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**11th United Nations Congress on Crime Prevention and Criminal Justice
Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice
Bangkok, Thailand April 18 to 25, 2005**

**Enhancing Criminal Justice Reform, Including Restorative Justice
Workshop #2 Friday, April 22nd, 2005**

PRESENTATION: MODEL CODES FOR POST CONFLICT CRIMINAL JUSTICE

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SPEAKING NOTES

1 Focus of the presentation

- This particular case study focuses on the *Model Codes for Post Conflict Criminal Justice Project* organized by the United States Institute of Peace and the Irish Centre for Human Rights, in cooperation with the UN Office of the High Commissioner for Human Rights and the UN Office on Drugs and Crime in a project involving over 250 experts from around the world. The model codes are designed as a tool for use in post conflict environments where States are in transition and working towards the re-establishment of the rule of law.
- The inspiration for the codes came from the many challenges that have been faced and lessons learned from post conflict States, which have been highlighted in various UN reports, such as the Report of the Panel on UN Peace Operations and the recent report of the Secretary-General of the UN on *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*.

2 Challenges in the administration of justice in post conflict states

- The United Nations itself faced many challenges in the administration of justice in post conflict States in its role as transitional administrators of Kosovo and East Timor, e.g. lack of qualified personnel, damaged infrastructure (court houses, prisons, police stations), limited resources (pen, papers, computers, standard court forms, law books). This is typical of almost all post conflict criminal justice systems, for example, Liberia, Congo, Burundi, Afghanistan, and Haiti.
- In addition to the challenges of lack of basic resources, infrastructure and personnel, other challenges that has been faced in the past are the deficiencies of the pre-existing criminal law in post conflict states where the law, for example, did not comply with international human rights standards or was discriminatory, did not contain offences that were being perpetrated on a widespread basis (example: trafficking, organized crime), or did not contain investigative tools necessary for police to undertake investigation. (Examples: Kosovo, East Timor, Haiti). This is not to say that the law should be

dispensed with – there is no “legal vacuum” - but rather that pre-existing laws need to be updated and enhanced both in the short and the long term. This was noted in the report of the Secretary-General of the UN on *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*. Also noted in the report is the role of the Model Codes Project in this process.

- The model codes represent a tool that can be used to assist those involved in law reform efforts that are taking place in societies transitioning from conflict.

3 What are the model codes?

- The model codes are a compendium of laws consisting of four annotated bodies of work: a draft penal code, the *Transitional Criminal Code* (“TCC”), a draft procedure code, the *Transitional Code of Criminal Procedure* (“TCCP”), the *Transitional Detention Act* (“TDA”), a body of law that regulates procedural and substantive issues relating to pre-trial detention and imprisonment, and the *Transitional Law Enforcement Powers Act* (“TLEPA”), a draft Police Act. Additionally, to aid the police in operational matters related to the TLEPA and TCCP, a set of Implementing Regulations will be included.
- The codes have been developed specifically for a post conflict environment and are compliant with international standards.
- They have been vetted by 250 experts to date from various regions and legal backgrounds (civil law, common law, Shar’ia law)
- The commentaries accompanying the substantive provisions of the codes are a vital component of the model codes package and represent a useful tool to those engaged in law reform in a post conflict state. They explain the choices of wording and approaches adopted by the drafters of the model codes, elaborate upon the content of the legal provisions, articulate why the provisions are of particular consequence in a post conflict environment, and provide practical information from the field on previous experiences in applying similar provisions.
- The “how to” in terms of using the codes in the law reform process is the subject of a document that has been drafted to accompany the codes, entitled, *Guidelines for Application of the Model Codes* (which is available for your reference). This document not only discusses in a practical manner how the codes can be employed in the law reform process, it also seeks to reflect on lessons learned from past law reform efforts, with the aim of setting out a broader methodology and strategic framework for dealing with the questions of the applicable law and transitional law reform in conflict and post conflict states. Finally, a succinct summary of the substantive provisions of the codes is provided in the Guidelines document.

4 Possible scenarios in which the codes could be used?

- The model codes are not a “one size fits all” model to be imposed on post conflict states. As noted previously, they are available as a tool for reform.
- There may be any number of uses for the codes.
- The following are just a few possible scenarios:
 - Where the pre-existing law contains “gaps,” such as is commonly found in the legislation of conflict and post conflict environments, the codes could be used to fill them. An example

would be the situation in which certain crimes do not exist on the statute books but are being perpetrated at large. This would be more common with “newer” crimes or crimes that are prevalent particularly during or after a conflict, such as trafficking in persons, people smuggling, organized crime, money laundering, or incitement to crime on account of hatred.

- The criminal legislation in many conflict and post conflict environments clearly violates international human rights standards and criminal law standards. For example, in Kosovo, early on in the mission, it was clear that a lack of provisions in the law for the review of detention, commonly referred to as *amparo* or *habeas corpus*, was in violation of international standards. In East Timor, *UNTAET Regulation 1999/1 on the Authority of the Transitional Administration in East Timor*, a number of provisions of the penal code were deemed to be no longer applicable as they violated international standards on human rights. In order to bring the law in line with these standards, it would be necessary to delete objectionable provisions and replace them with standards that comply with human rights norms, which may be drawn from the model codes.
- In some conflict or post conflict environments, the law in force might have been that of a former dictatorial or oppressive regime and therefore might be politically objectionable to the local authorities in power or the population at large. A decision could be made by the legislative authorities to create a “transitional law” pending more extensive revision of the criminal legislation. Where such a decision is made, the codes could be a valuable source of inspiration in creating transitional legislation. Given the fact that there is no “one size fits all” model, it is unlikely that the codes would be used in their entirety, but the provisions used could be adapted to the particular context in which they were to apply.
- In cases where a special chamber or tribunal is being set up in a conflict or conflict state, the codes may be used as a source of inspiration for developing rules and procedures (example: Bosnia for war crimes and economic and organized crime, Sierra Leone for international crimes)

5 Future of the Model Codes Project

- The first volume of the codes, containing the Transitional Criminal Code and the Transitional Code of Criminal Procedure, is due to be published in the coming months. Volume Two containing the Transitional Law Enforcement Powers Act and the Transitional Detention Act will be published at the end of the year. The codes and the *Guidelines for Application of the Model Codes* will be made publicly available on the internet, as well as being published in the form of a book.
- Next steps: Development of training modules. Still in assessment and consultation phase to determine topics and mode of delivery.
- We would welcome any comments on the codes or guidelines, which are available.