Section I – Penal Law. General Part

THE EXPANDING FORMS OF PREPARATION AND PARTICIPATION

Resolution

The participants in the XVIII AIDP International Congress of Penal Law (Istanbul, Turkey, 20-27 September 2009),

Considering that

- New forms of criminalization have emerged in the last few years as a response to very serious crimes, exploiting both the opportunities and the contradictions of today's global society;

- They are characterized by transnational relevance, serious harm to fundamental legal interests of the society and individuals, and new specific forms of planning and execution which are strictly connected, in particular, with the new communication and transport means: such as international terrorism, transnational organized crime, serious cybercrimes, illicit traffic of migrants, women, children, organs, weapons, and drugs;

- These serious crimes require more effective responses to combat the organized and often trans-national character of the phenomenon at stake, and this need poses a new challenge to the rule of law and the guarantee of fundamental freedoms and human rights;

- This requires that States shall not limit their legislation and prosecution to maintain their own national security, but they shall take into account the security of other States and the world community;

- A new tendency can therefore be outlined to enhance cooperation among different countries, not only at a judicial system and police level, but also in the harmonization of substantive criminal law;

- The AIDP already addressed certain aspects of the phenomenon in previous congresses, namely, participation in the commission of a crime in general (VII Congress, Athens, 1957) and participation in organized crime activities (XVI Congress, Budapest, 1999). However, in the last few years, a variety of changes have been introduced in the positive Criminal Law in force in each juridical system due to the growing influence of the phenomenon of globalisation and of consequent international duties;

- The legitimate status of the fight against terrorism, organized crime and other above-mentioned serious crimes cannot be used as a pretext for an extensive application of exceptional rules. Therefore, every kind of authoritarian tendency must be avoided in the evolution of Criminal Law, ensuring the application of fundamental principles of criminal law, and particularly those of legality, individual culpability, *ultima ratio*, proportionality and human rights and fundamental freedoms;

Have adopted as follows:

-A-

On the Expansion of Forms of Preparation

I. In compliance with the general principles of Criminal Law, it is only under special conditions that the criminalization of specific preparatory acts can be assimilated to acts of attempt (General Criminal Law),

or as separate crimes (Special Criminal Law), while it is necessary to improve crime prevention strategies, with special reference to very serious crimes and only in cases of clear and present danger.

II. Punishment of preparatory acts can therefore not be considered as legitimate, unless the following conditions apply:

1. Prevention of the commission of a very serious offence, causing harm to life, body or liberty of other human beings;

2. The law precisely defines which preparatory acts can be punished, describing objective and concrete behaviour and avoiding recourse to very general expressions (such as «all the other preparatory acts») and, above all, the criminalization of mere intention to commit a crime;

3. The acts criminalized are strictly related to the commission of the main crime, and this relation must be objectively identifiable, while they constitute a concrete, imminent threat to the above-mentioned legal interest;

4. The perpetrator acts with direct intent (*dolus directus*) in relation to commission of a concrete and specific main crime;

5. Punishment is less than the one prescribed for the main crime and must also be adequate to the corresponding sanction of attempt. When the preparatory acts result in the commission of the main crime, their punishment must be incorporated in the sanction prescribed for the main crime committed by the same individual;

6. In the event that the perpetrator refrains from acting, he/she should not be punished or must be given a reduced punishment.

-B-

On the Expansion of Forms of Participation

I. According to general rules, participation can be criminalized as accessory to the commission of an offence or at least of his/her attempt, by one or more co-participants.

Hence, if the offence has not been realized, or at least attempted, or if it is justified, no criminal liability of accomplices can be established.

However, specific «acts of participation» can be exceptionally criminalized independently of this accessory relation when they are upgraded to separate crimes.

II. Punishment of acts of participation as separate crimes can therefore not be considered as legitimate, unless the following conditions apply:

1. Prevention of the commission of a very serious offence, causing harm to life, body or liberty of other human beings;

2. The law precisely defines which objective and concrete acts of participation are criminalized, avoiding recourse to very general expressions (such as «all cases of cooperation/contribution/facilitation») and in particular the incrimination of mere intention or goal that a certain infringement is realized by another person;

3. Acts criminalized constitute a real and present danger of facilitating the commission of the main crime;

4. The perpetrator acts knowingly and with the specific intent to facilitate the opportunity of committing one or more specific main crimes by others;

5. Punishment must be less than the one prescribed for the perpetrator of the main crime and must in every case be adequate to the extent of individual guilt.

-C-

On the Punishment of Crimes of Association

I. The criminal liability of associations and organizations as an independent offence is justified only in so far as there is structured relation among its members, they act for the purpose of committing very serious and specific crimes, and they represent a continuing objective danger to commit the crimes: danger which goes beyond that of a preparatory act or an attempt of the crime that may represent their goal. Hence, a criminal association is punished independently of the attempt or execution of one or several crimes, which can constitute one of its goals.

1. The criminalization of association and organization as a separate crime requires that objective and subjective elements of the offence are precisely described, such as its stability, the fact that it might constitute a durable danger for a certain time period, its structure, and possibly characteristic acts (*modus operandi*: like use of violence, or mafia method, etc.).

2. The law must precisely define the notion of punishable participation. This should be different from the notion of promoters and organizers, requiring an objective and intentional contribution to the activities of the association in direct connection to the criminal project, particularly requiring both the commission of a concrete action for the association and the assumption of a role recognized by this one.

3. As for the mental element, it is required that all members act in the knowledge of the criminal nature of the association and with the specific intent that their actions are a means to attain the goals pursued by the association.

4. Criminal liability for each crime realized by member of the association must comply with the general principle regulating participation, without presumption of responsibility.

II. Criminal or administrative liability of legal entities is also important as a cumulative and independent sanction to combat this new serious crime, taking into account the role of charitable and political organisations in the context of comprehensive evolution, aiming at a balanced and consistent approach.

-D-

Interaction between national and international criminal jurisdictions concerning forms of participation

I. International tribunals are called upon to harmonize their application of general notions of perpetration and participation, in order to develop a coherent body of international criminal law.

II. Before adopting notions of participation as applied by international tribunals, national jurisdictions have to take into consideration the particular nature of international crimes, in order not to uncritically apply extended notions of participation to crimes of a different nature.

Section II – Penal Law. Special Part

FINANCING OF TERRORISM

Resolution

The participants of Section II of the XVIII International Congress of Penal Law, held in Istanbul (Turkey) (20-27 September, 2009),

Recognizing terrorism and financing of terrorism as potentially transnational and/or extra-territorial crimes being committed against mankind, threatening international peace and security as well as stability of nations.

Considering that controls against the financing of terrorism are useful and necessary for the purposes of prevention, monitoring, investigation and reduction of harm by terrorist operations.

Considering that financing of terrorism is complex and poses important challenges in the ongoing process of legal harmonization and international cooperation.

Recalling UN Security Council Resolutions 1373 (2001), 1267 (1999), and 1368 (2001), the General Assembly resolution 51/210 of 17 December 1996 (paragraph 3, subparagraph (f)) and the UN International Convention for the Suppression of the Financing of Terrorism of 1999.

Welcoming the widespread ratification of the UN Convention for the Suppression of the Financing of Terrorism of 1999 by Member States.

Recalling the Council of Europe Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies.

Taking note of the lack of a universal definition of terrorism and the diversity of national definitions and approaches to countering the financing of terrorism (CFT).

Reiterating the importance of both risk- and principle-based financial controls.

Reaffirming the wisdom of founding CFT and counter-terrorism policies more generally on reliable evidence and analysis.

Emphasizing that the financing of terrorism and money laundering practices are often dissimilar in nature and may require different counter-measures.

Noting the absence of systematic and thorough data collection and analysis regarding the financing of terrorism at national and international levels.

Relying on the possibility of establishing an effective system of international cooperation and mutual legal assistance regarding the exchange of financial information and intelligence, based on new technologies.

Stressing the importance of targeted approaches respecting basic human rights and fundamental freedoms.

Expressing concern at the application of certain preventive measures and designation practices without criminal prosecution or effective application of human rights safeguards and guarantees under international law.

Adopt the following Resolution:

The need for a fair and effective system of targeting the financing of terrorism

1. The establishment of a fair and effective system of countering the financing of terrorism (CFT) that is regionally and globally harmonized and established in an interdisciplinary manner is essential in order to fight terrorism. Reducing the possible harm of terrorist operations and attacks, a fair and effective system of control of terrorist finance can equally serve to monitor militant activities so that preventive actions can be taken. It also enables the reconstruction of events and the detection of coconspirators who can then be pursued; and moreover, the public announcement that financial activities are under scrutiny forces extremist groups to make frequent tactical changes and communications, which generates valuable opportunities for intelligence gathering.

Empirical Aspects

2. In the last decade, and particularly after September 11, CFT measures have grown in number, scope and geographic application due to UN, FATF, EU and other initiatives, including many undertaken at national levels. Lists of designated suspected terrorists have been created and circulated; assets of those named in such lists have been frozen, including those of non-profit organizations. Laws have been introduced regarding the financing of terrorism and material support for terrorism.

3. Nevertheless, after 7 years of applying CTF measures, the system and its cost-effectiveness should be thoroughly evaluated and its priorities should be adjusted accordingly.

4. Empirical studies on the dimensions and the ways and means of financing of terrorism should be encouraged in order to obtain a realistic overview of the actual situation worldwide. Production of empirical data is a fundamental precondition for policy evaluation in the CFT sector. Its analysis and public availability should be recognized as one of the major sources of legitimizing CFT measures thereby preventing violent radicalization leading to terrorism. As far as possible a solid knowledge base should be developed, supported and shared.

Legal definitions

5. The UN has defined financing of terrorism as follows: *" Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

This definition will serve as a basis in the process of harmonization of national provisions.

6. From this definition a comparative study must be undertaken into national definitions of financing of terrorism in order to identify problems and gaps in the implementation of international commitments.

7. In this framework States must ensure that criminalization of financing of terrorism must be a distinct offence while respecting fundamental principles of criminal law.

8. Financing of terrorism should be adequately criminalized, irrespective of the commission of an actual terrorist act, and incrimination should not be dependent solely on participation in or assistance to a terrorist group.

9. Responsibility of a legal entity shall be provided when financing of terrorism is committed within the scope of its activities by its agent and on its behalf.

Evidence-based approaches and risk management

10. The available judicial data and facts suggest that approaches based on the search for evidence and risk management should be adopted. Taking into consideration the existing resources and vulnerabilities, such approaches permit the development of a national strategy against the concrete threats of terrorism financing.

11. On the basis of such legal and factual information, studies and analyses, improved evidence-based, targeted and risk-based approaches should be pursued, taking into account existing resources.

12. The similarities and differences between financing of terrorism and money laundering activities need to be clearly identified. More specifically, attention should focus inter alia on the following issues that may require more specific or diverse legal and regulatory frameworks:

a) States should explore and develop an approach against financing of terrorism that takes advantage of commercial transactions based on transparent and comparative import-export statistics.

b) Informal fund and value transfer systems (hawala, hundi, fei 'chien, etc.) should be better understood and regulated in pragmatic ways that address the crime risks they represent and preserve the legitimate functions they perform.

c) The role of organisations with social and charitable activities as to the financing of terrorism should be analysed in the context of a comprehensive evaluation of national, economic and social conditions, aiming at a balanced and consistent approach.

d) Given identified vulnerabilities in the commercial sector, trade-based financing of terrorism should be examined and trade transparency should be enhanced to supplement existing financial regulations.

e) Analyses should provide either concrete guidelines on what constitutes possible suspicious terrorist financial transactions or re-define the extent to which financial controls enable private sector or regulatory bodies to identify such transactions.

13. Guidance for the private sector (in particular financial institutions, lawyers, accountants, auditors, etc.) needs to be further developed with the aims to harmonise divergent regional and national practices and to strengthen accountability.

Designations and Asset-Related Measures

14 (a). The processes of designating suspected individuals and organisations for the purpose of identifying, freezing and seizing assets intended to be used for terrorist activities or under the control of terrorist groups needs a thorough and comprehensive revision. In some instances, the process of removal is unclear, while no judicial or other legal process addresses the status of a suspect on such list – that is, there is frequently no criminal or other charge, no court proceeding and, in essence, no means for the determination of guilt or innocence of named suspects. On the other hand, the effects of executive decisions made on the basis of not fully known or transparent criteria and evidence are devastating for those affected.

(b). In this context, the procedural rights of targeted individuals and organisations subjected to "listing" and "delisting" proceedings must be guaranteed according to due process and fair trial requirements and subject to timely and effective judicial review.

15 (a). Judicial and administrative procedures for freezing and seizing assets of individuals and groups are to be properly coordinated with a clear determination of the prerogatives of the competent authority.

(b). During such procedures the rights of the natural and legal persons concerned to legal consultation and representation and to adequate information on charges and evidentiary material shall be safeguarded without delay.

16. In the financial sector, the use of multiple (national and international, mandatory and private) lists of persons suspected of supporting terrorism is a complex and ineffective procedure for the identification of sanctioned and high-risk customers. This process must be properly rationalized.

International cooperation

17. Judicial cooperation (civil, administrative and penal) as well as administrative cooperation (police, intelligence services and FIU) are vital to the effectiveness of actions against the financing of terrorism. It is necessary to strengthen States' common actions, taking into account agreements, guidelines, and best practices, in order to establish a culture of mutual interaction and the resolution of current legal and political differences in the treatment of common cases.

Respect for Human Rights and procedural guarantees

18. In the context of implementing the provisions of this resolution as well as the creation of designation lists, freezing and seizing orders and databases, we reiterate the necessity of respecting public liberties (individual and collective), fundamental principles of criminal procedure, and protection of human rights.

Section III – Penal Procedure

SPECIAL PROCEDURAL MEASURES AND PROTECTION OF HUMAN RIGHTS

Resolution

Preamble

The participants at the XVIIIth International Congress of Penal Law (Istanbul, Turkey, 20-27th September 2009)

Noticing in the national reports and in the general report that the paradigms of the "fight" against organized crime and terrorism and the seriousness of related crimes

- have led to extensive changes in the criminal justice system and criminal procedure as a result of governing through combating crime and enhancing security;

- have introduced special procedural measures, profoundly affecting the objectives, nature and instruments of the criminal justice system and the applicability of human rights standards;

- have extended the reactive system of punishment for crimes and resocialisation of offenders with a proactive system of prevention of crime and protection of public order and security;

- have produced an intelligence-led law enforcement approach, by which intelligence authorities play an increasing role in the field of law enforcement;

- have produced a digital-led law enforcement approach, by which search and surveillance powers have become very intrusive;

- that substantive changes have been introduced in the criminal procedure systems and practices of the states since 1999.

Endeavouring

- to elaborate rules of criminal procedure in line with modern, technological society and globalized society and in line with the basic principles of the rule of law and fair justice;

- to raise standards in the area of combating organized crime and terrorism, by which law enforcement, security and human rights are not mutually exclusive.

Taking into account that the AIDP has already addressed several questions in previous Congresses, particularly

- the XIIth International Congress of Penal Law (Hamburg, 1979), protection of human rights in criminal proceedings,

- the XIVth International Congress of Penal Law (Vienna, 1989), relations between the organization and administration of justice and criminal procedure,

- the XVth International Congress of Penal Law (Rio de Janeiro, 1994), reform movements in criminal procedure and the protection of human rights,

- the XVIth International Congress of Penal Law (Budapest, 1999), the criminal justice systems facing the challenge of organized crime.

Have adopted during the XVIIIth International Congress of Penal Law the following Resolution:

Criminal procedure, special measures and human rights standards

1. States should respect international and regional human rights, and, where applicable, international humanitarian law and may never act in breach of peremptory norms of international law (*jus cogens),* even when using special procedural measures in investigating and prosecuting organised crime and terrorism.

2. States are urged to accept the jurisdiction of international and regional human rights courts. International human rights norms and standards that have a binding effect should be considered as equal to constitutional norms and standards. These norms should be respected *ex officio* and be enforceable as individual rights in court.

3. The punitive reaction to organised crime and terrorism is fundamentally a matter for criminal justice systems and should not be replaced by administrative measures. These should never replace the ordinary course of the criminal justice system.

4. Special procedural measures in a public emergency (state of emergency and use of emergency powers for national security reasons) should be prescribed by law and decided by Parliament and submitted to judicial review by an independent, impartial and regularly constituted court (hereinafter court*).

5. Moreover, any departure from ordinary principles of criminal procedure or derogable international human rights standards should be in conformity with the principle of proportionality. In a public emergency the rule of law prevails.

6. Whatever the acts of persons suspected, prosecuted or convicted of organised crime or terrorism, non-derogable rights[1] such as the right to life, the prohibition against torture or inhuman or degrading treatment or punishment, and the right to recognition as a person before the law and to equality under the law, should under no circumstances be abrogated.

7. No state shall curtail the individual right to essential judicial guarantees for the protection of non-derogable rights. Protection against arrest and detention and the right to a fair and public hearing in the determination of a criminal charge may be subject to reasonable legal limitations. Rights fundamental to human dignity may not be abrogated, even under a public emergency.

8. Courts* shall have and maintain jurisdiction over all trials of civilians as well as in times of public emergency; initiation of any such proceedings before or their transfer to a military court or to non-judicial bodies shall be prohibited.

Specialised extraordinary courts in the judiciary should be prohibited.

Minority opinion: specialised extraordinary courts in the judiciary should be independent and impartial and apply rules of procedure that respect the right of defence, including the right to a public hearing.

Proactive investigative powers and criminal procedure

9. The objective of proactive investigations is to reveal the organizational aspects of organized crime and terrorism in order to prevent their preparation or commission and to enable the establishment of reasonable grounds for the initiation of a criminal investigation against the organization and/or its members.

10. In most cases, the provisions of ordinary criminal procedure provide sufficient means to react firmly against organized crime and terrorism but, exceptionally, it may be necessary to provide for the use of proactive investigations by intelligence agencies, police or judicial authorities. As such investigations,

[1] See John A.E. Vervaele, "Special procedural measures and the protection of human rights - General Report", 2009 *Utrecht Law Review* , 5, no. 2, pp. 67-68.

including electronic search and surveillance powers, interfere with the right to privacy and to public anonymity, and considering their intrusive character and impact on fundamental rights, they should only be permissible subject to the following conditions:

- They should be precisely defined in the law and compatible with the rule of law and human rights standards;

- They should not be used except in the absence of less-restrictive legal means;

- They may only be used for combating organized crime and terrorism and must be proportionate to the aim pursued;

- They should not be carried out without a court* authorization, which should be obtained in principle in advance and must be based on a reasonable belief that the measure is necessary in order to prevent the commission of organized crime and terrorism;

- They should be applied under the strict supervision of an independent and impartial judicial authority, responsible for the scrutiny and control of the use of the intrusive powers;

- They should respect legal privilege.

Pre-trial investigative powers and special investigation techniques

11. The conditions laid down in point 10 should also apply to special pre-trial investigation techniques. The court* must base its authorization on a reasonable suspicion or on sufficient reasons to believe that an organized crime or terrorism offence has been committed. This presupposes the existence of facts or factual information that would satisfy an objective observer that the person concerned may have committed the offence.

12. The use of torture or of cruel, inhuman or degrading treatment or punishment, as defined in the United Nations Convention against torture and other cruel, inhuman and degrading treatment or punishment, is absolutely prohibited, in all circumstances, including in a public emergency. Interrogation should comply with the rule of law and international human rights standards.

13. Secret detention centres shall be prohibited under international and domestic law. States and organisations that have secret detention centres should be subject to sanctions.

14. The collection of digital information for law enforcement purposes should be regulated by criminal procedure. In the case of privacy-related information, a court* warrant is required. The threshold for compelling data from service providers should be higher than the “relevant for the investigation” standard. For prospective transaction surveillance and the use of filter devices a high threshold should be required, including a court* warrant for content information.

Fair proceedings and procedural safeguards

15. The notion of a fair trial pertains not only to the trial proceedings before the court*, but to the procedure as a whole. Also, when applying special investigation techniques the presumption of innocence and the right to remain silent must be respected. Defence rights are intrinsically part of a fair trial and equality of arms.

16. In order to avoid unreasonable or arbitrary use of proactive investigation and special investigation techniques, the State should duly notify every person against whom the measures were conducted and provide for judicial remedies before a court*.

17. In every case of police arrest or detention the remedy of habeas corpus and the presence of a lawyer and interpreter must be available. Pre-trial detention may not be based on illegal anonymous testimony or on evidence obtained by the abuse of special investigation techniques. The arrested person must be brought promptly before the court*. The burden lies on the State to provide justification for arrest or detention, also for organised crime and terrorism offences. No person shall be detained for an indefinite or unreasonably long period of time.

Evidence, disclosure and fair proceedings

18. Recourse to anonymous witnesses and classified evidence should be exceptional. Recourse to anonymous witnesses and classified evidence is only legal when the conditions set forth in the first three subparagraphs of point 10 are met. In addition:

- Testimony by anonymous witnesses can only be justified by prior authorization of a court*, in case of a serious, clear and imminent threat to life or on a reasonable belief that the measure is necessary in order to protect the legitimate aims of vulnerable victims or of national security; anonymous evidence from law-enforcement officers or intelligence officers should be very strictly justified;

- The court* has to provide sufficient grounds for the refusal to disclose and to justify that this is a proportionate limit on the accused's right to disclosure that is necessary to protect legitimate aims and that the refusal to disclose can be counterbalanced in the procedure by compensatory measures in order to safeguard fair proceedings;

- The defence can directly test, at the pre-trial or trial stage, the reliability of the evidence and the credibility of a witness;

- If a fair trial is not possible because the defendant has not received sufficient disclosure, the proceedings must be terminated;

- Any conviction may not be based solely or to a decisive extent on anonymous testimony.

Minority opinion: Recourse to anonymous witnesses and classified evidence should be prohibited.

19. Conviction may not be based on illegal anonymous testimony or on evidence obtained by the abuse of special investigation techniques.

Minority opinion: Conviction may not be based solely and to a decisive extent on evidence obtained by the use of special investigation techniques.

20. Pre-trial judges *and/or* trial judges should have full access to all evidence for the determination of the legality and probative value of the evidence. Equality of arms includes the same access for both parties to the documents and files and the same opportunity to summon and examine witnesses.

21. States shall ensure that statements, evidence or other information obtained, directly or indirectly, by torture, cruel, inhuman or degrading treatment or punishment cannot be used in any judicial, administrative or other proceedings, other than for the purpose of establishing the occurrence of such act. Evidence obtained directly or indirectly by means that constitute a violation of other human rights or domestic legal provisions that jeopardize equality of arms and the fairness of the trial shall be inadmissible.

22. If criminal intelligence is used as steering information and as triggering information, it must be under the authority of the judicial authorities to open a judicial investigation. Criminal intelligence can only be used as grounds for coercive measures if the information has been obtained under a court* warrant or if the use of the information is authorized in advance by a court*.

Criminal intelligence cannot be used as evidence in criminal proceedings.

Minority opinion: Criminal intelligence cannot be used as evidence in criminal proceedings, unless the following conditions are met:

- The pre-trial court* and/or the trial court* can fully assess the reliability of the evidence, the credibility of the witness, and the probative value of the evidence and decide whether the witness must testify in court* and whether or not he/she should be interrogated while remaining anonymous;

- The defence can directly test, at the pre-trial or trial stage, the reliability of the evidence and the credibility of the witness;

- The defence can rely on that type of evidence under the same conditions;

- Any conviction may not be based solely or to a decisive extent on criminal intelligence as substantive evidence.

23. Individuals who are suspected of being members of a criminal organization and who decide to cooperate with the judicial authorities may benefit only from a reduced sentence where this cooperation complies with the principles of legality, subsidiarity and proportionality. In addition, no conviction may be based solely or to a decisive extent on a crown witness's (*pentiti, supergrass*) statement as substantive evidence.

Section IV – International Criminal Law

UNIVERSAL JURISDICTION

Resolution

The participants in the XVIIIth International Congress of Penal Law (Istanbul, Turkey, 20-27th September 2009),

Recalling Paragraph 4 of the Preamble of the Statute of the International Criminal Court "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation",

Considering that universal jurisdiction should be one of the most effective instruments to prevent and punish the most serious crimes of concern to the international community as a whole, and particularly those defined in the Statute of the International Criminal Court, by increasing the likelihood of prosecution and punishment of its perpetrators,

Keeping in mind that the exercise of universal jurisdiction by states remains necessary in order to prevent impunity for international crimes as mentioned above, notwithstanding the establishment of the International Criminal Court,

Mindful that universal jurisdiction is one of the most debated topics of criminal law,

Recalling the previous AIDP resolutions on this topic, in particular, those adopted by

- the Third International Congress of Penal Law (Palermo, 3-8 April 1933), addressing the topic "*For what offences is it proper to admit universal competency?*", which stated that "there are offences which are harmful to the interests common to all states" and discerned a tendency towards a universal repression of certain serious offences that endanger the common interests of the states in their international relations,

- the XIIIth International Congress of Penal Law (Cairo, 1-7 October 1984), inviting States to adopt the principle of universality in their national law for the most serious offences in order to ensure that such offences do not go unpunished,

- the XVIIth International Congress of Penal Law (Beijing, 12-19 September 2004) regarding *Concurrent national and international criminal jurisdiction and the principle of* 'ne bis in idem',

Have adopted the following resolutions:

I. Rationale and scope of universal jurisdiction

1. Universal jurisdiction forms a basis for jurisdiction over crimes committed abroad that are not covered by any other jurisdictional principle.

2. With the aim of ensuring the protection of the fundamental interests of the international community as a whole and preventing impunity, states should establish universal jurisdiction to investigate, prosecute and punish the most serious crimes of concern to the international community as a whole and particularly those defined in the Statute of the International Criminal Court.

3. Universal jurisdiction should not be established for crimes other than those serious crimes referred to in subsection 2.

4. Future international legal instruments concerning the most serious crimes of concern to the international community should confirm the applicability of universal jurisdiction.

II. General requirements for the exercise of universal jurisdiction

1. Universal jurisdiction should be exercised with self-restraint.

2. In the exercise of universal jurisdiction a distinction should be made between the different stages of proceedings. In all stages of the proceedings the standards of human rights must be complied with.

3. Investigation is admissible *in absentia*; states can initiate criminal proceedings, conduct an investigation, preserve evidence, issue an indictment, or request extradition.

4. The presence of the defendant should always be required for the main proceedings. Therefore, trials *in absentia* shall not be conducted in cases of universal jurisdiction.

III. Universal jurisdiction and conflicts of jurisdiction

1. The international community should establish mechanisms in order to determine the most appropriate and effective jurisdiction in cases of conflicts of multiple jurisdictions.

2. In cases of conflicts of jurisdiction amongst states seeking to exercise universal jurisdiction, in accord with the Resolutions of the XVIIth International Congress of Penal Law, the most appropriate state should be determined with a preference to either the custodial state or the state where most of the evidence can be found, taking into account criteria such as the ability of each state to ensure a fair trial and to guarantee the maximum respect for human rights and the potential (un)willingness or (in)ability of such states to conduct the proceedings.

3. In conformity with the *ne bis in idem* principle, a state wishing to exercise universal jurisdiction shall respect final decisions rendered by the domestic court of another State (or international court) regarding the same acts, unless the underlying proceedings were not conducted independently, impartially, or in accordance with the norms of due process recognized by international law.

IV. Exercise of universal jurisdiction

1. States must establish regulations in order to ensure that universal jurisdiction is not used for vexatious purposes and to prevent potential abuses of legal processes and human rights violations.

2. National criminal proceedings shall ensure the equality of arms, be equitable, guarantee fair, impartial and independent proceedings within a reasonable time, and respect fundamental human rights.

V. Limitations to the exercise of universal jurisdiction

1. Amnesties, pardons, and statutes of limitations should be respected if in accord with international law.

2. Procedural immunities as recognized by international law should be respected by state authorities.

VI. International cooperation in criminal matters

1. States are called upon to enhance international cooperation in cases of universal jurisdiction. Such cooperation must not infringe upon fundamental procedural guarantees and human rights.

2. Preconditions for the issuance of an international arrest warrant or an extradition request, as determined by the national law of the prosecuting state, should, in particular, include an elevated degree of suspicion, a ground for arrest, and be proportional. The issuance of an international arrest warrant or an extradition request under universal jurisdiction must not be prejudicial to the presumption of innocence.

3. States are called upon to overcome legal obstacles to effective international cooperation, in particular, by proscribing the crimes covered in chapter I.2. even where they do not intend to exercise jurisdiction over them.

4. The principle of *aut dedere aut judicare* should apply to the state on whose territory the suspect or accused is located, in accordance with the criteria set forth in chapter III.