

## **For a common language of justice: translating words into deeds**

### **I. Introduction**

1. In 2004, the Secretary-General of the United Nations, in his landmark report to the Security Council, wrote that in articulating a common language of justice “concepts such as justice, the rule of law, and transitional justice are essential to understanding the international community’s efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict. They serve both to define our goals and to determine our methods. Yet, there is a multiplicity of definitions and understandings of such concepts, even among our closest partners in the field. At an operational level, there is, for some, a fair amount of overlap with other related concepts, such as security sector reform, judicial sector reform and governance reform. To work together effectively in this field, a common understanding of key concepts is essential”.<sup>2</sup>

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<sup>2</sup> Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 5.

Drawing on this metaphoric notion of a “common language of justice”, the purpose of this interdisciplinary article is threefold. First, it seeks to contribute to a better common understanding of justice, more precisely criminal justice, by taking initial stock of and interpreting the approaches and instruments applied by the United Nations in facilitating and/or creating the conditions for pursuing in practice the “language” that the report of the Secretary-General postulates (section I). That language is that of the United Nations, meaning that it is multilateral rather than bilateral, involving direct “translation” of, for example, a legal principle from the legal system of Country A to Country B. The higher degree of commonality created through the application of the United Nations standards and norms in crime prevention and criminal justice entails a kind of a meta-language (multilateral), which is more than a “multilingual thesaurus” and far more than a two-language “dictionary”.<sup>3</sup> The present article shows how this United Nations application is proceeding in practice.

Second, the article discusses (section II) the various underpinnings of a common language of justice. It emphasizes that different cultural thought patterns and systems (theologies/legal philosophies) define what is a crime and are therefore a barrier to creating a common language of justice, although one that can be overcome gradually. That common language increasingly accommodates arrangements facilitating mutually agreeable and satisfactory outcomes and cooperative implementation techniques that both enable better access to and delivery of justice.

Third, the article goes beyond current outcomes and addresses common language issues that are emerging globally and that will contribute to a more conceptually harmonized justice in a world comprising different legal philosophies and systems (sections III and IV).

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<sup>3</sup> The following dictionaries are discussed: “bilingual”, such as that compiled by Matthew Stephenson in “A Trojan horse in China”, in *Promoting the Rule of Law Abroad. In Search of Knowledge* (Washington, D.C., Carnegie Endowment for International Peace, 2006), pp. 191-216, and “multilateral”, such as that compiled by Mark A. Drumbl, *Atrocity, Punishment and International Law* (Cambridge University Press, 2007), pp. 125-126. See also George P. Fletcher, *The Grammar of Criminal Law. American, Comparative, and International*, Volume One: Foundations, Oxford University Press 2007.

In addressing these three goals, this article uses two English writing styles: linear, non-discursive, deductive (sections I, III and IV) and non-linear, discursive and inductive (section II), both explained in that section. In doing so, the author would like to illustrate core differences in formulating a common language of justice from various cultural/intellectual perspectives (English and non-English). This will document that developing and implementing a common language of justice requires: (a) a clear agreement on the contents of the justice vocabulary; (b) an intellectual style enabling the practical adaptation of that vocabulary to local conditions in the spirit of the progressive development of international law (art. 13.1.a. of the Charter of the United Nations).

#### **A. Development of United Nations justice vocabulary, 1948-2005**

From 1948 to 2005, two related criminal policy developments shaped the United Nations agenda for articulating its common language of justice: legal and operational (practical).

Between 1948 and 2005, the initial vocabulary of a common language of justice was formulated in a number of legal instruments, including the *United Nations Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights (ICCPR)*, (1966) and one interim legal instrument, *The Standard Minimum Rules for the Treatment of Prisoners* (1955).<sup>4</sup>

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<sup>4</sup> Other legal instruments were *Basic Principles on the Independence of the Judiciary* (1985), *Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)* (1985), *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985); *Basic Principles on the Role of Lawyers* (1990), *Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)* (1990), *Guidelines on the Role of Prosecutors* (1990), *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)* (1990). All 55 of these legal instruments have been published in the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations Office on Drugs and Crime, United Nations, New York, 2006, which is available on the website of the United Nations Office on Drugs and Crime (<http://www.unodc.org/unodc/compendium.html>). The law-making mechanism of such “soft law” instruments and their impact on domestic legislation and practice is analyzed in “United Nations Criminal Justice Norms and Standards and Customary Law”, Sławomir Redo, in *The Contributions of Specialised Institutes and Non-Governmental Organizations to the United Nations Criminal Justice Program*, M. Cherif Bassiouni (ed.) (The Hague, Martinus Nijhoff, 1995), pp. 109-135, and in “Impacto de los principios de las Naciones Unidas en la reforma penal”, in *Congreso Internacional: Las Ciencias Penales en el Siglo XX* (México, Instituto Nacional de Ciencias Penales, 2004), pp. 469-490.

Essentially, from 1948 to 2005, “justice”, as interpreted by the United Nations, meant that:<sup>5</sup>

1. All persons shall be equal before courts and tribunals and are entitled to the minimum guarantees to a fair trial in full equality;
2. Everyone has the right to free access to effective, fair judicial remedies;
3. The tribunal is competent, independent, impartial, and established by law;
4. Everyone shall be entitled to a fair and public hearing; thus, the general public can be excluded only in specified cases;
5. Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law;
6. Everyone has the right to be tried without undue delay;
7. Everyone has the right to be tried in his/her presence. The accused has the right to defend himself in person or through legal assistance of his own choosing; if he/she does not have legal assistance he shall be informed of this right; in any case where the interests of justice so require the accused shall be assigned legal assistance without payment by him if he does not have sufficient means to pay for it;

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<sup>5</sup> Developed initially on the basis of *Understanding Human Rights, Manual on Human Rights Education*, European Training and Research Centre for Human Rights and Democracy, Human Security Network, Graz, Austria, 2003, p. 141.

8. The accused has the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf. The accused has the right not to be compelled to testify against himself or to confess guilt;
9. The accused has the right to have the free of charge assistance of an interpreter if he cannot understand or speak the language used in court;
10. No one shall be held guilty of any criminal offence on account of any act or omission, which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed;
11. No one shall be tried twice for the same criminal offence;
12. The death penalty will eventually be abolished;
13. Extradite or prosecute (*aut dedere aut judicare*);<sup>6</sup>
14. All persons deprived of their liberty will be treated with humanity and with respect for the inherent dignity of the human person;

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<sup>6</sup> Originally a principle of customary international law, since 1973 it has entered the United Nations law cross-sectorally through the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (which followed the 1970 *Hague Convention for the Suppression of Unlawful Seizure of Aircraft*), and then included in other such conventions. Since 1998 in the *Rome Statute of the International Criminal Court*, now also an agreed principle of the 2000 *United Nations Convention against Transnational Organized Crime* and the 2003 *Convention against Corruption*.

15. The treatment of prisoners will be guided by the aim of reformation and social rehabilitation;
16. Juvenile delinquency shall be prevented through the development of anti-criminogenic attitudes;
17. Non-custodial measures shall be applied in lieu of imprisonment;
18. Victims of crime and abuse of power shall be duly assisted and compensated;
19. Victims and offenders should be actively involved in restoring justice with a view to achieving their community reintegration; and
20. Crime prevention should not only prevent victimization and crime, but also promote community safety and contribute to the sustainable development of countries through community-centred action, evidenced-based practice, and social inclusion.

Of these 20 major elements, the first 16 were developed between 1948 and 1990, but only numbers 16-18 nominally went beyond a traditionally oriented criminal justice administration.<sup>7</sup> Later, from 1997 to 2005, those three elements of the justice “vocabulary” were further developed and strengthened<sup>8</sup> and the list expanded in 2002 by the addition of items 19 and 20.<sup>9</sup> Separately, two other elements, perhaps not so comprehensive, but still important were introduced through the *United Nations Convention against Transnational Organized Crime* of 2000. They will be discussed later.

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<sup>7</sup> In the sense that their implementation by the Secretariat and Member states of the United Nations was at best cursory.

<sup>8</sup> For example, *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime* (1997).

<sup>9</sup> *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* and *Guidelines for the Prevention of Crime* (both 2002).

However, already since the entry into force of the *Optional Protocol to the International Covenant on Civil and Political Rights* (1976), there has been steadily growing and externally verifiable evidence on how the above, gradually added, elements of a common language of justice have first been practically implemented in the domestic legislation of Member states and second in international and transnational criminal justice.

In addition to the implementation of the United Nations justice standards and norms by the States parties to the *ICCPR* of 1966, they have been implemented since 1976 through the external legal opinions and decisions of the *Human Rights Committee* (1976)<sup>10</sup> and through the other treaty-based expert appointed quasi-judicial bodies (such as the *Committee on the Advancement of and the Elimination of Discrimination of Women* (1999), the *Committee against Torture* (2006), the recommendations of the *Conference of the State Parties to the United Nations Convention against Transnational Organized Crime* (2003) and, finally, through verdicts of judicial bodies (such as the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda (1993) and the *International Criminal Court* (2002)).

Two further, seemingly disparate, developments have contributed to the development of a common language of justice and strategically reoriented the United Nations. In fact, they both put “justice” up front with “prevention” and seem to lead to one piece of advice. This advice, metaphorically, is that in international peacekeeping, using the language of justice, starting with certain basic words, is a prerequisite to successful communication and effective service delivery.

The *Brahimi Report* on peacekeeping operations of 2000 reflected upon the practical and legal difficulties that had been faced by the United Nations in delivering justice in post conflict States.<sup>11</sup> The report called for proactive responses to post-conflict law reform and specifically outlined the need for the creation of a “common United Nations justice

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<sup>10</sup> The *Optional Protocol to the International Covenant on Civil and Political Rights* entered into force in 1976 and other similar protocols, statutes or conventions entered into force later (dates given in brackets).

<sup>11</sup> *Report of the Panel on United Nations Peace Operations* (A/55/305-S/2000/809).

package” of interim legal codes in which mission personnel could be trained before deployment, while the final answer to the “applicable law” question was being worked out.<sup>12</sup> Soon thereafter, in 2002, the need for establishing such interim legal codes became even more pressing, when an official from the *United Nations Mission in Bosnia and Herzegovina* (UNMBIH, 1995-2002) with a mandate to assist in reforming and restructuring law enforcement there, made headlines with the following statement:

“In hindsight, we should have put the establishment of the rule of law first, for everything depends on it: a functioning economy, a free and fair political system, the development of civil society, public confidence in police and courts”.<sup>13</sup>

The second development of the same year was the United Nations Economic and Social Council resolution, which stated that the Council, being “aware of the scope for significant reductions crime ... and of the contribution that effective crime prevention can make in terms of the safety and security of the individuals and their property, as well as the quality of life in the communities around the world”, was providing *Guidelines for the Prevention of Crime*.<sup>14</sup>

In 2004, the Secretary-General, echoing both developments, emphasized that:

“Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-conflict settings requires strategic planning, careful integration and sensible sequencing of activities. Approaches focusing only on one or another institution, or ignoring civil society or victims, will not be effective. Our approach to the justice sector must be comprehensive in its attention to all of

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<sup>12</sup> Ibid., para. 81.

<sup>13</sup> Paddy Ashdown, “What I learned in Bosnia”, *New York Times*, 28 October 2002.

<sup>14</sup> Economic and Social Council resolution 2002/13, annex, (available at <http://www.un.org/ecosoc/docs/resdec.asp?id=316>). The *Guidelines*, published also in the aforementioned *Compendium* (pp. 294-302), were reviewed in Sławomir Redo, “Does crime prevention pay? Making UN crime prevention guidelines work”, *Habitat Debate*, September 2007, Vol. 13, No. 3, p. 7.

its interdependent institutions, sensitive to the needs of key groups and mindful of the need for complementarity between transitional justice mechanisms” (page 1), and that

“In matters of justice and the rule of law, an ounce of prevention is worth significantly more than a pound of cure. While United Nations efforts have been tailored so that they are palpable to the population to meet the immediacy of their security needs and to address the grave injustices of war, the root causes of conflict have often been left unaddressed. Yet, it is in addressing the causes of conflict, through legitimate and just ways, that the international community can help prevent a return to conflict in the future. Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner. Viewed this way, prevention is the first imperative of justice” (para. 4).

#### **B. Putting a common language of justice into operation, post-2005**

However, despite the Secretary-General having described it as “the first imperative of justice”, prevention has not yet been addressed in a comprehensive manner. First, *Model Codes for Postconflict Criminal Justice* were developed as a follow-up to the *Brahimi Report* by the United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the Office of the High Commissioner for Human Rights and the United Nations Office on Drugs and Crime (UNODC). The model codes do not cover crime prevention.

The ultimate aim was to create a set of model codes that could be used as tools by both national and international actors engaged in the criminal law reform process in post-conflict states around the world. They were therefore drafted in a way that took into

account their potential cross-cultural application and use, in addition to the inevitable exigencies of a post-conflict environment. The substantive provisions of the codes were inspired by a combination of various legal systems, blended to create a coherent body of criminal laws tailored to these exigencies.

This “common justice package” consists of four codes: the *Model Criminal Code*, the *Model Code of Criminal Procedure*, the *Model Detention Act* and the *Model Police Act*. The *Model Criminal Code* is a “criminal” or “penal” code focusing on substantive criminal law, similar to those found in many states. Substantive criminal law regulates what conduct is deemed to be criminal, the conditions under which a person may be held criminally responsible and the relevant penalties that apply to a person convicted of a criminal offence. The *Model Code of Criminal Procedure* focuses on procedural criminal law, which is a body of rules and procedures that governs how a criminal case will be investigated and adjudicated. The *Model Detention Act* governs the laws and procedures to be applied by the criminal justice system to persons who are detained prior to and during a criminal trial and also to persons who are convicted of a criminal offence. Finally, the *Model Police Powers Act* sets out relevant powers and duties of the police in the sphere of criminal investigations, in addition to relevant procedures to be followed in investigating criminal offences. It also contains additional police powers and duties and the relevant procedures to be followed by police in the maintenance of public order.

The model codes are to be published in a three-volume series in 2007 and 2008. The first volume contains the *Model Criminal Code* and its accompanying commentaries.<sup>15</sup> The second volume consists of the *Model Code of Criminal Procedure* with commentaries. The third volume comprises the *Model Detention Act* and the *Model Police Powers Act* and their accompanying commentaries. Each volume will also contain a *User’s Guide to the Model Codes*. The model codes will also be made available online.

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<sup>15</sup> Vivienne O’Connor and Colette Rausch, *Model Codes for Post-Conflict Criminal Justice*, Volume I: Model Criminal Code, Peacebuilding and the Rule of Law (Washington, D.C., United States Institute of Peace Press, 2007).

What has already been fully published is the *Criminal Justice Assessment Toolkit*,<sup>16</sup> a standardized and cross-referenced set of tools to enable United Nations agencies, government officials engaged in criminal justice reform, as well as other organizations and individuals to conduct comprehensive assessments of criminal justice systems; to identify areas of technical assistance; to assist agencies in the design of interventions that integrate United Nations standards and norms in crime prevention and criminal justice; and to assist in training on those issues. It should be noted in particular that the assessment of criminal justice systems in post-conflict societies may present additional challenges; therefore, in anticipation of those challenges, the *Toolkit* draws also on the *Model Codes*.

Prevention, which is a relatively new element of the desired “common language”, is pursued by the United Nations through the forthcoming commentary on the *Guidelines for the Prevention of Crime* (2008-2010).

### **C. Rendering a concept internationally**

Practically rendering a concept so that it means the same to United Nations readers throughout the world is not easy. Internationally, interpretations of the language of justice differ widely. The most typical example of such differences of interpretation is the American versus the Chinese interpretation of the concept of the “rule of law”. For the U.S. “interpreter”, that is policy maker, “rule of law” is originally equivalent to the German concept of *Rechtsstaat*. By the Chinese counterpart it is now interpreted as, merely, “rule by law” (*yifazhiguo*).<sup>17</sup> Both sides see different contents in it. For both this is a “catch-all” term, but whatever is in it, reflects their own, unilateral, convenient understanding of the concept.

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<sup>16</sup> *Criminal Justice Assessment Toolkit*, United Nations Office on Drugs and Crime and Organization for Cooperation and Security in Europe, Vienna-New York, 2006, [http://www.unodc.org/pdf/criminal\\_justice/INTERNATIONAL\\_COOP.pdf](http://www.unodc.org/pdf/criminal_justice/INTERNATIONAL_COOP.pdf).

<sup>17</sup> Originally *fazhi* which is closer to *Rechtsstaat*. See Stephenson, *op. cit.*, p. 198.

At the multilateral level, however, this “bilingual” (mis)understanding may get yet another “twist”: a certain unilateral understanding of a legal concept may be introduced into the legal system of another country and applied uniformly (“one size fits all”), while affected victims may expect a more subtle, diversified and functional reaction by a court to the behaviour and sentencing of offenders’.<sup>18</sup>

These two kinds of rendering of a legal concept differ immensely. In the first case, two powerful West/East interpreters (American and Chinese) seem to play cat and mouse with one another, as if they were betting on an inevitable win for one interpreter; indeed, from the Western standpoint, that winner would be the American with his “Trojan horse” philosophy, as the title of Stephenson’s article suggests. In the second case, one interpreter (such as a powerful state or group of states that spearheaded their particular legal concept by managing to introduce it in an international legal instrument) may overlook the specificity of a legal situation in a much larger group of other countries that may agree to be bound by that legal concept. However, within that second option still another outcome is possible, that is, a group of States (such as the United Nations Security Council) imposes on another State the meaning of justice by sanctioning its illegal behaviour and compelling it to comply with the sanction, as happened, for example with Libya in the *Lockerbie* case, which in fact covered two cases involving 441 deaths.<sup>19</sup> In either interpretation the political challenge in agreeing on one interpretation of the language of justice is considerable.

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<sup>18</sup> Drumbl, *op. cit.*, p. 127.

<sup>19</sup> In 1991, France requested Libya to produce material evidence in the judicial inquiry following the September 1989 attack on the *UTA* DC-10 over Niger, which resulted in 171 deaths (including the wife of the US ambassador to Nigeria) to facilitate necessary contacts for the assembly of witnesses and to authorize Libyan officials to respond to any requests by the examining magistrate. In the same year, the United Kingdom and United States requested that Libya surrender for trial all those charged with the destruction over Lockerbie (Scotland, United Kingdom) of the *Pan Am* flight on 21 December 1988, which resulted in 270 deaths. The United Kingdom requested that Libya accept responsibility for the actions of its officials, disclose all its knowledge of the crime and pay appropriate compensation. Those requests were included in Security Council resolution 731 (1992). The sanctions were spelled out in resolution 748, adopted on 31 March 1992, and resolution 883, adopted on 11 November 1993 and included travel restrictions, an arms embargo and financial sanctions excluding financial resources derived from the sale of petroleum products and agricultural products. By its resolution 1192 of 27 August 1998, the Security Council suspended sanctions when Libya made two suspects in the *Lockerbie* case available to a Scottish court sitting in The Hague, Netherlands. In 2001, one of the accused was sentenced to life imprisonment. In 2003, Libya paid compensation of 2.7 billion US dollars to the families of the *Lockerbie* victims and additional compensation to the families of the *UTA* victims. Libya also handed over a letter to the Security

Still another overlapping challenge in rendering a legal concept emerges one step higher, when the agreed words of the United Nations justice “dictionary” have to be made into deeds while there is no force (sanction) to ensure that this is carried through. For instance, among such agreed words there is “social exclusion”,<sup>20</sup> the counteraction of which is one of the objectives of successful crime prevention locally, nationally and globally.

The concept of “social exclusion” originally comes from Western literature but can be translated into an Eastern context. Introducing the Western concept of “social exclusion” into an Eastern context requires inscribing it into the terms of the decision-making process there. This can be shown using an example of crime prevention in Thai society drawn and adapted from a Thai research report and an official report of the Government of Thailand presented in 2005 (that is, in the year 2548 in the Buddhist calendar) at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok, an event that was itself an example of how a common language of justice works in practice.<sup>21</sup>

As research shows, in Thailand the term “social exclusion” was hardly known in the past.<sup>22</sup> What was known was the patron-client relation, but not social exclusion or inclusion. The superior has a duty to take care of his or her inferior and assist him or her. In return, the inferior should respect and obey the superior. This form of

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Council admitting responsibility for the *Lockerbie* bombing and renouncing terrorism. In response, on 12 September 2003, the Security Council lifted the sanctions against Libya (see also Michał Płachta, “The *Lockerbie* Case: the role of the Security Council in enforcing the principle *aut dedere aut judicare*”, *European Journal of International Law*, 2001, 12(1), pp. 125-140.

<sup>20</sup> See *Guidelines for the Prevention of Crime*, sec. III. 8: “Crime prevention considerations should be integrated into all relevant social and economic policies and programmes, including those addressing employment, education, health, housing and urban planning, poverty, social marginalization and exclusion. Particular emphasis should be placed on communities, families, children and youth at risk.”

<sup>21</sup> For a tongue-in-cheek illustration of a congress’ common language of justice, see G.O.W. Mueller, Eduardo Vetere, The UN’s global gatherings on crime prevention and criminal justice: some basic maxims, *HEUNI Newsletter*, January 2000.

<sup>22</sup> See Antoni Mączak, *Nierówna przyjaźń. Układy klientalne w perspektywie historycznej* (Unequal Friendship. Clientelism in a historical perspective), Monografie FNP (Wrocław, Seria Humanistyczna, 2003), pp. 388-390, and Anek Laothomas, “Business and politics in Thailand: new patterns of influence”, *Asian Survey* 28 (1988), pp. 451-470.

charity/obedience relationship is further enforced by the cultural ideal that is deeply enshrined in the Buddhist doctrines of *metta* (kindness, sympathy, pity, compassion) and *karuna* (passion to help and do a favour to an inferior), which teach that a superior should act benevolently to an inferior. In this patriarchal sense, traditional Thai society hardly allows its members to be excluded from sharing social benefits, even though the Thai social structure consists of unequal and hierarchical relationships among its members.<sup>23</sup>

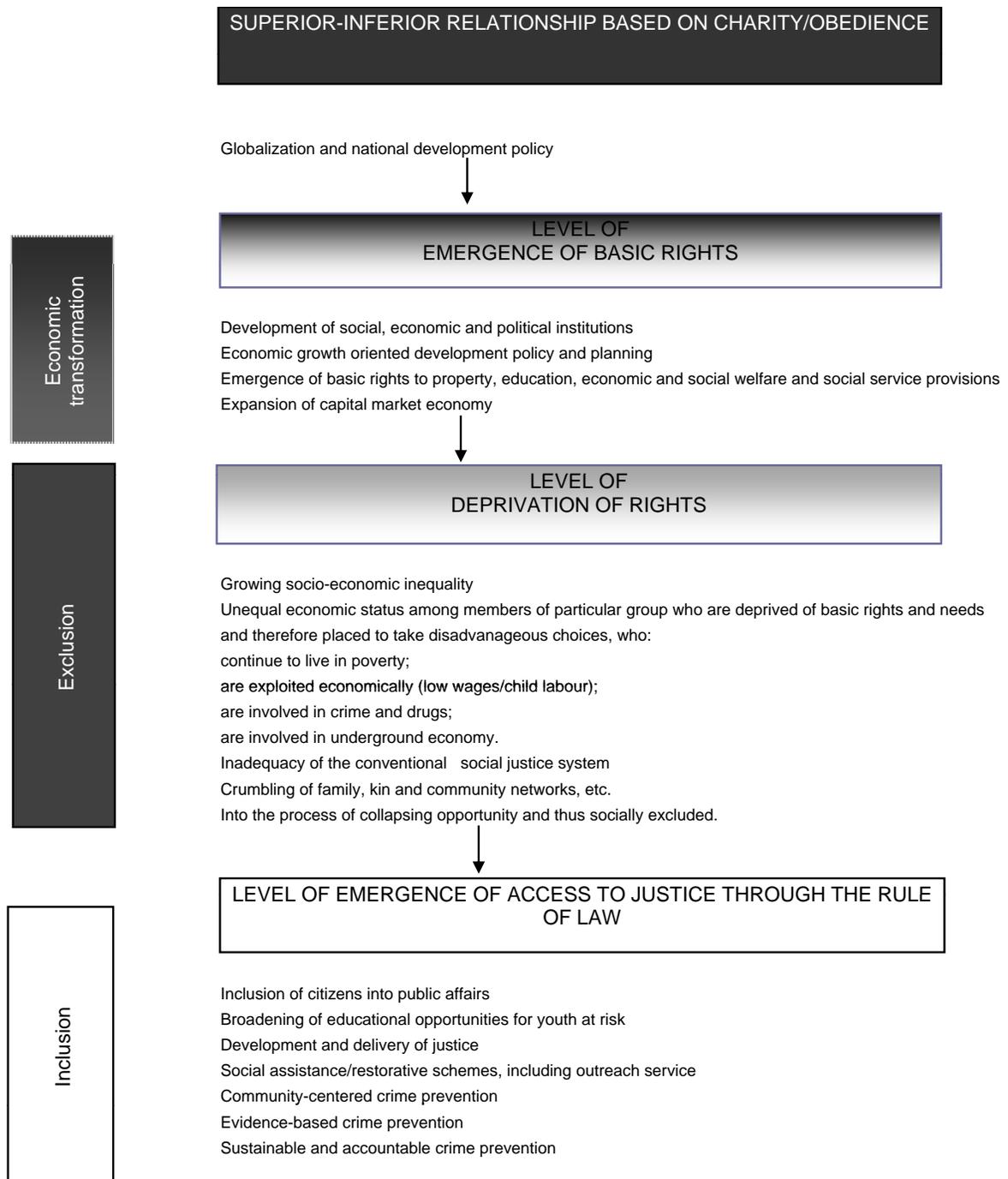
With globalization and economic transformation, new socio-economic and political mechanisms were formed, which enabled disadvantaged members of Thai society to claim their rights (the rights-based phase of social development is a precondition for evidence-based crime prevention) rather than expect charity. The formerly alien concepts of social exclusion and inclusion can now be theoretically understood in Thailand through the model shown in figure I, devised against nine successive national socio-economic development plans for the years 1961-2006 (2504-2549 in the Buddhist calendar).<sup>24</sup>

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<sup>23</sup> Richard A. O’Conner, “Merit and the market: Tai symbolizations of self-interest”, *Journal of the Siam Society*, 74 (1986), pp. 62-82.

<sup>24</sup> Adapted from Decha Sugkawan, “Social exclusion and public policy in Thailand”, *ACPF Today*, Asia Crime Prevention Foundation, June 1994, pp. 72-78, and updated on the basis of the Thailand country report entitled “Thailand-synergies and responses: strategic alliances in crime prevention and criminal justice” (Bangkok, Corrections Press, 2005), pp. 299-307, prepared for the *Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005*.

Figure 1 From social exclusion to social inclusion



#### **D. Building and applying a common grammar of justice**

Having successfully translated a Western concept into an Eastern context, there remains the need for a common “grammar”, that is, rules to deliver justice. As the above model lacks such rules (no information is available on how this model is pursued in Thailand in practice, through concrete crime prevention projects), the findings from a crime prevention project on good crime prevention practices in the Southern African and Caribbean regions may be used to demonstrate them. This 2004-2006 United Nations project funded by the Department for Economic and Social Affairs and executed by UNODC involved the review and evaluation of 40 smaller urban youth crime prevention projects from both regions. The project participants found the following five minimum rules of good practice in developing countries:<sup>25</sup>

1. Be very specific about objectives (what is going to be achieved) and how they will be achieved, so that success is defined and measurable;
2. Identify and promote low-cost and yet effective interventions that are already an established social, cultural, institutional or legal practice and can be sustained and replicated with minimal government support;
3. Develop structures, partnerships and opportunities wherein both government and non-government organisations can cooperate around a common strategic plan that is area-based for a greater concentration of expertise and inputs;
4. Identify, develop and engage user-friendly ways to share information about good practices from ongoing interventions, since many organisations do not have the capacity for ongoing research and analysis; and
5. Advocate and focus on integrated, national, five-year development plans to create clear and permanent conduits for the flow of monitoring-based information and to

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<sup>25</sup> See also <http://southsouthcrime.org>.

reduce the number of monitoring bodies while improving the level of integration among role-players.

There is no single list of such “grammatical” rules in delivering justice, including crime prevention. In crime prevention literature of developed countries, such rules are more rigorous and the list may be longer.<sup>26</sup> Consequently, what one learns about crime prevention under such rules may not necessarily be directly relevant to developing countries that lack such rules. Indirectly, the level of commonality between the two groups of countries expresses itself through the fact that certain theoretically known rules (for instance, application of correlations, control groups) will practically be introduced in developing countries in the future rather than in the present.

## **E. Common implementation techniques of justice projects**

### **1. Obtain a high-level political commitment and acknowledgement of a common cause**

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<sup>26</sup> For instance, Ron Clarke advocates seven rules of quality crime prevention (1. Be clear about your objectives; 2. Focus on very specific problems; 3. Understand your problem; 4. Be sceptical about displacement; 5. Consider a variety of solutions; 6. Anticipate implementation difficulties; and 7. Evaluate your results). A similar seven rules (similar to Clarke’s) are recommended in the “Beccaria-Project” (European Union). They centre around: 1. Establishing and describing the project; 2. Identifying the causes; 3. Specifying the goals; 4. Developing possible solutions; 5. Devising and implementing the project plan; 6. Reviewing the impact; and 7. Documentation and conclusions (Ronald V. Clarke, “Seven principles of quality crime prevention”, in *Quality in Crime Prevention*, Erich Marks, Anja Meyer and Ruth Linssen, eds. (Hanover, Landespräventionsrat, Niedersachsen, 2005), p. 85). However, the most elaborate rules for crime prevention in developed countries were recommended by Lawrence Sherman and others. In 1997 they published the results of a review of over 500 scientific studies, to inform an evaluation of the effectiveness of the US Department of Justice’s grants to assist in the prevention of crime. They employed a scientific methods scale to rate the methodological rigour of the studies quoted in evidence. The method used for assigning a score to a study included giving an overall rating (from 1 to 5), to: (a) the study’s ability to control extraneous variables; (b) the minimization of measurement error; and, (c) the statistical power to detect meaningful differences. The core criteria required to achieve the five levels of scientific rigour were: (i) correlation between a crime prevention programme and a measure of crime or crime risk factors; (ii) temporal sequence between the programme and the crime or risk outcome clearly observed, or a comparison group present without demonstrated comparability to the treatment group; (iii) a comparison between two or more units of analysis, one with and one without the programme; (iv) comparison between multiple units within and without the programme, controlling for other factors, or a non-equivalent comparison group has only minor differences evident; or, (v) random assignment and analysis of comparable units to programme and comparison groups (Lawrence W. Sherman and others, *Preventing Crime: What Works, What Doesn’t, What’s Promising* (1997, Washington, D. C., US Department of Justice (<http://www.ncjrs.gov/pdffiles/171676.pdf>)). See also *Reducing Offending: An Assessment of Research Evidence on Ways of Dealing with Offending Behaviour*, directed by Christopher Nuttall and edited by Peter Goldblatt and Chris Lewis (London, Home Office Research Study 187), 1998, pp. 139-140.

When there is a high-level political commitment to address a common problem, there will also be the acknowledgment of a common cause, hence there may be support infrastructure and adequate funding. In justice projects, illicit drug trafficking attracts a political commitment because of the lateral growth of the trafficking of opiates from Afghanistan, especially to other Asian countries and Europe. This is why 55 Member States and international organizations created an arrangement, the Paris Pact Initiative.<sup>27</sup> The Pact facilitates periodical consultations at the expert and policy levels. It brings together practitioners and experts from source, transit and consumer countries, which assess trafficking in opiates and recommend actions that partners and priority countries should take.

An evaluation of this project-based initiative (2004-2006), that intended to “combine...wills and efforts to step up national capabilities, develop regional partnerships and hence tackle all the aspects of this problem”<sup>28</sup>, found that in its first phase the initiative had clearly a positive impact on the increased ability of its parties to share law enforcement information in a collaborative and non-confrontational way. Furthermore, the initiative helped to revise Member States’ national drug control strategies, based on the shared experiences of other participants, thus fulfilling one of the primary requirements set out in the project.

By concentrating on law enforcement and carefully maintaining the focus of the initiative on support to combat trafficking, the project has ensured that it remained relevant to the participants. Any alternative approach would have resulted in the limited resources available to the project being spread too thinly to be effective. The evaluation report informs that the Paris Pact Initiative accepted shared responsibility amongst participating countries and organizations for the counter-narcotics effort. Its participants believe that it had also a positive, but not fully traceable, effect of increasing the levels of opiates’ interdiction smuggled from Afghanistan. Last but not least, among the project

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<sup>27</sup> [www.paris-pact.net](http://www.paris-pact.net).

<sup>28</sup> UNODC, *Independent Evaluation Unit Brief*, October 2007.

participants there was a greater willingness to acknowledge weaknesses in their controls and procedures, and to seek guidance for others.

The main findings of this independent external evaluation were reviewed by the Paris Pact partners at the ministerial level. Following this review and consultations, the partners adopted the evaluation results and recommendations and launched in 2007 the second phase of the Paris Pact Initiative. In the future, the project could be developed into an even more effective and useful tool if it were replicable in other regions and extend to the demand reduction (drug prevention) field. There should be a user guide prepared on the effective use of the coordination mechanism for technical assistance in the field of counter-narcotics.

This is a major contribution to a common language of justice, both in terms of its “vocabulary” (common understanding) and “grammar” (common rules). This is also an illustration of one of the very many ways in which it is being developed and expanded

## **2. “Speak in the language” of the donee**

When looking for opportunities to render technical assistance, getting to know the donee’s “language” is an advantage for the donor. It is important to use the “language” of a donee, that is to master the logical system of that language,<sup>29</sup> even though it may be not so clear. For instance, in United Nations “language”, there is a certain amount of overlap in such concepts as “security sector reform”, “judicial sector reform” and “governance reform”. Such an overlap exists also in many other concepts, for example “culture of lawfulness”, “culture of peace”, the “rule of law”, and so forth.

In a way, this is not necessarily so counter-productive.<sup>30</sup> Sometimes it is enough to use the other concept by re-adapting someone’s own professional language to that concept’s

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<sup>29</sup> Robert B. Kaplan, “Cultural thought patterns in inter-cultural education”, *Language Learning*, 16, Nos. 1 and 2, p.14.

<sup>30</sup> However, it is, as far as United Nations interagency collaboration is concerned. In response to this deficiency, the Secretary-General initiated in 2006 a process of harmonization of the work programmes of

terms. This has probably always been a very successful technique, as some historical arguments suggest (for instance, expanding the “rule of souls” over Central Asian tribes up to the fourteenth century by the Nestorian Christian clergymen who were preaching to the nomads using their own thought pattern).<sup>31</sup> Nowadays, it is recognized that writing a job application that uses the terms of reference of the vacancy announcement rather than those of the applicant may be the key to being short-listed, interviewed and perhaps employed.

### **3. “Write in” knowledge of international legal instruments “into” the technical assistance project**

Once the technical assistance application is successful, it may be necessary to rewrite what needs to be done in an agreed language, upon which the project idea will embrace common values (this is called “writing into the terms of reference”). This is important for a common language of justice and not just for the language of justice of a client (for instance, improving physical prison infrastructure in undemocratic countries).

Globally, increasingly the agreed language is that of the United Nations standards and norms in crime prevention and criminal justice, including its many treaties. All these instruments (as shown by the 20-point list above) have clear, multilaterally supportive and cross-referenced “vocabulary” of terms. Some terms are newer than others and require additional effort to put them into use in domestic legislation and practice (for example, “violence against women”, “human trafficking” and “human smuggling”). Many others have been generally more familiar and require rather more essential implementation than anything else.

### **4. Provide technical support for active field-level institutions**

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various agencies with the aim of creating “one UN” (see: *Delivering as One*, Report of the Secretary-General’s High-Level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment (A/61/583)).

<sup>31</sup> Sławomir Redo, *Zwalczanie przestępczości zorganizowanej w Azji Centralnej* (The Fight against Organized Crime in Central Asia) (Warszawa, Dom Wydawniczy ELIPSA, 2007), p. 212.

Technical assistance in crime prevention and criminal justice may be more successfully rendered by involving locally based institutions or organizations rather than by the direct involvement of a technical assistance provider. Headquarters-led and centrally implemented technical assistance projects probably have fewer chances of successful implementation than those that involve local actors who may be known on the ground and know the local conditions, this was recognized by one of the largest international banks, which adopted the slogan “Never underestimate the importance of local knowledge”, which advises talking directly with the target audience using the bank’s expertise and knowledge of local customs. Perhaps the most recent telling example of this technique in United Nations peacekeeping operations is the employment of anthropologists by the US army in Afghanistan to facilitate contacts with the tribal population, with the aim of “eas[ing] poverty and protect[ing] villagers from the Taliban and criminals”.<sup>32</sup>

## **5. Shift implementation power to local institutions and other constituencies**

Related to the above locally-focused process is the empowerment of local entities. Empowerment is “a social action process that promotes participation of people, organizations and communities towards the goals of increased individual and community control, political efficacy, improved control of community life and social justice”.<sup>33</sup> It is important to unlock the potential of those entities which in the process of self-governance may do more for justice delivery than in a centrally planned and executed process.

## **6. Improve peoples’ lives**

For this to happen Mahatma Gandhi (1869-1948), the spiritual father of non-violence movement said: ”Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom

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<sup>32</sup> David Rohde, “Army enlists anthropology in war zones”, *New York Times*, 5 October 2007.

<sup>33</sup> Nina B. Wallerstein, “Powerlessness, empowerment and health. Implications for health promotion programs”, *American Journal of Health Promotion*, 1992, 6, pp. 197–205.

you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to *Swaraj* [self-governance] for the hungry and spiritually starving millions? Then you will find your doubts and your self melting away”<sup>34</sup>. In still other words, an outcome is not a report, an article or even a project lacking individual focus. An outcome is making a proven concrete difference for the better in peoples’ lives.

## **II. Discussion**

### **A. Occidentalism and orientalism**

The argument presented thus far has been factual. The author hopes that it appears as linear (straightforward) as possible, not only in the writing style (or what English-language academics call “English rhetoric”), but also in substance. But the question of a common language of justice is far more multi-layered than this. It is also far more complex and politically contentious and therefore linear arguments may be wishful thinking. In the present section, therefore, let us discuss some of the issues at stake.

In a more discursive non-linear style, more akin to non-English-language styles of rhetoric, I would first like to note that the following departure point for this discussion is based on two symbolically meaningful publications: the English-language article “Orientalism, occidentalism and the sociology of crime”<sup>35</sup> and a Polish book with a partly English title, *Catering Dziedzictwa Kulturowego?*<sup>36</sup>

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<sup>34</sup> See further Thomas Weber, “Gandhi, Deep Ecology, Peace Research and Buddhist Economics”, *Journal of Peace Research*, Vol. 36, No. 3 (May, 1999)”, pp. 349-361.

<sup>35</sup> Maureen McCain, *British Journal of Criminology*, vol. 40, No. 2, 2000, pp. 239-260.

<sup>36</sup> Paweł Kalinowski, *Catering Dziedzictwa Kulturowego? Kaszubi i Kaszuby w Oczach Etnologów* (Catering of Cultural Heritage? Cashubs and Cashubia in the Eyes of Ethnologists), Gdynia, Region 2006.

In the former publication, Maureen McCain reports on her eight-year experience of teaching criminology at the University of the West Indies in Trinidad. As a British criminologist, she points out that issues that were most salient there might not be covered at all in Western criminology texts and that the theoretical presumptions of Western criminology were as likely to be misleading, or at best to miss the point, as to be helpful. An analysis of these difficulties revealed the twin failings in Western criminology of orientalism, which romanticizes the other, and occidentalism, which denies the possibility of difference or seeks to explain it away. The deep presumptions of Western theories may be harmful for Eastern consumers of them. Meanwhile, Western criminology inhibits its own theoretical development by limiting its theorization of difference to resistance. Consideration of an issue relevant to, but located outside criminology, that of violence against women and children, reveals the possibility of an interactive globalization in which people living in different societies may more constructively learn from each other.

In the latter publication, Polish anthropologist Aleksandra Marjańska shows how to technically, using anthropological methods, overcome research difficulties in getting across different cultures by “writing in oneself” or “entering” into a relation which one seeks to understand (as we remember this technique belongs to the repertoire of criminal justice technical assistance).<sup>37</sup>

Philosophers add in such a context that there are two basic relations that control the mind sets of people: internal (Eastern) and external (Western). In the “internal relation”, identified by the Aristotelian philosophers (William James, 1904; Bertrand Russell, 1909; George Edward Moore, 1922), the “thing” (concept/social fact) is defined by internal relations between person/group “A”, “B”, “C”, as eventually determined by the elders (“C”). The “external relation” defines the “thing” outside the circle of such relations, as concretely and hierarchically as a social fact can be. However, the role of the elders is substituted by the authority of formal agents of control.

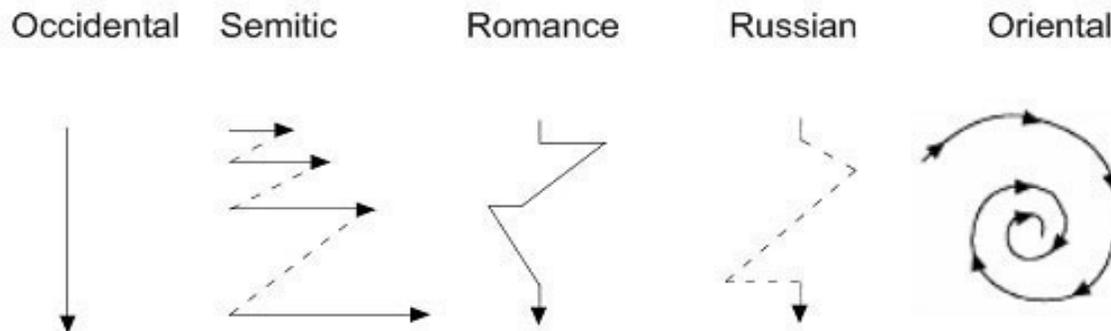
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<sup>37</sup> Aleksandra Marjańska, “Rodzina jako forum dialogu kulturowego pokoleń” (*Family as a cultural dialogue forum*), in Paweł Kalinowski, *op. cit.*, pp. 17-64.

## B. Cultural thought patterns

Psycholinguists, who add that logic is a cultural phenomenon (“if Aristotle had been Mexican, his logic would have been different”<sup>38</sup>), put forward five basic thought patterns, among which English (Linear/Occidental/Western) and Oriental (Eastern),<sup>39</sup> seem to me to be the two leading ones in a bipolar world (see Samuel Huntington’s *Clash of Civilizations*). I have accordingly amended the original seminal graph of 1966 showing those basic patterns from left to right: English/Semitic/Oriental/Romance/Russian. The first of these thought patterns is slightly renamed and the third repositioned in the current political -- including also the present dominant international criminal justice -- policy context. Consequently, the Occidental and Oriental patterns of cultural thought are shown on the opposite sides of the spectrum, with the remaining three (Semitic, Romance (Italian/French/Spanish) and Russian) in between (see figure II).

**Figure II Five cultural thought patterns**



Adapted from Robert B. Kaplan, “Cultural thought patterns in inter-cultural education”, *Language Learning*, 16, Nos. 1 and 2, p. 15.

<sup>38</sup> Charles Pierce, American philosopher (1839-1914).

<sup>39</sup> Kaplan, *op. cit.*, p. 15, and Robert G. Bander, “*American English Rhetoric: Writing from Spoken Models for Bilingual Students*”, Holt, Rinhart and Winston, 2<sup>nd</sup> ed. (1978), p. 3.

There are other cultural thought intricacies<sup>40</sup> and typologies<sup>41</sup> perhaps more refined but less comprehensive. The one shown here appears to me to be more comprehensive and conclusive, to the perhaps not coincidental point of finding the Russian thought pattern the most eastward positioned among the other non-Oriental types, hence with a new overall geostrategic connotation (“Russia has an Asiatic face which looks always toward Europe, and a European face which looks always towards Asia”<sup>42</sup>).

### C. Systems of thought and legal consequences for “justice” and “crime”

The Chinese interpretation of “rule by law” is not intended to outmanoeuvre the American interpretation. The reason for this interpretation is far more mundane. It derives from a polytheistic concept, which lacks “sin” and “guilt” (later inherited by the philosophies of Confucianism and Taoism), while the American (indeed monotheistic or occidental) concept is based on this essential dichotomy, both in positive and natural law (“crime”-“sin” with “moral guilt”).

The latter also exists in Islam, albeit to a limited extent. For although Islam belongs to the monotheistic religions, there is no sharp contradiction in its natural law between “sin” and “moral guilt”, as it exists in other monotheistic religions, *i.e.* in judeochristianity with its “evil” and “virtue” (bad and good/suffering and reward). And, of course, in orthodox Islam, there is no positive law, but only divine law.

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<sup>40</sup> For example, in Chinese, one syllable, *ma*, depending on the intonation used, has four different meanings. In British English a three-syllable word, *unpleasant*, in conjunction with other words (such as “it was rather unpleasant”) may mean only “disquieting” or may mean “horrible” (if used in the manner of so-called “British understatement”). Moreover, the Chinese written language is composed of some 49,000 iconic symbols that express separately other meanings, while the 26-letter Latin alphabet has no such features. All this points to the linear nature of English.

<sup>41</sup> Johan Galtung, “Structure, culture, and intellectual style: an essay comparing saxon, teutonic, gallic and nipponic approaches”, *Social Science Information*, 20, 6 (1981), pp. 817-856; Johan Galtung, Fumiko Nishimura, “Structure, culture and languages: an essay comparing Indo-European, Chinese and Japanese languages”, *Social Science Information*, 22, 6 (1983), pp. 895- 925. However, see also Kaplan, *op. cit.*, p. 10, footnote 13.

<sup>42</sup> Benjamin Disraeli (1804-1881), British Prime Minister. Likewise, new connotations emerge in the occidental thought pattern, for example, in the United States (the growth of Spanish-speaking population). However, since the purpose of this section of the article is not to analyse the internal shifts in all thought patterns, but rather limit itself to the principal dichotomy, consideration of this and other possible new connections (for instance, whether Polish thought pattern belongs to “Romance” or to “Russian” (Slavic)), is beyond its scope.

Within that law Islam is more flexible. An act may be sinful or not (not criminal in the sense of positive law), depending on how it is interpreted by the law of *shari'a*. Some deeds may be reprehensible and bring punishment, and some may be laudable and bring reward.

The feeling of guilt is more relative in Islam than in judeochristianity. In a cultural comparative study on schizophrenia of 1006 patients from Austria, Poland, Lithuania, Pakistan, Nigeria and Ghana, which analyzed the religious roots of their social unconsciousness as it relates to the pathogenesis of delusions of guilt, it was found that in contrast to 15.5% of the Roman Catholic patients, only 3.8% of Muslim patients reported on this delusional theme<sup>43</sup>.

But there is no “guilt” or “sin” in polytheism (Buddhism, Hinduism) at all. Instead of this dichotomy, there is *karma* (law of cause and effect). In both religions also, it is an illusion that causes that either a man suffers because of the way he sees himself and can save himself from this bad condition by practicing, thus returning to original purity (Buddhism) or a man cannot be separated from God by his sin, because, in an ultimate sense, man is God (Hinduism).

Although the differences between polytheistic and monotheistic doctrines are deep, possible commonalities in the justice language emerge with the onset of market economy in China, but are so far limited to the commercial arbitration (civil justice) and not to criminal justice where sin/guilt is much more established than “delict”.

This is because the base for a common language of justice is first created by the globalization of trade. The international rules of trade spread with the volume of trade. They require settlement of disputes in a satisfactory (“just”) way with any party, whether to a bilateral or multilateral trade arrangement. One such rule is that of reciprocity.

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<sup>43</sup> T. Stompe and others, “Delusions of guilt: the attitude of Christian and Muslim schizophrenic patients toward good and evil and the responsibility of men”, *Journal of Muslim Mental Health*, Vol. 1, Issue 1, July 2006, pp. 43-56.

Initially this was only (or mostly) a bilateral rule of the trade law, nowadays it is increasingly becoming multilateral.

A common criminal justice language follows suit. Bilateral reciprocity has always been the base of extradition, but with the onset of internationalization and transnationalization<sup>44</sup> of crime (growth in the volume of cases), extradition arrangements have also become multilateral, to give the example of the 2000 *United Nations Convention against Transnational Organized Crime* (art. 16.4)<sup>45</sup>, in force since 2003. But this development of a common criminal justice language has also its own terms of reference. Namely, it is preceded and powered by an independent force, originally - that of intervention in other State's internal affairs on the basis of a post-Second World War (starting with 1949 Geneva conventions) humanitarian law/action which subsequently legitimized international actions through the human rights law (1966 *ICCPR* and its 1976 *Protocol*). In sum, functionally, the sequence of developments (1949 until now) contributing to the elaboration and internationalization of a common language of criminal justice at the United Nations level would probably look like this:

humanitarian law -> human rights law -> criminal law

This seems to be a conclusion supported by the previously mentioned report of the Secretary-General to the Security Council. In the first place, it mostly deals with the rule of law regarding transitional justice for countries in post conflict situations (the humanitarian law approach). Secondly, it emphasizes the human rights aspects of justice administration. Thirdly, it emphasizes the criminal law (penal) aspects of the rule of law.

In each aspect, this three-step approach advances a common criminal justice language through its joint "vocabulary" (see the 20-point list, above). Practically, it is most fully

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<sup>44</sup> By "internationalization" I mean crimes covered by the United Nations human rights treaties. By "transnationalization", I mean crimes covered by other United Nations treaties, including the three drug conventions of 1961, 1972, 1988 and the conventions against transnational organized crime (2000) and corruption (2003).

<sup>45</sup> First introduced in the 1970 *Hague Convention for the Suppression of Unlawful Seizure of Aircraft* (art. 8).

used in conventional criminal justice administration in more stable politically countries categorized in the United Nations official terminology as "developed, developing or with economy in transition". In the other group of countries in post conflict situations, the employed list is shorter (basic elements are not in place or insufficiently observed).

Despite obvious and now explainable difficulties in creating and pursuing a common language of justice in practice, its vocabulary is expanding in words and actions. For a very long time the major division between the civil law concept of "criminal association"/*association de malfaiteurs*<sup>46</sup> and common law "conspiracy"<sup>47</sup> was insurmountable. At the time of negotiating of the *United Nations Convention against Transnational Organized Crime* (1999-2000), originally proposed in 1996 by Poland<sup>48</sup>, there were few who believed that this difference can find a satisfactory solution. In the *Convention* (a ground breaking exercise in itself), now broadly ratified in East and West by no less than, as of this writing, 137 Member States of the United Nations, both concepts were eventually and very successfully merged in one legal instrument (arts. 5. 1 (a) (i) and (ii), and 6.1 (b) (ii)).<sup>49</sup> All Member states won.

In the same Convention, plea-bargaining made its first multilateral appearance (art. 26.2 and 3) – another new example, first opposed by civil law countries. Again, all Member States won. Especially, on the winning side, there is a greater and common sense of

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<sup>46</sup> More than two persons, acting in concert with a view to committing offences (*Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime*, a joint project of the International Centre for Criminal Law Reform and Criminal Justice Policy and the Centre for International Crime Prevention (UNODC), Vancouver, March 2003, pp. 23-33).

<sup>47</sup> An intentional agreement between two or more persons formed for the purpose of committing, by their joint efforts, a criminal act (see also *Black's Law Dictionary*, abridged sixth ed. (West Publishing Co., 1983), p. 214).

<sup>48</sup> The text of a draft United Nations framework convention against organized crime (A/C.3/51/7, annex). *Travaux Préparatoires* (official records) of the negotiations for the elaboration of the Convention are an excellent testimony to how this common language was eventually agreed, see *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Organized Crime and the Protocols Thereto*, United Nations publication, Sales No. E.06.V.5) (available at [http://www.unodc.org/pdf/ctoccop\\_2006/04-60074\\_ebook-e.pdf](http://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf)). See also: Christopher Harding, *Criminal Enterprise. Individuals, Organisations and Criminal Responsibility*, Willan Publishing 2007, Chapter 10.

<sup>49</sup> The Convention criminalizes the mere agreement to commit serious crimes rather than particular overt acts, in their search for a "financial or other material benefit". However, States may add as an element of the offence an act committed by one of the participants furthering that agreement.

delivery of justice. These are the examples of a new vocabulary, just emerging, which through the modification of national criminal laws (for instance, since 2003 the Polish law allows for plea bargaining (*wytargowanie przyznania się*, art. 387 of the amended 1997 Code of Criminal Procedure)) are successfully applied in the domestic court practice.

### **III. What does the future hold?**

The future development of a common language of justice is likely to take place on five fronts.

First, there is likely to be further growth in the vocabulary of a common language of justice. New international soft law, model and treaty instruments in their own ways will contribute to that growth, bilaterally and multilaterally. They will contribute to the strengthening of the rule of law without which minor legal arrangements, like plea-bargaining or restorative justice, cannot be successfully institutionalized.

Second, the role of various international semi-judicial bodies and criminal justice courts and their decisions, concluding observations or verdicts is likely to be further strengthened. They will lead to a new cross-national meaning of these various outcomes that may involve sanctions, in terms of their specific and general deterrence, as happened in the United Nations criminal case of *Lockerbie*.

Third, peacekeeping and other rule-of-law field work operations, despite their shortcomings, on balance will nonetheless add to a real sense of delivering justice to offenders and crime victims. Therefore, the United Nations plans to increase the pool of career civilian peacekeeping staff, to which it has been committed since 1949.<sup>50</sup> Those

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<sup>50</sup> See also Sławomir Redo, "Standardy międzynarodowe w teorii i praktyce walki z przestępczością, z uwzględnieniem roli kongresów ONZ" (International standards in theory and practice of the fight against crime), in *Problemy więziennictwa u progu XXI wieku. I Polski Kongres Penitencjarny* (Centralny Zarząd Służby Więziennej, Centralny Ośrodek Szkolenia Służby Więziennej, 1996), p. 39.

professional staff will be able to respond more quickly to peacekeeping needs, including rule-of-law work.<sup>51</sup>

Fourth, the development of a common language of justice will benefit from the computerization of criminal justice information. This will happen through “electronic governance”, the use by governments of information technology to exchange information and services with citizens, businesses and other government bodies. Domestically, electronic governance is usually used by the legislature, judiciary and administration to improve internal affairs, the status of public services and the processes of democratic governance. It promotes transparency and trust in the activities of both government and administration. Internationally, it harmonizes various domestic concepts and brings them in line with a broader sense of justice worldwide.

Last but not least, because of the demographic changes in the world, by 2050 there will be a very different age and ethnic structure in comparison to now. Especially in Europe, where in 40 years from now there will be about one-tenth less Europeans (with the remaining much older than now) and more immigrant labour-seeking Muslims who in countries like Austria, Germany, the Netherlands, Norway, Sweden, and the United Kingdom may constitute up to one-third of their population<sup>52</sup>. This will affect the further development of a common justice language, for its more conservative sense (because of the aging European population) will be confronted with the understanding of justice brought by young Muslim immigrants. This controversy will be projected into the regional and cross-regional justice agenda.

#### IV. Conclusion

The present article was inspired by the report of the United Nations Secretary-General promoting a common language of justice and Robert Kaplan’s article on different cultural

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<sup>51</sup> Report of the Secretary-General on civilian career peacekeepers (A/61/ 850), para. 7.

<sup>52</sup> Estimates of the European Commission and the United Nations (Joanna Blewaska, Europa, 2050, *Gazeta Wyborcza*, 23 January 2008).

thought patterns. I would now like to start concluding it with his observation that “while it is necessary for the non-native speaker learning English to master the rhetoric of ... English ..., it must be remembered that the foreign student, ideally, will be returning to his home country ... English is a means to an end for him; it is not an end in itself”.<sup>53</sup> Some 40 years after Kaplan’s article, it would be rhetorical to ask whether the 1960s ideal of someone’s return home was successfully confronted with the realm of migration in the first decade of the twenty-first century.

Furthermore, again paraphrasing Kaplan, in the present global world, with its dynamic movement of people, English not only became an end in itself, but also the language of cross-cultural communication<sup>54</sup>.

Finally, unlike in the pre-globalization era, the United Nations, which provides the impetus to develop a common language of justice, is here to stay. In this United Nations language, there exist and will exist different “noun phrases” and “verbs” to describe the same or similar concepts and approaches. Noun phrases such as “culture of peace”, “culture of lawfulness”, “human security”, “rule of law” and verbs such as the anthropological “entering into relationship”, the psycholinguistic and philosophical “mastering the logical system” and the technical assistance “writing into the terms of reference” have much in common. While they are not precisely the same, multilaterally they denote, by and large, a common understanding of justice.

After the experiences with *UNMBIH*, one may also add that a common understanding of justice succeeds better when justice is served earlier rather than later. But, in this connection, there still should be one more common condition for those who deliver and receive justice. They must be taught and trained in the same “vocabulary” and “grammar” of justice through rule-of-law education and training. Military personnel involved in the

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<sup>53</sup> Kaplan, *op. cit.*, p. 19.

<sup>54</sup> Influencing also computerization. But this does not necessarily mean that eventually one (English-based) computer language will narrow down the differences in the natural languages. This programming language goes rather through the process of local adaptations, instead of having the impact of harmonizing them. Moreover, research suggests that, for example, Asian programmers have greater difficulty learning that language than Western English-language-educated programmers.

United Nations missions, who already receives this kind of preparation, civilian peace keepers, mentioned in the *Report of the Secretary-General (A/61/583)*, are or soon will be the ones benefiting. Also those who receive justice (offenders and victims of crime and the local population-at-large) should likewise know what a common language of justice in practice means, in line with local conditions addressed, and in the spirit of the progressive development of international law.<sup>55</sup>

After the experiences with the Paris Pact Initiative, one may further emphasize that when there is a common cause, for a common language of justice a consultative and coordination mechanism is a driving force which powers its development, both in terms of “vocabulary” and “grammar”.

An old joke about ways of thinking and doing things says that there are “good”, “bad” and “the United Nations” ways. Seriously, it seems that, in addition to the five thought patterns, there is also the United Nations thought and action pattern for communication and for a common language of justice. This pattern makes it possible to translate words into deeds to the satisfaction of a far greater world constituency than any other kind of language.

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<sup>55</sup> Involving, inter alia, the eventual abolition of death penalty. This is one of the reasons why in Iraq the United Nations generally did not support the imposition of death penalty on the sentenced there offenders (2006-2007), contrary to the popular retentionist sentiment of its residents, and the U.S.-backed criminal justice reform in Iraq, favouring death penalty. In 2007, the United Nations General Assembly called for the moratorium on the death penalty executions worldwide.