerning the application of the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. It explores various existing restorative justice programs in different Member States, addresses implementation measures, and assesses the role of UN entities, intergovernmental organizations, NGOs, and further relevant actors. Delegates will find this document useful as it reflects the current level of implementation and provides numerous examples of restorative justice programs in different Member States.*

United Nations, Commission on Crime Prevention and Criminal Justice. (2018). *Outcome of the Expert Group Meeting on Restorative Justice in Criminal Matters: Report of the Secretary-General (E/CN.15/2018/13)*. Retrieved 9 July 2018 from: <https://undocs.org/E/CN.15/2018/13>

*Following a request by ECOSOC, this report summarizes the discussions of 25 restorative justice experts reviewing the use and application of the Basic Principles. The expert group furthermore agreed that since the adoption of the Basic Principles, Member States have developed a more nuanced understanding of important key concepts. The expert group additionally noted that Member States had yet to explore the full potential of restorative justice and therefore stressed the need to further develop public awareness and support for restorative justice. Since this document additionally mentions new developments in the area of restorative justice, it provides delegates with an overview of issues of increasing importance.*

United Nations, Economic and Social Council. (2002). *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (E/RES/2002/12)* [Resolution]. Retrieved 9 July 2018 from: <http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>

*This landmark ECOSOC resolution is a declaration of basic principles of restorative justice programs. It provides useful definitions of important terms in the context of restorative justice and can be used as a general guideline for the use and operation of restorative justice programs. The Basic Principles also offer safeguards to be implemented alongside restorative justice programs to ensure rights are upheld and to minimize risks for all persons involved, such as consideration of cultural differences and voluntary participation. Delegates will find this source useful as it is a good starting point to get an overview of the official terms and definitions of restorative justice.*

United Nations, Economic and Social Council. (2013). *Use and Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice: Report of the Secretary-General (E/CN.15/2013/11)*. Retrieved 12 August 2018 from <https://undocs.org/E/CN.15/2013/11>

*This report of the Secretary-General reflects the discussion of Member States at the twenty-second session of CCPCJ in 2013 on the application of the standards set by the*

*United Nations in the field of crime prevention and criminal justice. Although restorative justice is not explicitly mentioned, this practical review provides delegates with an overview and assessment of the working mechanisms of CCPCJ and UNODC, and reveals possibilities in the mandate of both agencies to act. Delegates should pay attention to the section that outlines how UNODC has dealt with issues that also present a challenge in the context of restorative justice, such as systematic data collection.*

United Nations, Economic and Social Council. (2018). *Restorative Justice in Criminal Matters (E/CN.15/2018/L.5)* [Draft Resolution]. Retrieved 11 August 2018 from: <https://undocs.org/E/CN.15/2018/L.5>

*This CCPCJ resolution on restorative justice was adopted at the most recent annual meeting in May 2018 and has yet to be adopted by ECOSOC. In it, CCPCJ places a special focus on exchange of best practices among Member States and assistance to one another in the development and implementation of research and training. Delegates will find this source helpful as it reflects the most recent discussions Member States had on the topic, and thus indicates current and future issues to be addressed.*

United Nations, Office of the Special Representative of the Secretary-General on Violence Against Children. (2013). *Promoting Restorative Justice for Children* [Report]. Retrieved 12 August 2018 from: <https://violenceagainstchildren.un.org/content/promoting-restorative-justice-children>

*This report explores the opportunities restorative justice has to offer to children, whether they are involved in crime as victims, offenders, or witnesses. It discusses fundamental questions, such as "When is restorative justice appropriate?" or "How are procedural safeguards for children ensured in the restorative justice process?" prior to presenting the benefits of restorative justice for children and strategies to overcome challenges. Despite the special focus on children, many of the challenges described apply to implementing restorative justice in general. Since this report is very concrete and practically-oriented, delegates should carefully study its recommendations.*

United Nations Office on Drugs and Crime. (2006). *Handbook on Restorative Justice Programmes*. Retrieved 9 July 2018 from:

[https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf)

*This handbook, which was published by the UNODC in 2006, gives a comprehensive overview of definitions, features, underlying assumptions, and objectives of restorative justice. Additionally, it provides a practically-oriented overview of restorative justice approaches as well as strategies of implementation, and methods of monitoring and evaluation. Moreover, the handbook is supplemented by case studies of different restorative justice formats from various cultural contexts. Delegates will find this handbook useful since it presents an exhaustive depiction of the theoretical and practical aspects of restorative justice and presents program implementation mechanisms that have been developed so far.*

Zehr, H. & A. Gohar (2002). *The Little Book of Restorative Justice*. Retrieved 10 August 2018 from: <https://www.unicef.org/tdad/littlebookrjpakaf.pdf>

*In this book, Zehr provides a short overview of the basic premises of restorative justice. In doing so, he outlines underlying assumptions and benefits, addresses misconception, and describes the range of application and forms, as well as the various goals of restorative justice. He concludes his explanations with the observation that restorative justice is a way of life grounded in the values of respect, responsibility, and relationship. Although this book provides a very philosophical, less practically-oriented perspective on restorative justice, it is important as it constitutes one of the major starting points and reference works in the evolution of restorative justice in criminal matter and will help delegates understand the origins of many concepts discussed throughout the restorative justice literature.*

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