



EGUZKILORE

(Flor protectora contra las fuerzas negativas)

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• Antonio Beristain. Presentación - Aurkezpena	7
• Hans-Jürgen Bartsch. Política criminal contemporánea. Perspectivas europeas	9
• Thilo Firchow. Elementos de presentación del sistema legal de protección de la infancia en Francia	17
• Hans-Heinrich Jescheck. El principio de culpabilidad como fundamento y límite de la punibilidad	25
• Luis Murugarren. Historia de las cárceles donostiarras	39
• Luciano Tavazza. El Voluntariado penitenciario en Italia	75
• Naciones Unidas. Informe sobre las víctimas del crimen y de abuso de poder	83
Manifiesto de Nuremberg	93

CURSO DE VERANO: "Eutanasia y Criminología: hoy y mañana"

• Juana Teresa Betancor. El testamento vital	97
• José Luis Díez Ripollés. Eutanasia y Derecho	113
• José Antonio García-Andrade. La relación médico-enfermo .. Eutanasia y Criminalidad	141 153
• Anton M. van Kalmthout. Eutanasia: el ejemplo holandés	163
• Ignacio Muñagorri. Negatividad social de la muerte voluntaria	195
• Antonio Beristain e Isabel Germán. Preguntas y opiniones acerca del morir con dignidad	203
• José Cruz Larrañaga y Luis M^a Barandiaran. ¿Nuevos horizontes de la eutanasia activa? (Comentario a la encuesta)	211

II Promoción de Master y VIII de Criminólogos	219
Nombramiento de Miembros de Honor a J.A. Cuerda y J. Pinatel ..	223
Memoria del IVAC-KREI	229

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INFORME SOBRE LAS VICTIMAS DEL CRIMEN Y DE ABUSO DE PODER

EXPERT GROUP MEETING ON VICTIMS OF CRIME AND ABUSE OF POWER IN THE INTERNATIONAL SETTING

Grupo de Expertos de las Naciones Unidas*

SUMMARY OF THE DISCUSSION

A. USE AND APPLICATION OF THE DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER AND PRIORITY NEEDS

It was acknowledged that when the United Nations Declaration was adopted, in 1985, major reforms were foreseen in the way victims would be regarded, assisted, compensated and treated by criminal justice systems around the world. While, in a decade some progress had been made nationally in that respect, serious deficiencies, nevertheless, remained in crucial areas, which continued to exacerbate the plight of victims.

Subsequent to the Ninth United Nations Congress and proceeding the Commission's forthcoming evaluation of programme priorities, it was timely to take stock of the progress achieved, over ten years, and to look at what could be done to ensure that the Declaration was given more practical effect in the years to come.

* Informe –preparado por el Prof. Daniel D. N. Nsereko, Professor of Law, University of Botswana, Gabarone– de la Reunión del Grupo de Expertos, sobre víctimas del crimen y de abuso del poder en el ámbito internacional, celebrada en Viena (Naciones Unidas), del 18 al 22 de diciembre 1995.

In many ways, progress in the application of the provisions of the Declaration had been slow, and in some areas virtually non-existent. One major challenge was to drastically reduce the number of persons victimized. Another major challenge was to foster greater recognition of the rights and interests of all kinds of victims, and to put into place the apparatus, laws and procedures, to “make standards work” in their favour, while recognizing their legitimate claims and right to justice and redress.

At the national level, some systems had ‘failed’ to enact or fairly enforce the requisite laws and procedures and to put into place or make more effective criminal justice operations that would foster the protection of the rights of victims, advance their standing, meet their varied and usually urgent needs, ensure their access to important information, provide reparation and avenues for other kinds of redress.

As the number of victims multiplies, there had to be a greater system capacity and response, better organized and more effective support services, and a well-qualified cadre of professionals more prepared to deal adequately with their varied needs. In that regard, the various roles of the professionals involved, the types of services and coordination needed had to be more clearly defined.

In terms of one such service or agency, the police, its role in victim support and assistance was central. The police were entrusted with the responsibility for citizen safety, and, as the first point of contact, had to have the know-how to respond to a victimizing situation and the victim, as well as the crime scene and the apprehension of a crime suspect. In countries where victim support or assistance systems were not in place or well-developed, the family and the community would bear the responsibility of coming to the aid of the victim. Where the role of such social control agents had weakened considerably, however, and in the absence of an adequate victim support system, victims had to fend for themselves.

There was no doubt of the need to ensure that the interests, concerns and needs of victims of crime and abuse of power were addressed, and that their position and standing in the criminal justice process at all stages be assured, including in the presentation of the case. In that respect, it was necessary that victims participate to the extent possible, with the benefit of legal aid and counsel.

A largely retributive justice approach, that ran counter to the Declaration, had led systems to emphasize the prosecution, conviction and sentencing of the offender, assuming, at the same time, that conviction solved the problem of victimization. This approach had also discounted the role of the victim in the judicial process, for many reasons, one of which was a view that victim testimony (and thus victim impact statements) about the first-hand details of the victimization could distort the outcome or delivery of justice.

Where victims had a participatory role or could exercise a civil right to initiate a lawsuit or claim against the perpetrator, they, nevertheless, were not as well equipped as the perpetrator in terms of legal standing and assistance. The frequent second injury or “double victimization” was also an inevitable obstacle to the victims access to justice. In seeking a more balanced approach to the victim in the criminal justice process, it had to be borne in mind that the prosecution was not pursuing the

victim's claims; and the rights of the victim were not nearly as developed as those of the accused in substantive or procedural law.

Compensation and restitution, while serving as traditional indigenous forms of justice for victims in some justice systems, were, for many others, fairly modern possibilities. In both cases, the right, ability or access of the victim to be granted compensation or restitution was not 'easily' granted or exercised. Compensation and restitution by the perpetrator could only be made when the perpetrator was in a position to do so; and criminal trials could, indeed, be lengthy and time-consuming, taking time away from a much-needed healing process. It was appropriate to encourage more reparative sanctions over incarceration, such as remunerated work in detention or in the community, earmarked for the victim.

To help the victim bring about a sense of psychological "closure" about the incident and feel vindicated, the significance of apology and of assuming blame by the perpetrator was advocated. A victim might be willing to divert a criminal case from prosecution if acknowledgement of the wrongdoing could be obtained from the accused. Recognition of the wrong done and harm inflicted on the victim was seen as an important way of helping the victim to recover and reconcile with the past and even with the offender.

Often victims were not aware of the supportive laws, services, legal aid, and funds for compensation that might be placed at their disposal: this was an important area for future work. The public had to be made more aware of where a victim might go for help and information.

It was necessary to bring about a marked difference in the situation of victims of crime and abuse of power and to change the way victims were regarded and treated nationally and internationally. Many governments wished to be assisted in dealing with the many complicated issues involved in a more affective way.

On this basis, also, an appropriate international mechanism had to be devised that could foster and bolster the efforts of various grass-root organizations and agencies, and, bring to bear outside, international assistance in a well-orchestrated fashion to come to the aid of victims of crime.

One appropriate national mechanism would be a national center for victim assistance in each State, that would be coordinated at the international level and would operate in accordance with the principles of the victim Declaration.

Because of the urgency and immediate needs in circumstances of victimization, emphasis had to be placed on rendering all possible and necessary assistance and support to the victim, as opposed to focusing on a directly affecting the victimizing action which, in any case, needed to be tackled through prevention. In that way, it was hoped that, although it was often difficult to frontally or immediately do so, the particular victimizing action or source of victimization would eventually be influenced, controlled, halted or deterred by the intervention. Perhaps the most difficult situation in that regard was a political one, in which governments were either directly, through their own actions, or indirectly, by inaction, responsible for the victimization of large segments of the population.

Criminal victimization deriving from the collapse of a government, a disappearance or an usurping of the rule of law, the physical destruction of a justice system, and/or from “wholly repressive” action or “impunity” on the part of a government, where there was an absence of justice, were particularly difficult challenges. In situations of an acute catastrophic event, dealt with by a functioning national authority, victim care-providers had to tap and mobilize existing local infrastructures, services, networks, professions and authorities. In such events where a Government so-to-speak did not exist, and law and order had broken down, an operational framework for sustainable victim support would have to be (re-) established. In the absence of a functioning justice system, though, it was imperative first to (re-) install the rule of law and, in the meantime to have available and international means for victim recourse. In the absence of justice, there was a system failure, and systematic, institutional, individual or group-level, responses, were stalemated, aggravating the harm and suffering. In any intervention, then, the type and scope of the victimization and who the offenders were would become apparent, as would the appropriate nature, level and time of intervention and response.

In situations of political violence and abuse, of armed conflict, and other crises, systems tended to break down or fail. But, whether the victimization be related to interpersonal or property offences, political repression, war, warfare or strife, or deriving from the criminal justice system itself, with a collapsed or sitting government, the point, type and level of intervention on behalf of the victim were equally important.

Advances in the study of traumatic stress disorder had to be applied in interventions on both an individual and mass scale. For the life-long and inter-generational “rupture” caused by trauma to be treated, a meaningful professional conceptual framework and techniques, over time, had to be utilized to ensure some degree of effectiveness.

Notwithstanding the many types of victimization and categories of victims, victims were of one class in terms of the basic elements attributable to them and the common denominator of their plight caused by the wrongdoing and harm inflicted. That applied to victims of conventional crime, as well as group victims of non-conventional crime, including “crimes against humanity”. By attempting to influence both ends of the spectrum, precious resources and expenditures could be saved, and the complicated and painful processes involved in the victimization itself, and in victimization interventions could be spared. Common elements of an intervention paradigm included the means, know-how, mechanisms, access, legal framework and local conditions.

B. TECHNICAL COOPERATION AND ASSISTANCE

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was based on the philosophy that victims should be “treated with compassion and respect for their dignity”, and that they are “entitled to access to the mechanisms of justice and to prompt redress for the harm that they have suffered”. In order to ensure such treatment, access and redress, it was critical

that victim service programmes be established to provide support to victims who are traumatized by crime and to effectively intervene on behalf of victims, when necessary, with criminal justice and social institutions. It was also important that criminal justice and other social institutions integrate policies, procedures and protocols that address the harm victims have suffered in their processes. While such programmes and policies may be established voluntarily, experience suggested that in many cases legislative changes are necessary to ensure consistent and equitable services.

An outline of a training manual was developed by the meeting, as a guide for implementing victim assistance, in line with the UN Declaration. The proposed manual would specify the fundamentals of victim service programmes: how to establish them, and the techniques of providing victim support. It encouraged multi-disciplinary involvement of professionals who work with victims and suggests programmes, policies and protocols that would help in this regard. It also referred to sample legislation that addresses victims' rights. It was envisaged that the training manual would be adapted to the problems of developing countries, and those in transition, and expanded to address victims of abuse of power. According to the United Nations Declaration, victims of abuse of power were unjustly subjected to loss, damage or injury and may, in addition, suffer hardships when assisting in the prosecution of offenders; hence, a similar effort should be undertaken to develop guidelines for assistance and a companion training manual for victims of abuse of power.

Additional training and protocols should be developed to guide specialized programs for different victim populations, such as sexual assault victims, family violence, victims of hate crimes, robbery victims, burglary victims, property crime victims, refugee victims, and victims of major disasters, usually caused by criminal negligence. Protocols and training should also include guidance on how to work with victims in different age groups, racial or ethnic minorities, religious or spiritual orientation, sexual orientations, different abilities or socio-economic status. Training for all victim assistance providers and allied professionals should include discussions of victimization within their professions and intra-agency programmes should be established to assist victims in the workplace. Public information should also be provided, including a handbook for victims.

It was considered essential that the outcome of the Meeting be elaborated upon amplifying the content of the International Manual on Victims Assistance to ensure that relevant examples of laws, policies, programs and practices are included to illustrate how the principles of victim assistance can be implemented in different countries and systems of justice. It was recommended that, once finalized, the Manual be widely disseminated to governments, intergovernmental agencies, non-governmental organizations and practitioners through the United Nations and by ensuring its translation in the official languages of the United Nations, so as to assist requesting countries in the use of the Manual.

In order to facilitate the concrete implementation of the Declaration by means of technical cooperation, two proposals were made. One proposal was the preparation of a "set of tools" for cooperation and technical assistance in the field of victims'

rights and assistance. Such a set of tools would include a short description of programmes and practices that were known to “work”. It could adopt the format of a collection of data sheets, describing a selection of good or “promising practices” of actions and laws in favour of victims, preceded by the United Nations Declaration and followed by a directory of agencies, and experts associated with different practices. The set of tools would be periodically updated and supplemented on the basis of developing knowledge.

The second proposal was for the establishment of an international quick-response team, with the capacity to act rapidly to provide services on the spot and help national authorities to organize a system of care and assistance in cases of collective victimization. Situations of crisis or collective victimization required quick, adequate, efficient and multidisciplinary action to reduce the impact of the crisis on numerous victims, providing immediate assistance in different areas. Where victim assistance mechanisms already existed, they could be reinforced or supplemented. Emergency situations or situations involving collective victimization required a capacity of immediate, strong and often long-term resource mobilization, with quality professional activity and the acceptance and cooperation of all the other services involved.

Situations of crisis and collective-victimization often afforded the opportunity for central governments and local authorities to become more aware of the necessity and usefulness of the mechanisms to help victims. Under the pressure of public opinion, policy-makers were often forced to cope with the problem of multiple victims, to which they were not always sensitive when only individual victims were involved. In the acute phase of a crisis, public opinion and national and international public scrutiny tended to greatly enhance efforts to take control of the situation and to exert the necessary pressure on responsible authorities to take appropriate action. Often, a crisis was a good opportunity to compel decision-makers to take the necessary action for victims, and to recognize the necessity of a real system of protection for the victims. Where the government had for a long time been conscious of the need for a policy in favour of victims, emergency or crisis situations often allowed remarkable improvements, even with limited available resources. Initiatives and the progress experienced on such occasions and the know-how developed during often continued after, the crisis, to the benefit of ordinary, individual victims of crime.

In such situations, it was necessary to define the principles of action in favour of the victims in cases of crisis, and to facilitate, for States already having services for victims and sufficient means, the organization of an appropriate resource in cases of emergency, and to devise and implement a scheme for crisis intervention able to provide a rapid response through international and national teams, dispatched to the place where a major crisis occurred.

In order to guarantee rapid action by an international task force in the case of emergency and collective victimization, a financial reserve system would need to be set-up. It could be constituted either by an allocation from funds available for technical cooperation or through a new, *ad hoc* extrabudgetary provision. This fund would permit the immediate mobilization of the international team and should be replenished after each action by the Member States supporting the UN action in the

country affected by the catastrophe. In the meantime any national structure having agreed to participate in the international task force should try to convince its own government to support financially its participation in the international mechanism.

The “quick response team” concept, considered to be relevant in terms of “crisis management” or preventive “crisis intervention”, was premised on a quick, on-the-spot organization of a system of protection and assistance for victims. An essential component would be an on-the-spot “diagnosis” of the situation, of the needs involved, and the matching of requisite services that would reach the victims, taking into account and mobilizing existing resources, infrastructure, services and personnel that would need to be utilized and supplemented. The work of this team would follow the lines of what would be considered as a “model” intervention on behalf of victims. For such an approach to be successful, it was necessary to ensure the requisite longevity and sustainability of the system set up to deal with the crisis.

In the light of recent events, it was considered important and timely to develop a system for crisis intervention and, thus, one was recommended for field-level action. This would seek to pre-organize the modalities for providing immediate assistance to large numbers or groups of victims that may be created by, and the mass casualties or massive harm resulting from disastrous natural or man-made catastrophes, and extraordinary crime-related or crime-symptomatic events, including war, and other forms of armed conflict including civil strifes, terrorist activity and other emergencies of which there have been many recent instances in different parts of the world.

In rendering the requisite victims assistance and support, the appropriate scheme, focal point, infrastructure and service delivery system would have to be in place and mobilized. For this, it would be useful to list elements that need to be provided regardless of what exists or what the specific system will support. Thus, a project on victim services in the context of sustainable development was proposed. Its aim would be to organize a comprehensive network that would satisfy the various needs of the victims involved, and to improve or create the necessary conditions, resources and services to support and sustain the network in the long term.

Training and information exchange had to be undertaken at every level and at all stages, as part of a process that would ensure that all those who deal in various capacities with victims, across sectors, were sensitized, aware and acquainted with the requisite action to be taken, in a coordinated way. In that process, personnel from different sectors must have an understanding of the various roles involved in successful victim service delivery. It would be useful to synthesize and expand existing training materials for use at the international level. The training requirements related to victim concerns were also enumerated.

The meeting urged that systematic information exchange and clearing house facilities in this field be established, with specialized data bases so as to assist professional dialogue and practice, and, as well, improve publish information and awareness raising activities. Preparation for a handbook for victims would prove most useful in this regard.

C. INTERNATIONAL MEANS OF RECOURSE AND REDRESS WHERE NATIONAL CHANNELS MAY BE INSUFFICIENT

Discussion focused on a number of issues that had been considered in related meetings: the need for active fact-finding by the United Nations system in situations of widespread victimization resulting in crimes involving human rights violations and abuses of power. New possibilities, including the establishment of a universal or international criminal jurisdiction (the ex-Yugoslavia and Rwanda tribunals and the proposed International Criminal Court) were especially encouraging. It was important that victims' issues be properly taken account of in the proceedings of such courts.

At the time of the adoption of the Declaration, criminal victimization through the abuse of power and violations of human rights was considered to be largely codified in other international instruments. However, it was now apparent that the coverage of protection, safeguards and guarantees in those instruments had not been sufficient, particularly in light of mass victimization incidents that the world has witnessed in the interim. It was thus necessary to advance an international mechanism and means of recourse and redress for victims of abuse of power and gross violations of human rights.

In terms of international recourse mechanisms of justice, it was noted that the international tribunals set up to deal with the atrocities that occurred in Rwanda and in the Former Yugoslavia did not adequately address to the needs of victims. Many atrocities had occurred throughout the world in recent times for which no international tribunal was set up and for which no international platform was effectively launched. In a number of instances, international aid was mobilized at the time of, or soon after, a crisis, but perhaps not effectively followed-up and sustained.

In addition to such bodies, that tried to bring to justice the perpetrators of crimes of international concern, such as crimes against humanity, other means of redress were discussed aimed at holding a State accountable for its victimizing actions. These included the desirability of establishing an International Human Rights Court and a right of petition in cases of massive threats to the security of persons, as contemplated by the Commission on Global Governance. It was also appropriate to review systematically the existing international criminal, humanitarian and human rights law in order to identify the normative and institutional protection of victims.

In the establishment of an international criminal court, it was urged that the position, role, standing and rights of the victim in the criminal proceedings be secured. The meeting drafted a set of principles which it considered necessary for the protection of the victims rights and which it hoped the Preparatory Committee would incorporate in the draft statute.

In terms of reparations for mass victimization, examples might be taken from the Peace and Reconciliation Commission of South Africa, which was trying to take action for victims of Apartheid, and from the German Wiedergutmachung for victims of Nazi crimes.

D. PROMOTING AN INTEGRATED APPROACH AND CONCERTED ACTION

It was clear that the concerted approach and coherent action in support of victims of crime and abuse of power, called for by the Declaration, needed to be advanced in a variety of ways, at different levels and across sectors.

At the international level, the issue of victims had yet to be accorded the priority attention it deserved. With the identification by the Commission of the first set of programme priorities, like transnational organized crime, violent urban criminality and effective criminal justice administration, the status, situation and role of victims in criminal justice processes assistance to them and the prevention of victimization had not been adequately taken into account.

Acknowledging the key role of the Commission on Crime Prevention and Criminal Justice, it was recommended that it designate the question of victims, in the context of the implementation of the victim Declaration and related international action, as one of the programme priorities for the next period. This would have not only substantive significance, but also great symbolic value in terms of the pressing need to balance the rights of victims with those of the perpetrator when treating criminality and in the criminal justice process, as systems tended to focus on the offender and the offence. It would also be highly desirable for the Crime Commission, in its coordinating and legislative functions in the field of crime prevention and criminal justice, to invite the attention of other relevant commissions in that work.

A global "menu" of what was needed in terms of concrete proposals and of a broad policy and operational framework, as a basis for and guide to future action by States, inter-governmental and non-governmental organizations were called for. A series of practical steps had to be outlined for the wider implementation of the victim Declaration, and the mobilization of national and international action potential. In moving toward a more effective application of the provisions of the Declaration, it was essential to specify the types of activity that would give effect to them. Toward that end, some of the essential elements were seen to be the development of a United Nations Manual, as called for by the Economic and Social Council, the formulation of technical cooperation and assistance programmes, with a mechanism for crisis intervention, model projects that could be useful at the local and national levels for the establishment of victim services in the context of sustainable development, the drafting of model legislation and procedures, model constitutional provisions for emerging democracies and countries in transition, the elaboration of international means of recourse and redress where national channels were insufficient, and fostering an integrated, approach at the national and international levels, on the basis of a common plan of action.

If there were discrepancies between the intentions of the provisions of the UN Declaration and the realities of their application, then it was necessary to appeal to Governments which were ultimately responsible for its implementation. The political will of Governments was a basic criterion for the UN Declaration to 'work' for victims. In order to close the gap between the provisions and reality, public and civil participation in, and scrutiny and vigilance of, national practices and international

action were important; also important were the invaluable efforts and support of non-governmental and humanitarian organizations, some of which undertook a great deal of direct victim assistance and were themselves in need of technical support.

The coordinated participation of different actors in the delivery of victim services at the local, national, and international levels was a considerable effort. Relying on the strength of each member of the network, the action of support and assistance always required that one agency or group assumed a leadership or coordinating role. It was hoped, in that regard, that the UN Crime Prevention and Criminal Justice Branch, could, if a flexible machinery and institutional mechanism were in place, undertake such a role in support of victim groups both on-the-spot and through those dispatched to a given crime scene and other critical events.

It was important to draw on the experience of a variety of victim support organizations and groups. Coordinating professional networks to help create expertise and improvement in victim services was a desirable goal. The importance of the work and efforts of existing organizations serving local population on the basis of existing resources could not be sufficiently underscored. But it was necessary to build upon, support, and broaden their capacity to provide victim assistance. Networking was of special importance in that regard. Matching opportunities with needs through databases, clearing-house activities, training and fund raising was also important. Empowerment would, no doubt come from the ability to identify fund-raising mechanisms and to obtain sustainable funds.

It was emphasized that victims of catastrophic events were as much victims of crime as they were recipients of humanitarian aid; and this pointed to the evident central role of the Branch in responding to such victimizing situations. The contribution of the Programme in peace-keeping operations, in undertaking training for such operations and in developing training materials required attention to be paid to victims and a consistent attempt should be made to protect victims in United Nations operations.

An integrated approach and concerted action could be fostered by the adoption of an international action plan, as developed by the experts at the meeting. The action plan, in line with a series of mandates and expert guidance on the subject, may need to be prioritized and phased, with short-term, medium-term and longer-term tasks. This would be facilitated by the coordination of efforts with other UN bodies by the Crime Commission.

The crime prevention and criminal justice programme has a historic and substantive responsibility in ensuring justice and assistance for victims of crime and abuse of power, and should properly be the lead agency for this endeavour. In fact, it had a global responsibility to advance the victims issue. Representing tremendous suffering across the globe, for similar and different reasons, the plight of victims, warranted this attention, which was long overdue.

The meeting was convinced of the need for, and was disposed to recommend, the elaboration of a UN convention on victims. A convention was considered desirable and would be a welcomed development at an appropriate time.