

INTERNATIONAL  
LAW  
REVIEW

# 国际法评论

(第七卷)

主 编 孔庆江  
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## 内 容 简 介

《国际法评论》是读者了解国内外关于国际公法、国际私法以及国际经济法最新发展动态的权威读物。

《国际法评论》(第七卷)包含国际法各方向近期研究成果。其中,国际公法方向的论文涉及:“国际环境法发展趋势探析——以中国环保法的修订为视角”“论法律现实主义视角下国际法上的善意原则与程序性权利的滥用——以南海仲裁案为例”“Possibility of Establishing a New Space Agency for Lunar Exploitation and Legal Problems on the Moon Agreement”等;国际私法方向:“中国海事诉讼送达程序的回顾与展望”“海牙诱拐儿童公约——日本的实践与就我国缔结公约可行性的思考”“中国通用航空征用法律问题研究”等;国际经济法方向:“应对出口信用保险欺诈的投保询问法律问题探究”“亚投行 PPP 投资模式法律问题研究”“The Legal Framework of EU Trade Law and Its Inspiration for Regionalization in the Greater China Region”等优秀论文。

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# Lessons Learned from Post-Second World War Trials for the United Nations Crime Prevention Education for Succeeding Generations

Sławomir REDO\*

*Zan Yu asked, "Once there are so many people, what should be done?" "Enrich them," said the Master. "Once they are enriched, what next?" "Educate them."*

Confucius, c. 551-c. 479 B. C. E

## I . Introduction

Some academics argue that beyond a mere "guilt"/"shame" distinction, the fuller cultural distinctions between Western and Eastern individuality "are even more powerful than previously imagined"<sup>①</sup>. But as intellectually plausible and popular the above cultural distinction of individuality is, its relative importance may better be understood in the context of powerful States and ideologies condemned by the United Nations Declaration of Human Rights for their barbarous acts in the Second World War (1939—1945) for which their major perpetrators were convicted. It is this context in which this criminological essay first looks into shame and guilt cultures. Next, it offers action-oriented recommendations and practical conclusions going beyond these cultures with a view to enhancing crime prevention education for the "succeeding generations" (the UN's Charter term). In this essay, it is projected for the future welfare of women and children, as envisioned by the United Nations Sustainable Developments Goals 2016—2030, on the way to which there is the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (Japan, 2020).

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① H. R. Markus and S. Kitayama, "Culture and the self: Implications for cognition, emotion, and motivation." *Psychological Review*, 98(2)/1991, p. 224.



## II . Cultures of guilt and shame

In 1946, one year after the establishment of the United Nations, and in the year of grounding the United Nations Crime Prevention and Criminal Justice Programme, Ruth Benedict, US cultural anthropologist, published a book *The Chrysanthemum and the Sword: Patterns of Japanese Culture*.<sup>①</sup> The manuscript of her book was earlier commissioned by the US Office of War Information. While at that time still in war with Japan, the US officials wanted to understand the “foreign morale”, i. e. the behavior of the Japanese. In particular, they had to consider the question of criminal responsibility of the Japanese military commanders for their barbarous acts. Eventually, in the following years of the US occupation of Japan (1945—1952) that book has been an intellectual guidance for the US military in monitoring Japan's society culture of shame, contrastingly different with the US' society based on culture of guilt.

Specifically, Benedict argued, this East-West contrast involves different cultural mechanisms of social control. In shame society children and adults are externally inculcated with shame and social ostracism, but with no sin. In guilt society people are kept under control by continuously reinforcing the internal feeling of guilt (and the expectation of punishment now or in the afterlife) for certain condemned behaviors, and the fear of retribution. Respectively, in Confucianism and other Eastern philosophies there is ample support for the culture of shame, and so is for the culture of guilt in Western Judeo-Christianity and philosophy.

Popular as this distinction still remains in other than cultural anthropology fields, it enjoys only a qualified support by the educationists. This is because they doubt, if indeed the mechanism of social control through which the inculcated one way or another conduct instructions to be ashamed or to feel guilty of something sufficiently explains the criminal conduct of the Second World War criminals. These educationists claim that this conduct may as well be influenced by the teaching material and methods of its inculcation, or rather its indoctrination—a method for spreading political ideology.

## III . Guilt at the post-Second World War trials

The research on guilty feelings of the hard core representatives of Nazi ideology-

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① R. Benedict, *The Chrysanthemum and the Sword: Patterns of Japanese Culture*, Boston: Houghton Mifflin 1946.

German leaders tried after the Second World War in Nuremberg indeed seem to suggest their imperviousness, to the point that instead of the self-abased recognition of the criminal conduct, the admission of guilt was “extracted” from them.<sup>①</sup> A journalistic account of the prison chaplains’ confessional work with 7 of them (mostly Christians) sentenced to life imprisonment documented how modestly penitence<sup>②</sup>, let alone penance<sup>③</sup> affected their mind. That account also showed them as people with quite normal childhood, without any overly criminogenic traits.<sup>④</sup>

One of those 7, Albert Speer (“Hitler’s architect”), only accepted “responsibility” as a member of Nazi elite and government, but not “guilt” in legal terms.<sup>⑤</sup> But another one from that group, Baldur von Schirach (a Nazi youth leader, later Governor of Vienna) in his trial testimony evidently admitted guilt. He said: “Hitler is a murderer. Auschwitz must mark the end of racism. It is a shame in the German history”. Hans Frank—a converted Catholic, the “Butcher of Poland” sentenced to death there as its German Governor-General, admitted at his own trial that he was possessed by a deep sense of guilt.<sup>⑥</sup>

Less balanced than the above seem to be the accounts of Japanese war criminals tried by the International Military Tribunal for the Far East for War Crimes. Its Dutch Justice B. V. A. Röling pointed out the uniqueness of Japanese culture and its influence from Zen Buddhism, which he sensed from the attitude of the defendants.<sup>⑦</sup> A Japanese researcher after whom this account is quoted here, further informs that intensive research showed the ambivalence in the Japanese attitude towards the Tribunal’s trial. However, this “has less to do with the lack of a legal tradition, or with nationalist bloody-mindedness, than with the nature of the trial itself” “far more publicized or unfair than Nuremberg”<sup>⑧</sup>.

Regarding other Japanese war criminals of whom over 1000 were sentenced by the Chinese courts in over 800 trials to various terms of imprisonment, a

① J. Diekres, *Guilty Lessons? Postwar History Education in Japan and the Germanys*. London: Routledge, 2010.

② In criminological sense, to feel guilty for a crime and successfully respond to a punishment.

③ In criminological sense, to feel guilty for a crime.

④ L. Joanin-Llobet, *Les sept de Spandau, les secrets révélés des derniers criminels Nazis*, Paris: Oh! Editions, 2008.

⑤ S. Karlstedt, “The lives and times of Nazi War criminals: Re-negotiating guilt and innocence in Post-Nuremberg Germany 1950—1975”. In *Transitional Justice: Images and Memories* A. Hol, D. Sigel and Ch. Brants, eds., Farnham (UK)-Burlington (USA): Ashgate, p. 43 (2013).

⑥ Y. Beigebeder, A young graduate in Nuremberg, *ACUNS Quarterly Newsletter*, Issue 2/2015, p. 5.

⑦ M. Futamura, “War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy”, (2008), London-New York: Routledge Taylor & Francis Group, p. 12.

⑧ Ibid, p. 12.



criminological and political science analysis documented that all of them pleaded guilty and eventually demonstrated their penitence.<sup>①</sup> Unlike their German counterparts, the Japanese inmates underwent re-education. It was intended to demonstrate their very humane treatment, combined with the teachings of materialism, international public law, and field visits to Chinese post-War reconstructed localities. As later reported by the Chinese Foreign Affairs Ministry, the effects of their re-education were found positive to the point that after their release and return to Japan, the ex-prisoners advocated peaceful relations with China. "It is the friendship and kindness of the educational staff in prison that changed them", concludes that report.<sup>②</sup>

This positive effect led to the improvement of the normative climate between Japan and China. It resulted in the signing in 1978 between the two countries a peace treaty. Nonetheless, the continued for more than two decades ex-prisoners' advocacy has done nothing to prompt the still awaited in China apology by Japan.

#### IV. Germany and Japan as the Second World War aggressors in comparative historiography

A partial reply why still this has not happened may be facilitated by the probably most systemic and recent comparative study by the afore mentioned Julian Dierkes. He analyzed the post-Second World War middle school history curricula from Germany (West/East) and Japan. From the very start these curricula have essentially differed by substance and method. The Japanese curricula, like those in the now non-existent now German Democratic Republic (East Germany) were first expressed from the standpoint of materialist historiography. In Germany (West, now the Federal Republic of Germany/FRG), the curricula remade the historical narrative to iterate country's "glorious" past until the First World War. Then until the end of 1960s both Western historiographies went into the period of relative silence, and now the remaining West German historiography markedly differs from Japanese historiography.

Dierkes explored this difference further. He first analyzed the background of comparative research<sup>③</sup> of 335 university historiographical curricula (1895—1964)

① J. Chen, "The trial of Japanese war criminals in China The paradox of leniency", 23 (2009), China Information, pp. 447-472.

② Ibidem, p. 466.

③ D. J. Frank, S-Y Wong, J. W. Meyer, F. O. Ramirez, "What counts as history: A cross-national and longitudinal study of university curricula", 44/1 (2000), Comparative Education Review, p. 33.

from 89 countries. He found in that research to be “organized around universalistic rational-legal principles rather than a distinctive high cultural heritage”.<sup>①</sup> Drawing on this finding, he came to the conclusion that the university-level history curricula through their concepts, methods and interpretations heavily weight upon the message they eventually convey to a reader. They either emphasize the unique national features (“specificity”, “character”, “psyche”, “chosen nation”), or common values with other nations. This is exactly the place, he writes, where a bureaucratic authority, mandate and policy comes into the profiling of educational message’s content as a proxy for a national narrative of history.

Before assessing in this light Japanese historiography, Diekres reminds that in the fundamental change of heart in Germany’s historiography had the visit to Poland by Willy Brandt, the German Chancellor. The Chancellor (who at the Nazi time was a German émigré in Norway and Sweden), in 1970 showed in Poland an extraordinary penance; In Warsaw he kneeled in front of the Memorial to the Murdered Jews of Europe and apologized. In 1972 at the initiative of the FRG and Polish Commissions for UNESCO the German-Polish Textbook Commission was established. The Commission paved the avenue to the signing a peace treaty, to the literature on reconciliation, to German reparations and eventually to other mutual agreements. They enabled the surviving post-Second World War and the succeeding generations of the two countries to come bilaterally to constructive and positive coexistence and fruitful cooperation, both by political leaderships and general public.

Regarding Japan, in Diekres’ opinion, in its actions, including the official historiography, there has been too little content, goals and accomplishments enabling reconciliation of that sort. Japan’s current historiography prefers an empiricist unreflective and paradigm that emphasizes selective facts and chronology. He therefore concludes that, by and large, Japan’s admission of guilt still remains internally and internationally a muted issue, both among its leaders and general public.

Finally, Dierkes notes therefore that the Japanese-Chinese reconciliation has so far been rather very limited. He concludes that save a couple of important actions: signing in 1978 a peace treaty, and Premier Tomiichi Muruyama’s apology in 1995 for Japanese aggression on the occasion of the fiftieth anniversary of the end of the Asia Pacific War, Japan has not yet managed to face squarely its own history.<sup>②</sup>

① D. J. Frank, S-Y Wong, J. W. Meyer, F. O. Ramirez, “What counts as history: A cross-national and longitudinal study of university curricula”, 44/1 (2000), *Comparative Education Review*, p. 33.

② The most recent example of it being the unsettled account in 61-volume official biography of the Emperor Hirohito of his Second World War role, published in 2014.



This conclusion best contextualizes the potential ultra-nationalistic residual power of Shintoism-the Japanese ethnic religion. Although in contemporary Japan due to the post-Second World War educational reform Shintoism is not taught at the pre-college level, since the 1990s a few colleges offer Shintoism either as a course on religion or a part of country's history. Other colleges offer substitute course involving the Shinto as a part of literary or ethnological issues ("Japanese Culture"/"Japanese Studies").<sup>①</sup>

Satoko Fujiwara randomly sampled and examined the course curricula of 100 such 4-year colleges (15 religious, 30 public and 55 secular private colleges).<sup>②</sup> She noted in them the absence of religious education for peace and tolerance. In her view, all such Shinto references strengthened the stereotyping of Japanese culture as unique. Thus they reinforced its legitimization against other foreign cultures. She concluded that in Japan like in every other country in the world, religious education for peace and tolerance is needed.

## V. Aggressor and victim historiographical and policy perspectives

In line with this finding is the argument on the cultural significance of the new Japanese Constitution (1947). Its authoritative Japanese commentator eloquently stated that:

In the contemporary world where the great problem is the establishment of world peace and world order every individual is required to be faithful to "the highest conscience of mankind" as well as loyal to his nation and his people. It is natural that the Constitution of Japan be based on "universal principles" but in reality it is extremely difficult to seek out principles in which all peoples without exception can believe. Also the classical Anglo-American liberalism and democracy and the Soviet-type socialism as they are cannot become "universal principles" either now or in the future. True universal principles must be those which transcend even those which might be built on a synthesis of those mentioned above.<sup>③</sup>

No wonder that Japan did not rush to ratify the ICC Statute (1999), but did so in 2007. Germany ratified it in 2000-another evidence of a political commitment of

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① S. Fujiwara, "Problems of teaching about religion in Japan: another textbook controversy against peace?", *British Journal of Religious Education*, Vol. 29, No. 1, pp. 49-54 (2007).

② Ibid, pp. 37-39.

③ K. Chsakai, J. M. Maki, *Japan's Commission on the Constitution: the final report*, Asian Law Series, Vol. 7, University of Washington Press, Seattle 1980, p. 215.



that country to the worldwide maintenance of peace and security, which since the 1970s informs others about this.<sup>①</sup>

But the German-Polish model has not been replicated in the Polish-Russian historiographic relations. They only resulted in a bilaterally mandated Commission for Difficult Matters which jointly published the report inventorying those unsettled matters. As per that model, even less settled are such difficult matters between Poland and, for example, Ukraine. They, inter alia, include the Second World War-time killing of some 100 000 Poles by the Germany-acquiesced Ukrainian nationalists ("The Volyn Massacre"). According to the recently adopted in Ukraine the *Law On the Legal Status and Honouring of Fighters for Ukraine's Independence in the Twentieth Century*<sup>②</sup> these nationalists-veteran members of the Organisation of Ukrainian Nationalists and the Ukrainian Insurgent Army (UPA) are entitled to receive state benefits. This 2015 law rules that denial or disrespect of their role in fighting for Ukrainian independence is an unlawful "desecration of their memory". In memory of these Nazi collaborators in Ukraine monuments are built, thanks to the Presidential decree recognizing the members of UPA as "freedom fighters". As a follow-up to the above legislation one such monument was recently erected for the UPA General Roman Sukhevych, whose son is the Ukrainian parliamentarian. All this is for Russians and Poles alike an extremely painful reminiscence of Ukrainian Second World War barbarous acts. This reminiscence is perhaps as painful as the Japanese official visits to the Shinto Yakasumi Shrine are for the Chinese remembering the barbarous acts during Japan's occupation of China, including the "Nanking Massacre".

Taking these examples as a whole, one can now see, how:

- (a) insignificant the distinction between the cultures of shame and guilt may be;
- (b) perfunctory admission of guilt can be, and
- (c) powerful ideologies can revive the political and educational agenda in terms of determining national and personal responsibility for the various barbarous acts that still outrage the conscience of humanity.

Last but not least, notwithstanding these examples drawn mostly from German and Japanese history, there is no country which would not have been at one time or another on the wrong side of justice. Poland seems to be one of such cases in point.

<sup>①</sup> China, Russia or USA, three of the five permanent members of the UN Security Council, still are not Parties to the Statute of Rome of the International Criminal Court. But the notion of "victor's justice" who settled the post-Second World War score seems to lose its import (France and United Nations Kingdom have both acceded to the Statute).

<sup>②</sup> [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54689](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54689).

There not only individual Poles but also a high-ranking “Law and Justice” populist party supporter-Andrzej Duda, successfully running for the office of the President (2015–2020), questioned the formal apologies by the two former Presidents for a massive killing of the Polish Jews in the “Jedwabne Massacre” (1941).<sup>①</sup> Other cases in point involve the “Sabra and Shatila Massacre” (1982)<sup>②</sup> of the Palestinians by the Israelis, and the “Srebrenica Massacre” (1995) of Muslims by the Serbians.<sup>③</sup> The latter massacre, as stated by the United Nations Secretary-General, “will forever weigh on the collective conscience of the international community”.<sup>④</sup> Shortly thereafter, the Secretary-General issued another statement. In it he condemned in the strongest terms the devastating bomb attack on 17 July 2015 on a busy market in Khan Bani Saad, an Iraqi town north of the capital Baghdad. Reportedly, the attack, left over 100 civilians killed and many more injured, including children.<sup>⑤</sup>

These massacres rather and only may illustrate that they, other barbarous acts, the criminal victimization of women and children, the inferior treatment of the prisoners of war, other prisoners, migrants, political opponents, enemy soldiers, communities, faith and ethnic groups, whole nations, whether large or small, but self-regarded as “predestined”, “chosen”, and so on-also happen elsewhere. There probably is no religion, no moral philosophy and no country that would be impervious to such abuses of their tenets in one or another time in history and the eventual fundamentalism and nationalism that may both be credited for the massacres. Preventing them involves strengthening a democratic statehood process through the art of fine tuning the locally driven dynamic interrelationships between the secular and non-secular tenets and actors. This builds and keeps a peaceful and inclusive society.

## VI. Beyond the rhetorical question: If we believe in knowledge, can education by itself make people stop killing one another or prevent other crime?

But this was not the goal of the Axis states before and during the Second World War. High education had not prevented Hideki Tōjō, Japanese Education Minister

① [https://en.wikipedia.org/wiki/Jedwabne\\_pogrom](https://en.wikipedia.org/wiki/Jedwabne_pogrom); <http://www.eurojewcong.org/poland/12972-polish-presidential-candidates-clash-over-jedwabne-responsibility.html>.

② [https://en.wikipedia.org/wiki/Sabra\\_and\\_Shatila\\_massacre](https://en.wikipedia.org/wiki/Sabra_and_Shatila_massacre).

③ [https://en.wikipedia.org/wiki/Srebrenica\\_massacre](https://en.wikipedia.org/wiki/Srebrenica_massacre).

④ Let Us Not Turn Our Backs When People Turn to Us for Help, Urges Secretary-General at Remembrance for Victims of Srebrenica, Press release SG/SM/16986, 1 June, 2015: <http://www.un.org/>.

⑤ available at: <http://www.un.org/sg/statements/>, 18 July, 2015.



(1943) and Prime Minister (1941—1944) from his criminal acts, from the responsibility and a death sentence by the International Military Tribunal for the Far East for War Crimes. Joseph Goebbels (1897—1945), master propagandist of the Nazi regime and dictator of its cultural life, had been educated in the Hellenic literature that projects the most humanistic message. But he corrupted it. Learning from that literature about justice, what is right or wrong, among many other highly moral calls had not prevented him to assist Hitler in seizing power, starting and losing the Second World War. By committing suicide both escaped the criminal responsibility to which other Nazi functionaries have been brought for the Holocaust and other barbarous acts.

However, the French king Louis XV, another student of Hellenic literature, when in 1745 saw some 5000 human corpses of Dutch, British, Hanoverian and French troops lying on the field after the victorious battle of Fontenoy (now in Belgium), commented to his son: "See how much blood a triumph costs. The blood of our enemies is still the blood of men. The true glory is to save it".<sup>①</sup>

Until the recent times, too few contemporary political decision-makers, but also development aid specialists and agencies (including the United Nations<sup>②</sup>) have been inspired to work systematically for that true glory. Others, as diverse as Mao Zedong, General Douglas MacArthur who oversaw the Allied occupation of Japan, and leaders of Imperial Japan were more inspired by "The Art of War" by Sun Tzu (544 B. C. —496 B. C.) the definitive work on military strategy and tactics of its time.<sup>③</sup>

The answer to the question put in the title of this section is then clear: If we only believe in knowledge, education by itself will not make people stop killing one another or prevent other crime. What Confucius meant (see the motto) is that education can make fed people docile, but not necessarily "hungry" for innovation. Innovation spelled troubles to Confucius, Mencius and even to his opponent Xunzi.<sup>④</sup> They all emphasize the priority of economic and welfare rights over individual rights permitting such innovation to be only the music for the ears of the governors but not

① Quoted in the editorial by S. Carroll in *The Bulletin magazine* (Brussels), reprinted in electronic media as: "The Battle for Fontenoy", *History Ireland. Ireland's History Magazine*, Issue 2 (Summer 2004), News, Volume 12, available at the website: <http://www.historyireland.com/20th-century-contemporary-history/the-battle-for-fontenoy/>.

② The UN quite chaotically pursues the respective specialized humanitarian and other technical assistance despite the escalating rhetoric to the contrary. W. Easterly, C. R. Williamson CR, "Rhetoric versus reality: The best and worst of aid agency practices", 39/11 (2001), *World Development*, pp. 1930-1949.

③ [https://en.wikipedia.org/wiki/The\\_Art\\_of\\_War](https://en.wikipedia.org/wiki/The_Art_of_War).

④ B. J. Schwartz, *The World of Thought in Ancient Asia*, Cambridge, MA: Harvard University Press, 1985, ch. 4.



the governed.

The argument of individual versus collective rights resounds in restorative justice debates concerning the rights of victims and offenders. But whatever is the priority, any choice can only then succeed, if first a more basic-humanitarian-condition is met. This basic condition is that the aggressors reconcile with the victims the past through the aggressors' penance. True penance is the aftermath of genuinely felt guilt with compensatory act(s) mutually recognized as satisfactorily settling the consequences of the past barbarities.

## VII. Towards the international and intercultural reconciliation of views on crime prevention education

Remembering that crime prevention is not only an art, but science<sup>①</sup>, this section will seek to answer, how to balance out the unsettled contentions through the reconciliation-an art of emphatic settlement of conflict.

It starts by reminding that when the FRG Chancellor Brandt was interviewed after his extraordinary act of penance in Poland, he said about the German Second World War barbarous acts the following:

"This horrible issue exceeded every theory and I thought-actually I couldn't have done anything else-that I have to apologize, I, who did not belong to Hitler's most barbarous followers, wanted to offer an apology on behalf of my nation, and to pray that we would be forgiven"<sup>②</sup>.

Accordingly, the following insights into this section are atheoretical. They are partly drawn from the social science literature and partly from the authors' UN and post-UN teaching experience, including the interdisciplinary intercultural graduate course "The UN and Crime Prevention" for the law and other students.

These insights show the limits of the United Nations' common language of justice-a metaphorical term used for operationally harmonizing the Organization's rule-of-law work, according to its standards and norms.<sup>③</sup> The upcoming United

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① L. W. Sherman, D. C. Gottfredson, D. L. MacKenzie, J. Eck, P. Reuter and S. D. Bushway, *Preventing Crime: What works, what doesn't, what's promising, Research in Brief*, U. S. National Institute of Justice, 1998. 7, pp. 2-3.

② Text from the footage: <http://www.onlinefootage.tv/stock-video-footage/25389/1970-on-his-knees-in-warsaw-chancellor-willy-brandt-in-poland>.

③ See further UN doc. S/2004/616, The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General, 23 August 2004; S. Redo, The United Nations Rule of Law, "'common language of justice' and the post-2015 educational agenda: Some academic and policy aspects", 16 (2014), *Comparative Law Review*, pp. 211-246.

Nations Sustainable Development Goals (SDGs) agenda (2016—2030)<sup>①</sup>-the UN master plan operationalizing socio-economic part of the United Nations Charter for the next fifteen years-reinserts into a common language of justice its root meaning from the time of the UN Charter's negotiations, namely that there is no peace without justice.<sup>②</sup> More precisely, and again, justice nowadays and in the future is meant to be the promotion of "peaceful, safe societies and strong institutions"-possible as an ever developing process interdependent with other agenda's constitutive elements.<sup>③</sup>

In sum, in theory and in domestic and UN practice, we now have differently internationally and interculturally balanced outhumane treatment of offenders and victims of crime, particularly within human rights' and the socio-economic welfare rights' agenda. Irrespective of the ensuing lack of close parallels between Western and Eastern crime prevention education, the implementation of the United Nations sustainable development goals may reorient criminologists and educationists aware of the current ideological differences and idiosyncrasies in the rights-based agenda (whether secular or not) towards the collective peace contribution.

In its interest, as a lawyer and criminologist, as an academic and former United Nations technical assistance crime prevention expert, I would like to emphasize that for the United Nations the reduction of poverty matters more than the rest of human or socio-economic rights' considerations otherwise reflected in the present educational agendas and curricula. The first and overarching SD goal is the eradication of absolute poverty by 2030 by lifting up the standard of living of some 1 billion people to US\$ 1.25 a day (draft SDG 1.1). Teaching hungry people how to behave and how to govern well is a futile effort, as already emphasized by the Confucians. The United Nations Food and Agriculture Organization estimated that in 2010—2012 globally on the average one in eight people were suffering from chronic undernourishment. Save one, all others lived in poor developing countries-15

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① This forthcoming agenda is based on concrete end goals and targets. They are organized along four key dimensions of a more holistic approach: (1) inclusive social development; (2) inclusive economic development; (3) environmental sustainability; and (4) peace and security. In each of these dimensions there are targets and sub-targets to be reached by 2030. Some of them involve education, property-rights, the treatment of women and children, countering of various forms of domestic and transnational crime, including corruption and cybercrime. See further: UN doc. A/69/700, The Road to Dignity: Ending Poverty, Transforming All Lives and Protecting the Planet, Report of the Secretary-General, 4 December 2014.

② "Peace, real and durable, cannot be based on anything other than justice" (Doc. 944. 1/1,34, Report of the Rapporteur, Committee I to Commission 1, United Nations Conference on International Organization (UNCIO) Documents, Vol. VI. p. 453).

③ UN doc. A/69/700.



percent of the entire world population.<sup>①</sup> Reportedly, there appears to be a positive correlation between satisfactory level of nourishment and low homicide rate, while a negative correlation is in developing countries with undernourished population and high homicide rate.<sup>②</sup>

But criminologists well know that it is neither a number of calories per day nor any other absolute measure of poverty which make “glocally”<sup>③</sup> a difference in successful crime prevention education. That difference depends on the way in which governments and people respond not to the absolute but the relative deprivation of a sort, regardless of one or the other amount of calories per day and regardless of any resource scarcity.

Obvious as this is, our appreciation of this fact should be translated into educating that deprivation (material and non-material, especially maternal) in one or another form starts at birth and has criminogenic consequences later.<sup>④</sup> Mindful of this truth, David F. Farrington, the eminent British criminologists awarded with the “Stockholm Prize in Criminology”, captured this by saying that “cold, rejecting parents tend to have delinquent children” and that “parental warmth could act as a protective factor against the effects of physical punishment”<sup>⑤</sup>.

From a much broader perspective, undernourishment is a problem of resource scarcity, and an intellectual shortcut to the problem of deprivation. Economics which is “the study of social behavior guiding in the allocation of scarce resources to meet the unlimited needs and desires of the individual members of a given society”<sup>⑥</sup>, other social science studies and the ensuing from them the compelling evidence, all point to the criminogenic effects of relative deprivation.<sup>⑦</sup> Consequently, economists, philosophers, criminologists and development aid specialists in various ways

① <http://www.fao.org/news/story/en/item/161819/icode/>.

② S. Redo, “Reducing resource deprivation and attaining the UN Sustainable Development Goals in 2030; SDG 16 and generic indicators”, In *Vienna Vision: Peaceful, Inclusive, Prosperous and Sustainable World* (M. Dimitrijevic), Academic Council on the United Nations System: Vienna 2015, p. 112.

③ “Glocal” (Global/local): “The universal idea or concept, the universal feeling or emotion...given a local habitation and a name”. J. E. Walsh, *Intercultural Education in the Community of Man*, Honolulu: University of Hawaii Press 1973, p. 106.

④ S. Redo, “Education for succeeding generations in Culture of Lawfulness”, In E. W. Pływaczewski (ed), *Current Problems of the Penal Law and Criminology*, Wydawnictwo C. H. Beck, Warszawa 2014, pp. 698-722.

⑤ D. P. Farrington, “Family influences on offending and family-based intervention”, In *Women and Children as Victims and Offenders: Background, Prevention, Reintegration Suggestions for Succeeding Generations* (H. Kury, S. Redo and E. Shea), Springer Verlag: Berlin-Heidelberg 2015 (forthcoming).

⑥ <http://www.digitaleconomist.org/economics.html>.

⑦ S. F. Messner, L. E. Raffalovich and G. M. Sutton, “Poverty, infant mortality, and homicide rates in cross-national perspective: assessments of criterion and construct validity”, *Criminology*, Vol. 48 (2) pp. 509-537.



emphasize the need to mainstream the access to scarce resources for human development. This should happen by addressing comprehensively the question of property rights to land and water, property rights in communities and households, between men and women, parents and children and among children themselves may be the way to counter interpersonal violence, property crime, including corruption.<sup>①</sup>

Various sorts of deprivations will then be preventable more successfully than they are now, while crime victims and offenders will benefit from more humane and efficient treatment, especially successful among the young ones (infants and young children) at risk of the conflict with the law.

This may be a chance for China and Japan. Both countries are involved in the Programme for International Student Assessment (PISA) carried by the Organization for Economic Cooperation and Development (OECD) that comparatively assesses their primary and secondary education. Educationists in both countries stress for these levels the importance of civil moral development of children. In various PISA countries social exclusion (i. e. school bullying (real and virtual)), drug peddling and use are in the order of the day. It may rather be surprising to note therefore that so far PISA has still been lacking an indicator or indicators of such uncivil behaviours,<sup>②</sup> while criminologists and educationists alarmingly report on their manifestations among children from all over the world.<sup>③</sup>

Practical education is needed how to go about drugs and alcohol, virtual reality, how to be a good colleague at school, be a life partner later, how to be a good father or mother, how to go about mentally sick people in the family and outside.<sup>④</sup> Education in that direction may change social attitudes. Therefore one of the next PISA surveys could also measure whether, and if so, how the Western and Eastern instructional institutions meet such civic moral education needs that improve those attitudes. Alternatively, such assessments may be supplemented via the recurrent International Self-Report Delinquency surveys.<sup>⑤</sup>

① S. Redo, "Reducing resource deprivation and attaining the UN Sustainable Development Goals in 2030: SDG 16 and generic indicators", In *Vienna Vision: Peaceful, Inclusive, Prosperous and Sustainable World* (M. Dimitrijevic), Academic Council on the United Nations System, Vienna 2015, p. 112.

② This is a recurrent intergovernmental 3-year assessment of reading, mathematics and science performance by 15-year old students.

③ C. Hartjen, S. Priyadarsini, *The Global Victimization of Children: Problems and Solutions*, Berlin-Heidelberg, Springer Verlag, 2012.

④ R. Layard, *Happiness: Lessons from a New Science*, London, Penguin, 2005.

⑤ I. Marshall, "Results of the second round of the International Self-Report Delinquency (ISR2) study: Importance of education and social learning for 12-15 year olds", in *Women and Children as Victims and Offenders: Background, Prevention, Reintegration Suggestions for Succeeding Generations* (H. Kury, S. Redo, E. Shea, eds), Berlin-Heidelberg, Springer Verlag, 2015 (forthcoming).

The construction and substantive content of such survey indicators is a very subtle and sensitive issue for any country. In Japan, reminds us Masako Shibata,<sup>①</sup> the Cabinet of Premier Yasuhiro Nakasone (1982—1987) blamed the 1947 Fundamental Law on Education (FLE, art. 15)<sup>②</sup> effectively barring religious instruction for causing the psychological insecurity of children and increasing disorder in Japanese schools. The basic assumption was that the FLE-prompted reforms during the Occupation brought about too high valuation about Western ideas-in consequence, the too much “denial of traditional values and norms”.<sup>③</sup>

In 2006, the FLE-debate eventually led to the adoption of the Basic Act on Education (Act No. 120 of 22 December 2006).<sup>④</sup> While in art. 15 it repeated word-by-word the original text of the old FLE art. 15, in art. 2, it added the obligation “to foster an attitude to respect our traditions and culture, love the country and region that nurtured them, together with respect for other countries and a desire to contribute to world peace and the development of the international community”. This new wording additionally restrains the ultra-nationalist Shinto undertone already countered by the FLE. The new Law interplays in this regard with the otherwise more exclusive “Education Law of the People’s Republic of China”. It stipulates in art. 7 to carry out education “in the spirit of inheriting and expanding the fine historical and cultural traditions of the Chinese nation and assimilating all the fine achievements of the civilization progress of human beings”.

In sum, China and Japan, together with other PISA countries, have now some more common ground to strengthen the moral education of children and to stand accounted for it before the international community with its educational performance indicators and global values. What would matter in such criminological indicators which capture and help to measure the degree of social exclusion, and other uncivil behaviour through proxy variables.

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① M. Shibata, “Religious education reform under the US military occupation: The interpretation of state Shinto in Japan and Nazism in Germany”, *Compare*, Vol. 34, No. 4 (2004), pp. 425-442.

② Article 15 (1) The attitude of religious tolerance, general knowledge regarding religion, and the position of religion in social life shall be valued in education; (2) The schools established by the national and local governments shall refrain from religious education or other activities for a specific religion.

③ M. Shibata, “Religious education reform under the US military occupation: The interpretation of state Shinto in Japan and Nazism in Germany”, *Compare*, Vol. 34, No. 4 (2004), p. 428.

④ Adopted at the Third Session of the Eighth National People’s Congress on March 18, 1995, promulgated by Order No. 45 of the President of the People’s Republic of China on March 18, 1995 and effective as of September 1, 1995.



## VIII. On the “The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet” with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

Before and during the Second World War German Christianity and Japanese Shintoism did a lot to prevent from globalizing the values. Both have discredited themselves in the service of Nazism.<sup>①</sup> This powerful nationalist ideology was defeated by the internationalist ideology of equality and freedom that much more fully, sincerely and progressively than the defeated countries addressed people's material and spiritual welfare.

There is no universal formula that makes one or the other religion impervious to pathologies, like there is no perfect democracy, and no culture impervious to xenophobia and social exclusion. In each and every country and case uncivil behaviour has its own limits. But when that behaviour comes to weight on the conscience of humankind, since 1945 it is universally regarded as barbarous.

Therefore quite right are the suggestion of Fujiwara to begin with the reconciliation of ideas with the homework involving a critical internal revision of the narratives in Japanese historiography. She writes:

“First, instead of working individually, scholars of religion with various backgrounds and specializations can cooperate to create a book for religious education if they intend to foster intercultural understanding. By working together they can critique the book from various view-points before publishing it. Secondly, not only writers but also views within a book can be multiple. A book for teaching about religion will give students opportunities to think more deeply if it offers different views on a particular issue rather than imposing a single view onto them. The same point can be made for the education of religious sentiments. What matters may not be a subject, but the way to present the subject. Nothing about religion should be taboo for students”.<sup>②</sup>

However, important as such an educational reconsideration of non-secular

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<sup>①</sup> Although to a different degree. In the opinion of the US occupant, the criminogenic influence of Shintoism in Japan had been more harmful and less amenable to reform than still residual Nazi-motivated Christianity in Germany after the Second World War. S. M. Shibata, “Religious education reform under the US military occupation: The interpretation of state Shinto in Japan and Nazism in Germany”, *Compare*, Vol. 34, No. 4 (2004), p. 431.

<sup>②</sup> S. Fujiwara, “Problems of teaching about religion in Japan: another textbook controversy against peace?”, (2007), *British Journal of Religious Education*, Vol. 29, No. 1, p. 56.



abstract justice is, only in the interplay with civic education about justice and action on it that combined outcome may give the idea of peace its full meaning as a shared responsibility for the future we want for all.<sup>①</sup> The UN-inspired inclusive sustainable development implies both forms of education about justice. At a practical and country-specific level this joint dealing may produce solutions of various justice issues. For example, they may involve clarifying various aspects of property rights that may be differently interpreted according to various religious tenets. For instance, that: women are not the property of men; children have their entitlements; people with property have more autonomy to take their future in own hands; inclusiveness means broadening the avenues for genuine participation in public affairs, etc.

These issues captured under the general term of “access to justice”, as far as criminal justice is concerned have been generically enumerated by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice, adopted in 2012 by the General Assembly resolution 67/187<sup>②</sup>.

The resolution emphasizes that “Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process”.

Among the many guidelines and principles which follow in that resolution, two of them read:

“32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.

33. States should also ensure that legal aid is provided to persons living in

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① “Future we want for all” is a slogan of the United Nations Secretariat, derived from the Outcome Document of the Report of the United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 20-22 June, 2012 (UN doc. A/CONF. 216/16, p. 1), entitled “Future we want”.

② General Assembly resolution 67/187, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Annex), 20 December, 2012.

rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups".

These principles and guidelines share in common the need to settle *glocally* the access to justice in The nature of these justice practices is equity. Equity is "a direct emanation of the idea of justice"<sup>①</sup>. It is distributive justice done in practice (Latin "*in concreto*") applicable as "if it were law", that is as a part of customary international law,<sup>②</sup> the practice which elsewhere may have its own roots and standing but a similar sense. In criminology and other fields, equity is an instrument for countering exclusion.

This one of many United Nations crime prevention and criminal justice instruments,<sup>③</sup> invites States to involve in its implementation "a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia".<sup>④</sup> It also recommends to provide technical assistance "relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multilateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate" (Guideline 18).

Globally and locally there is a lot to do before one makes in such a UN way inclusiveness a more viable objective than is now. If we need an academic lens to undo our own myopia in this regard, then an intercultural crime prevention perspective could be a helpful tool for more inclusive and peaceful societies. A retooled, reinvigorated, much harder, if not also incisive look at the implementation of the UN Charter and other UN legal instruments should be in the focus. With the coordinated multipronged effort of the UN governmental and non-governmental actors, the various UN-led secular and interfaith alliances of civilizations and academic initiatives will then live up to their calls. The UN crime prevention

<sup>①</sup> International Court of Justice, *Case Concerning the Continental Shelf* ICJ Reports 1982, p. 60 (para. 71).

<sup>②</sup> M. Bos, *A Methodology of International Law*, North-Holland, Amsterdam 1984.

<sup>③</sup> Others include, e. g. the "Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power(A/RES/40/34) which is the first global legal instrument for curtailing victimization by inclusiveness through a range of material and non-material measures and the ECOSOC resolution on "International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa" (ECOSOC resolution 2007/24).

<sup>④</sup> General Assembly resolution 67/187, Annex, para. 9.



message will then be heard more profoundly and forcefully across the world.

This is how the shared responsibility is built and may later be accounted for.

## IX. Conclusion

I would like to conclude with a couple of operational points and a few substantive lessons learned.

This essay:

First, provided recommendations that take the reconciliation of crime prevention educational ideas beyond the proper of any single country or any mutual (mis) understandings. It exemplified the inter-state dynamics (and vagaries) of reconciliation through the history textbooks and the reconciliation commissions.

Second, informed of the United Nations instrumentalities for better international understanding and cooperation which, among others, include the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

A few substantive lessons learned follow.

First, that depending on the interpretation of the various religious or philosophical tenets, they may or not have a positive effect on the cultures of guilt or shame. Cultures of guilt or shame alone are not responsible for a more or less pronounced individual accountability. It is how they are orchestrated by powerful ideologies, including those informed by religion and moral philosophies. They may be the accomplices in the (non)admission of guilt by the perpetrators of barbarous acts. In history, too few of them have faced trials for their illegal acts. And if one takes only those who did criminally respond for the Second World barbarities, only a handful of them felt really guilty and ashamed. Ideologies which corrode the sense of guilt, lead to the tolerance of impunity that encourages new barbarous acts. Until these days, bringing someone eligible to international criminal responsibility is still like assuming that there will be no wholes in a Swiss cheese.

Second, the UN should educate the current and next generations more instrumentally and productively for the maintenance of peace and security for the future we all want, so then the conscience of humanity will eventually prevail for humane and effective crime prevention. The moral agency of the UN should not be a rhetorical figure and "We the Peoples of the United Nations" not only a nominal phrase when it comes to making the choice of right or wrong by anybody, anywhere and anytime. In this connection, the OECD should continue improving its PISA survey to account for student's moral conduct in civic matters.

Third, in each and every country secular and non-secular governance must take

account of this fact and acknowledge it in words and deeds in their culture and faith, so they measure up to the overarching ecumenical United Nations standards of unity in diversity, of equality and freedom, however complex this everyday endeavour is. From the bad memories of the Second World War those standards and norms emerged in the United Nations that teaches unity in diversity. The United Nations sustainable development goals agenda 2016—2030 is a master plan that broadens for the succeeding generations the road to dignity according to those standards, so the future we want for all may indeed be peaceful, prosperous and inclusive.

But in one or another way of reconciliation, at whatever form and pace it happens, important will remain the Secretary-General's call in his report "The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet":

"Young people will be the torch bearers of the next sustainable development agenda through 2030. We must ensure that this transition, while protecting the planet, leaves no one behind. We have a shared responsibility to embark on a path to inclusive and shared prosperity in a peaceful and resilient world where human rights and the rule of law are upheld".<sup>①</sup>

Fourth, it is incumbent on the civic education and training to continue to work for a universal moral sense of right and wrong. This common sense of right or wrong frames peaceful societies and empowers women and children as the "succeeding generation" to carry on the torch and enjoy the benefits of crime prevention education according to the United Nations standards and norms.

Fifth, the returns on crime prevention education and training depend on how effectively, constructively and interculturally one respectively addresses in practice the UN ideal of peace. Ever since after the Second World War the changing fortunes and spirits of the UN Member States have (mis)lead the Organization, one wonders if it will draw from the lessons learned and manage for the current generation to prevent its world from the scourge of the Third World War.

Finally, the United Nations Sustainable Development Goals give a chance for any country to look "back into the future", to revisit its own political commitments and operational precepts concerning the United Nations, and to give it the power for the SDGs' implementation worldwide. No ideological confrontations of the post-Second World War time 1945—2015 should prevent looking into the future we want for all. May the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (Japan, 2020) be a roadblock in this direction.

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<sup>①</sup> Ibid para 3.