

Restorative Justice & the United Nations



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Restorative justice
is a paradigm,
not a program.

Restorative Justice & the UN

- 1) Domestic criminal justice
- 2) Trans-national justice
- 3) Transitional justice
- 4) International justice



United Nations Congresses on Crime Prevention & Criminal Justice

To date, eleven United Nations Congresses have been held in:

- 1) Geneva in 1955
- 2) London in 1960
- 3) Stockholm in 1965
- 4) Kyoto in 1970
- 5) Geneva in 1975
- 6) Caracas in 1980
- 7) Milan in 1985
- 8) Havana in 1990
- 9) Cairo in 1995
- 10) Vienna in 2000
- 11) Bangkok in 2005



Alliance of NGOs on Crime Prevention & Criminal Justice

The Alliance was formed in 1972 as a coalition of major NGOs having consultative status with the United Nations and dedicated to crime prevention and criminal justice improvements. The Alliance sponsored ancillary sessions at UN Crime Congresses beginning in 1975.

www.cpcjalliance.org





Alliance of NGOs on Crime Prevention & Criminal Justice

The Ninth Congress, conducted in Cairo in 1995, included several sessions on the theme of crime victims and restorative justice. While interest in the topic was strong, presentations during Ancillary Meetings had little effect on the debate during the Committee and Plenary Sessions of the Congress itself. As a result, a group of NGOs participating in the Alliance on Crime Prevention and Criminal Justice (NY) decided to form a Working Party on Restorative Justice.





Alliance of NGOs on Crime Prevention & Criminal Justice

“It is our belief that the United Nations has a unique opportunity to help shape a new model for criminal justice and crime prevention, one which will serve to restore peace in communities and societies throughout the world.”

Working Party on Restorative Justice
(1998).

www.cpcjalliance.org





Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

The purpose of the Working Party was to stimulate sufficient international awareness and interest in restorative justice to make it an item of discussion at the Tenth Crime Congress to be held in 2000 in the Committee and Plenary Sessions of the Congress itself, not simply in the ancillary meetings.

Worked under two charters approved by the Alliance.

- The first had as its objective making restorative justice a discussion topic at the Tenth Crime Congress.
- The second, adopted after the first had been realized, was to promote UN adoption of basic principles on the use of restorative justice.



Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

The first tasks of the Working Party were:

- 1) Do an overview of current literature on Restorative Justice.
- 2) Develop a working definition of Restorative Justice.
- 3) Review nomenclature and decide on the most appropriate title.



Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

1) Overview of current literature on Restorative Justice.

Paul McCold, *Restorative Justice: Annotated Bibliography* (Monsey, NY: Criminal Justice Press, 1997).

A comprehensive annotated bibliography of articles and research concerning use of restorative justice worldwide. The 500+ entries in the bibliography have been since put online and are regularly updated as a searchable database on restorative justice. It now contains 7,000+ entries.

www.restorativejustice.org/research.



Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

2) Develop a working definition of Restorative Justice.

McCold, P. (1997, May). Restorative justice: Variations on a theme. Paper presented at the 1st International Conference on Restorative Justice for Juveniles, Leuven, Belgium.

Used a Delphi process to try to establish a consensus definition among scholars. When successive iterations of the process failed to produce a consensus, the WP adopted the definition submitted by **Tony Marshall**, of the British Home Office.

the Marshall definition

“Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

(Tony F. Marshall, 1996)



Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

3) Review nomenclature and decide on the most appropriate title.

McCold, P. (1998). Restorative justice handbook. UN Alliance of NGOs on Criminal Justice and Crime Prevention (New York), Working Party on Restorative Justice. *Corrections Compendium*, 23(12), 1-4; 20-28.

Proposed a working definition (Marshall) and fundamental principles of restorative justice, descriptions of typical restorative programs, a lexicon of terminology commonly used in discussions about restorative justice, and a short bibliography.



Council of Europe

- In 1995 the Council of Europe appointed an Expert Committee to evaluate and assess the use of mediation in criminal proceedings within Europe.
- Between 1996 and 1999 the Committee met to review reports from countries with experience in mediation of criminal matters, and to consider what if any recommendations to make.
- The appendix of the report defines “mediation” and offers 34 principles for Member States of the Council of Europe to consider when using mediation in penal matters.
- The Committee of Ministers adopted the recommendation in September 1999.



United Nations Commission on Crime Prevention & Criminal Justice

The 40-member UN Commission on Crime Prevention and Criminal Justice formulates international policies and recommends activities in the field of crime control.

The Commission offers nations a forum for exchanging information and to settle on ways to fight crime on a global level. It also provides substantive direction for the periodic UN Congresses on the Prevention of Crime and the Treatment of Offenders.

- international action to combat national and transnational crime, including organized crime, economic crime and money laundering;
- promoting the role of criminal law in protecting the environment;
- crime prevention in urban areas, including juvenile crime and violence; and
- improving the efficiency and fairness of criminal justice administration systems.



United Nations Commission on Crime Prevention & Criminal Justice

- In April 1997, the Commission on Crime Prevention and Criminal Justice adopted a provisional agenda for that 2000 Crime Congress.
- Item four on the agenda was "Offenders and victims: accountability and fairness in the justice process."
- It was understood that this topic opened the door to discussion of **restorative justice** as well as issues related to the rights and roles of victims in criminal justice.



Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

Revised it's charter.

- The first had as its objective making restorative justice a discussion topic at the Tenth Crime Congress.
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Working Party on Restorative Justice

Alliance of NGOs on Crime Prevention & Criminal Justice

On behalf of the Working Party, Dan Van Ness of Prison Fellowship International collected standards and norms about restorative justice, treatment of victims and mediation and drafted a set of *basic principles on the use of restorative justice*. These were circulated for comment and revision at a series of restorative justice conferences and among UN member states.

International Scientific and Professional Advisory Council

In 1999, ISPAC released *An Overview of Restorative Justice Programmes and Issues* that concluded that **guidelines and standards are desperately needed because of three dangers.**

- 1) that programs that are initially restorative in outlook recreate the courtroom process and, in turn, undermine rather than cultivate restoration.
- 2) that the legal basis for initiating the process can get lost.
- 3) that the etiological factors producing crime - poverty, racism, cultural/social values, individualism will not be addressed as they are uncovered in the process.

Friday, P. (1999). *United Nations Overview of Restorative Justice*. Working group of Resource Committee No. 1, Victims, Report on restorative justice issues. International Scientific and Professional Advisory Council (ISPAC) of the United Nations Crime Prevention and Criminal Justice Programme.



United Nations Commission on Crime Prevention & Criminal Justice

- In April 2000, at the Commission on Crime Prevention and Criminal Justice meeting, the governments of Canada and Italy introduced a resolution proposing development of basic principles on the use of **restorative justice**.
- Thirty-eight other countries joined as cosponsors and the resolution was approved unanimously and referred to the Economic and Social Council.

Van Ness, D. (2003). Proposed basic principles on the use of restorative justice: Recognising the aims and limits of restorative justice In A. von Hirsch, et. al., (Eds.), *Restorative justice and criminal justice: Competing or reconcilable paradigms?* (pp. 157-176) Oxford: Hart Publishing.



United Nations

Economic and Social Council

(ECOSOC)

In July 2000, ECOSOC resolution entitled *Basic principles on the use of **restorative justice** programmes in criminal matters*

- requested the Secretary-General to seek comments from Member States and relevant intergovernmental and non-governmental organizations, as well as institutes of the United Nations Crime Prevention and Criminal Justice Programme network, restorative justice programmes in criminal matters, including the advisability of developing a new instrument for that purpose.



Group of Experts on Restorative Justice

Group of Experts on **Restorative Justice** meeting in
Ottawa from 29 October to 1 November 2001.

*Report of the Secretary-General on **restorative
justice** [E/CN.15/2002/5 and Corr.1.]*

*Report of the Group of Experts on **Restorative
Justice** [E/CN.15/2002/5/Add.1]*



Group of Experts on Restorative Justice

- The Expert Group agreed that the purpose of basic principles was to assist Member States of the UN to adopt and standardize restorative justice initiatives in their justice systems, but not to make these mandatory or prescriptive. Further, since theories of restorative justice continue to evolve, the Expert Group avoided using prescriptive or narrow definitions that might impede further development.



United Nations Economic and Social Council

In July 2002, the United Nations Economic and Social Council adopted "Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters" [E/CN.15/2002/5/Add.1] as a guide to encourage member states to implement restorative justice in the operation of their domestic juvenile criminal justice systems.

United Nations Economic and Social Council

37th plenary meeting, 24 July 2002 E/2002/INF/2/Add.2

Landmark historical event!



United Nations

Economic and Social Council

1. "**Restorative justice programme**" means any programme that uses restorative processes and seeks to achieve restorative outcomes.
2. "**Restorative process**" means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.
3. "**Restorative outcome**" means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

The Marshall definition!



United Nations

Economic and Social Council

Member States should consider the formulation of national strategies and policies aimed at the development of restorative justice and at the promotion of a culture favourable to the use of restorative justice among law enforcement, judicial and social authorities, as well as local communities.

1. *Takes note* of the basic principles on the use of restorative justice programmes in criminal matters
2. *Encourages* Member States to draw on the basic principles on the use of restorative justice programmes in criminal matters in the development and operation of restorative justice programmes;
3. *Requests* the Secretary-General to ensure the widest possible dissemination of the basic principles on the use of restorative justice programmes in criminal matters among Member States, the institutes of the United Nations Crime Prevention and Criminal Justice Programme network and other international, regional and non-governmental organizations;
4. *Calls upon* Member States that have adopted restorative justice practices to make information about those practices available to other States upon request;



11th UN Congress on Crime Bangkok Declaration 2005



32. To promote the interests of victims and the rehabilitation of offenders, we recognize the importance of further developing **restorative justice** policies, procedures and programmes that include alternatives to prosecution, thereby avoiding possible adverse effects of imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of **restorative justice** approaches into criminal justice systems, as appropriate.



Criminal Justice Reform Unit

Criminal justice reform is at the heart of the mandate of the United Nations. Successive UN Crime Congresses, the First UN Congress on the Prevention of Crime and the Treatment of Offenders being held in Geneva in 1955, have explored ways in which criminal justice systems can operate both more effectively and more humanely. The most recent Crime Congresses, held in Vienna in 2000 and in Bangkok in 2005, have continued to strengthen the role of the United Nations in the area of criminal justice reform. The Vienna Declaration and its Plans of Action, in particular, highlighted the importance of the issue of criminal justice reform. The Commission on Crime Prevention and Criminal Justice has in successive sessions continued to underscore the importance of effective global responses in the area of criminal justice reform. The mandate to assist States in building fair and effective criminal justice systems are also contained in resolutions by the main policy-making organs of the United Nations: the General Assembly and the Economic and Social Council.



Criminal Justice Reform Unit

The Unit contributes towards the mandate of UNODC by assisting developing countries, countries emerging from conflict, and countries with economies in transition in building the capacity of their justice systems to operate more effectively within the framework of the rule of law and with particular attention to vulnerable groups, such as women and children. (General Assembly Resolution, 59/159 of 3 February 2005).



Criminal Justice Reform Unit

CJRU works on the implementation and the operationalization of the United Nations Standards and Norms in Crime Prevention and Criminal Justice. These include:

- Code of Conduct for Law Enforcement Officials (GA Resolution 34/169),
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (GA resolution 45/113),
- Basic Principles on the Independence of the Judiciary (ECOSOC Resolution 1989/60),
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (GA resolution 40/33),
- United Nations Standard Minimum Rules for the Treatment of Prisoners (ECOSOC resolution 1984/47),
- United Nations Standard Minimum Rules for Non-Custodial Measures (GA resolution 45/110),
- Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC 1989/57)
- Guidelines on justice in matters involving child victims and witnesses of crime
- Basic principles on the use of **restorative justice** programmes in criminal matters (ECOSOC resolution 2002/12)



Criminal Justice Reform Unit

The Unit oversees project development and provides substantive support for project implementation in the general area of justice reform, including:

- juvenile justice;
- penal reform;
- **restorative justice**;
- alternatives to imprisonment;
- victim support; and
- monitoring and civilian oversight of criminal justice performance.



UN Commission on Crime

April 2006

E/CN.15/2006/3

United Nations Economic and Social Council

Commission on Crime Prevention and Criminal Justice

Fifteenth session, Vienna, 24-28 April 2006

Item 3 of the provisional agenda

Work of the United Nations Office on Drugs and Crime

The rule of law and development: strengthening the rule of law and the reform of criminal justice institutions, including in post-conflict reconstruction



UN Handbook on RJ

- **A. Providing Member States with technical tools and manuals**
- **1. Criminal justice reform**
- *(c) Handbook on restorative justice*
- 36. Drawing on the Basic principles on the use of **restorative justice** programmes in criminal matters (ECOSOC resolution 2002/12, annex) and with an international focus on **restorative** processes, a handbook on **restorative justice** has been developed. It offers an overview of key considerations in the implementation of participatory responses to crime based on a **restorative justice** approach. It focuses on a range of participatory measures, inspired by **restorative justice** values, that are flexible in their adaptation to criminal justice systems and that complement them while taking into account varying legal, social and cultural circumstances. The handbook covers definitions of key concepts, a summary of the main types of intervention, legislation, rules and guidelines for practitioners, and programme operation, monitoring and evaluation. It is meant as a guide for policymakers, legislators and practitioners as well as international organizations and non-governmental organizations.

Handbook on Restorative Justice

*On the use and application of the Declaration of
Basic principles on the use of restorative justice
programmes in criminal matters*

coming soon !!



UNITED NATIONS
Office on Drugs and Crime

http://www.unodc.org/unodc/en/criminal_justice_tools.html

Where next?

Restorative Justice & the UN

- 1) Domestic criminal justice
- 2) Trans-national justice
- 3) Transitional justice
- 4) International justice



International Criminal Court

- The International Criminal Court was established by the Rome Statute of the International Criminal Court, so called because it was adopted in Rome, Italy on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.
- The Rome Statute is an international treaty, binding only on those States which formally express their consent to be bound by its provisions. These States then become "Parties" to the Statute.
- The Rome Statute entered into force on 1 July 2002, once 60 States had become Parties. Today, 100 States have become Parties to the Statute.



International Criminal Court

- The International Criminal Court (ICC) is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The ICC is based on a treaty, joined by 100 countries.
- The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. In addition, the ICC only tries those accused of the gravest crimes.

Restorative trans-national justice



International Criminal Court

Victims and witnesses

- One of the great innovations of the Statute of the International Criminal Court and its Rules of Procedure and Evidence is the series of rights granted to victims. For the first time in the history of international criminal justice, victims have the possibility under the Statute to present their views and observations before the Court.
- The victim-based provisions within the Rome Statute provide victims with the opportunity to have their voices heard and to obtain, where appropriate, some form of reparation for their suffering. It is this balance between retributive and restorative justice that will enable the ICC, not only to bring criminals to justice but also to help the victims themselves obtain justice.
- For the first time, an international court has the power to order an individual to pay reparation to another individual; it is also the first time that an international criminal court has had such power.
- Pursuant to article 75, the Court may lay down the principles for reparation for victims, which may include restitution, indemnification and rehabilitation.



United Nations Peacebuilding Commission

20 December 2005 by a resolution of the General Assembly

To advise on and propose integrated strategies for post-conflict peacebuilding and recovery;

To focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict

To support the development of integrated strategies in order to lay the foundation for sustainable development;

To provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations,

To develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to postconflict recovery

Restorative transitional justice

Charter of the United Nations



to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

The background of the slide features a large, faded watermark of the United Nations emblem. It consists of a world map centered on the North Pole, surrounded by a laurel wreath. The text is overlaid on this background.

Article 33 of the UN Charter

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

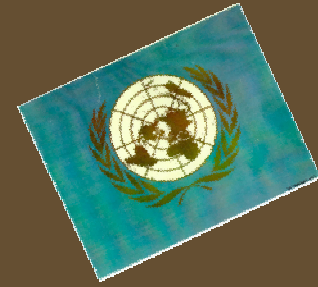
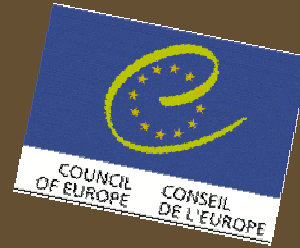
Restorative international justice

Restorative Justice & the United Nations

**Consider the possibilities
of a new paradigm.....**

United Nations General Assembly

Council of Europe



European Union

UN Criminal Justice Reform Unit



UN Peacebuilding Commission



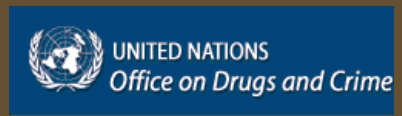
UN Economic and Social Council



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