

International Protocols on Victims' Rights and some Reflections on Significant Recent Developments in Victimology

1. Introduction

In 2003, the XIth International Symposium on Victimology was organised in Stellenbosch, South Africa. The overarching conference theme was 'New horizons in victimology'. Under this heading, attention was focused on the issues of victims' rights, victim services and transnational victimisation. These themes were well chosen, because they clearly underline that victimology as an academic discipline has matured, as it has by now acquired an undisputable international dimension. When victimologists from around the globe gather to discuss the issues mentioned, it is clear that the presentation of their research findings and their insights will be relevant for colleagues from all continents. Hence, contemporary reflections on fundamental questions in this area are of equal importance for colleagues from South Africa and from Europe.

The present contribution proceeds from the same assumption. In section 2, an overview will be given of some of the more prominent international protocols concerning the rights of victims of crime and abuse of power. Given the universal nature of the values and objectives underlying these documents, I feel justified in using the "European Union Framework Decision on the standing of victims in criminal proceedings" as a special example to elucidate some points which also apply in the South African context. The subsequent section 3 is about some of the main trends in recent victimology. Victimology is rapidly moving forward and it has attracted many academics and practitioners from different backgrounds and with widely diverging interests. The resulting avalanche of publications in this field plainly ask for some analysis. What are the most important issues which are likely to dominate victimological debate in the next decade?¹ Which fundamental choices need to

1 This contribution is geared to the future; an overview of the past is presented by

be made when we want to preserve (or to establish?) some coherence in victimology as a respectable academic discipline? And finally, in section 4, some inferences will be drawn from the content of the preceding parts of the present contribution.

2. International protocols, with special reference to the “European Framework Decision on the standing of victims in criminal proceedings”

During the relatively short life-span of victimology - let's say: some odd 50 years since Hans von Hentig's book on the criminal and his victim - one of the most repeated complaints has been that the victim is the forgotten party in the criminal justice system. It would be factually wrong when this type of criticism would still be maintained today. It is generally known that criminal justice systems around the world feature vast differences. They vary from strictly adversarial systems (e.g. in Anglo-Saxon countries) to more inquisitorial systems in many jurisdictions on mainland Europe. No matter the incompatibilities between the various systems, nowadays they have one thing in common. They all share the ambition of reform on behalf of victims of crime.

The roots of these reformist efforts can be traced to the final quarter of the 20th century. In 1985, virtually simultaneously two powerful documents were issued urging the international community to enhance the status of victims. The first one of these is the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.² The second one is the Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure.³ Although differences in language and in details cannot be overlooked⁴, the contents of the Declaration and the Recommendation are to a large extent overlapping and have

Schneider (2001).

2 A/res/40/34, adopted by the General Assembly in 1985.

3 R(85)11, also adopted in 1985.

4 The only really substantive difference between the Protocols is that the UN Declaration is not confined to victims of crime, but also includes victims of abuse of power. Given the crucial importance of abuse of government power in many regions of the world, this point is of major significance. The scope of victimology will be further addressed in section 3 *infra* as part of the issue of recent developments.

subsequently been echoed and expanded on in other international protocols of a similar nature. I specifically refer to the “Statement of Victims’ Rights in the Process of Criminal Justice”, issued by the European Forum for Victim Services in 1996, and ultimately to the European Union “Framework Decision on the standing of victims in criminal proceedings”.⁵

It is impossible - as it is unnecessary - to give a detailed account of all the articles (with the inevitably attached specifications, conditions and exceptions) contained in these main or general “Bills of Rights” for victims. Instead, I’ll briefly indicate what appears to be the international consensus on the nature and the extent of victims’ rights in the criminal justice system⁶. Essentially, it amounts to the following list:⁷

- (1) The right to respect and recognition at all stages of the criminal proceedings.
- (2) The right to receive information and information about the progress of the case.
- (3) The right to provide information to officials responsible for decisions relating to the offender.
- (4) The right to have legal advice available, regardless of the victims’ means. Since 1985, this right has been extended in two ways. Now there is also the right to be reimbursed for expenses incurred as a result of legitimate participation in criminal proceedings.⁸ And in order to minimise communication difficulties, translation facilities or interpreters should be available to an extent comparable with the measures of this type which are present in respect of defendants.⁹
- (5) The right to protection, for victims’ privacy and their physical safety.

5 Council Framework Decision of 15 March 2001 (2001/220/JHA).

6 For the first time in the present contribution, I point out that appearances can be deceiving. The fact that the major protocols are to a large extent identical, does not necessarily reflect a genuine international consensus. People who have actually negotiated these protocols have informed me that quite often it is only a small group of intellectual or moral entrepreneurs who have succeeded in persuading the international institutions to adopt new and aspirational standards, without them really understanding the implications of doing so.

7 This list builds on the overview in Groenhuijsen 1999.

8 Art. 7 of the EU Framework Decision.

9 Art. 5 of the EU Framework Decision.

- (6) The right to compensation, from the offender and the State.
- (7) The right to receive victim support.¹⁰
- (8) The right that governments seek to promote mediation in criminal cases for offenses which it considers appropriate for this sort of measure.¹¹
- (9) The right that the State shall foster, develop and improve cooperation with foreign States in cases of cross border victimisation in order to facilitate more effective protection of victims' interests in criminal proceedings.^{12 /13}

Against this background, the current state of affairs is probably summed up in the most concise way in recital 8 to the European Union Framework Decision of 2001:

“The rules and practices as regards the standing and main rights of victims need to be approximated, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have

10 Art. 13 of the EU Framework Decision calls on member states to “promote the involvement of victim support systems responsible for organising the initial reception of victims and for victim support and assistance thereafter...”. For a more detailed account of this I refer to another international protocol, the “Statement of victims’ rights to standards of service”, issued by the European Forum for Victim Services in 1999

11 Art. 10 of the EU Framework Decision.

12 Art. 12 of the EU Framework Decision.

13 This completes the list of rights which are more or less common to most international protocols in this respect. The rights are all directly or indirectly linked to the way the criminal justice system in the relevant countries should be operated. It should be noticed, though, that there is a single international protocol which goes far beyond the scope of criminal justice. I refer to the document “The social rights of victims of crime”, issued by the European Forum for Victim Services in 1998. In addition to the items mentioned above, this protocol calls for - *inter alia* - the victims’ right to

- receive recognition by society of the effects of crime
- have access to health care services
- have access to appropriate home security measures
- receive support and protection in the workplace
- receive support and protection in educational establishments.

Due to constraints of space allotted to the authors of this book I cannot further comment on these highly inspirational standards. Suffice it to say that this level of sophistication has not yet been achieved (or even approximated) by even the most advanced countries.

allowance made for the disadvantage of living in a different (...) State from the one in which the crime was committed.”

It must be observed here that the EU Framework Decision is a legally binding instrument.¹⁴ In this, it differs from the previously adopted international protocols, such as the UN Declaration, the Council of Europe Recommendation and the various documents released by the European Forum for Victim Services.¹⁵ Furthermore, it should be noted that the Framework Decision under consideration is part of the first wave of major EU rulemaking on criminal justice. Up until recently, the EU refused to accept competency in this area. All of this logically leads to the question why it has been relatively easy to adopt this set of binding rules on the position of the victim in criminal justice systems?

The answer to this question is basically as simple as it is sobering. The key to the matter is that the member states of the Union generally believed that they already complied with the provisions in the Framework Decision. In other words: the member states felt confident that agreeing to these standards would not entail a pressing need to reform or refine their legal system.¹⁶

Where did this national self confidence stem from? On what basis did they feel they could safely assume that no problems were at hand? I have identified two root and proximate causes.

The first one is reflected in the mandate of the negotiators. The preparatory stages of the Framework Decision reveal that member states instructed their representatives to specifically be protective of the features of

14 To be more precise, it imposes a formal obligation on the member states to make sure their jurisdictions meet the new standards. In case of gaps or discrepancies, either legislation should be introduced or adapted, or policy measures must be taken in order to ensure compliance. In other words: the goals of the Framework Decision are binding; the member states are left with some discretion as to the means they prefer to warrant compliance.

15 This EFVS is an umbrella organisation comprising as members the existing national (voluntary) victim support organisations throughout Europe. It follows that statutory organisations with similar objectives are not eligible for full membership.

16 It might be useful to point to a historical parallel of this situation. In 1950, the Treaty of Rome was concluded, better known as the European Convention on Human Rights and Fundamental Freedoms. Back then all civilised western European States felt confident that their domestic legislation would never violate the minimum-standards prescribed by this Convention. The next decades proved all of them wrong in this respect.

their own domestic systems. Some negotiators were candid enough to admit explicitly that they could not agree with a proposed provision *because* it would mean that their country would have to amend the pertaining criminal justice system in that respect.

A clear example of this approach is visible in the genesis of the wording of the provisions in articles 5-7 of the Framework Decision. They are about the right to translation/interpretation, legal aid and reimbursement of expenses respectively. The point that needs to be emphasized here is that these rights are limited to those victims *'having the status of witnesses or parties to the proceedings'*. This language was insisted on by representatives of countries which do not have a system of *'partie civile'*.¹⁷ Since these member states do not consider victims as *'parties'*, the end result is that the rights conferred by articles 5-7 only apply to victims who are called upon to testify in court. This is a severe restriction, if one only considers the fact that the victims concerned are deprived of these basic rights in all cases where the defendant pleads guilty.

The second reason for not expecting any serious problems is that some of the items included in the earliest drafts of the Framework Decision were quickly deleted when the national governments considered the consequences. A case in point is State compensation for victims of violent crime. A right to this kind of compensation was indeed included in the first drafts; and it was subsequently dropped when it became clear that for most member states it would involve more expensive systems than the current ones.

Intermezzo

A section on international protocols would be conspicuously incomplete if it would fail to report separately on efforts to promote State compensation. State compensation will be described in a brief *'intermezzo'*, because it is different in nature from the procedural rights mentioned above. First and foremost, the right to State Compensation does not exist in most regions of the world. It looks as if only the more affluent countries can afford to pay compensation to

17 The *'partie civile'* is an institution which allows the victim to join criminal proceedings as a party who can file a claim for damages. Many jurisdictions on mainland Europe have incorporated this legal phenomenon (which usually also entails additional procedural rights), but it is notably absent in the United Kingdom and Ireland.

citizens who have been victimised. And it must be emphasized that even in these privileged countries State Compensation is considered to be the exception rather than the rule. It is usually restricted to victims of violent intentional crime. Payments are made to cover loss of income, medical costs, funeral costs and living expenses for the bereaved family of murder victims. Most countries have stipulated a threshold minimum amount as well as a maximum sum that can be payed. A customary eligibility requirement is the obligation to have the crime reported to the police. Compensation can be refused or reduced if the victim is financially secure or when the victims' behavior before, during or after the crime is considered to be less than impeccable, e.g. when he has contributed to the occurrence of the crime (some States even go as far as to deny any compensation to victims who have a criminal record!). And finally, unvariably there is the restriction that payments by the offender, by insurance companies or social funds must be deducted (the 'subsidiarity-principle'). In the European context, most of the national schemes reflect the basic conditions set forth by the "European Convention on the Compensation of Victims of Violent Crime", adopted by the members of the Council of Europe in 1983. The most recent development in this area is the agreement reached on April 7, 2004, by the European Union on a Directive (8255/04) which "will ensure that all Member States shall have in place, by 1 July, 2005, the relevant national provisions to ensure compensation to violent intentional crime and will contain rules on access to compensation in cross border cases which will help victims claim compensation as a result of crime suffered in a Member State other than their own."

Just a few closing remarks to conclude the intermezzo (more on this in Groenhuijsen 2001b) . The *ratio legis* of the compensation schemes is the idea of social justice or collective solidarity. The existence of State compensation is never based on the assumption that the government accepts liability for not having prevented the crime. Secondly, we need to bear in mind that victims of crime in general do not spontaneously tend to ask for help, neither for emotional support, nor for financial assistance. From a policy point of view, this means that it is insufficient to set up a compensation scheme and then expect the victims to find a way to access the system. Empirical evidence shows that in many countries only a small minority of those who meet the

eligibility criteria, actually claim the compensation they are entitled to. And finally, a major problem in this area is the lack of communication of basic information on compensation schemes. In many countries over 50% of the applications do not lead to an award by the compensation fund. Denying a claim is tantamount to not meeting the victims' expectations, which can obviously be a source of secondary victimisation.

Back to the EU Framework Decision and its aftermath. What inferences can be drawn from this experience? The first interim conclusion regarding the new horizons in victimology is that we should always be aware of the possible existence of "hidden agenda's" when faced with new initiatives ostensibly designed to benefit victims of crime. More than once new pieces of legislation or policy measures have been introduced on behalf of victims, but the real interests at stake might very well be political expediency or to protect vested bureaucratic interests of some of the agencies involved in drafting or executing the new policies. We have to be conscious of the fact that there are usually different kinds of rationalities involved in the decision making process resulting in a call for reform. To name but one example: the rationality of a justice department does not necessarily coincide with the logic of the welfare department. For the discipline of victimology this means that we can never take things at face value. The victimologist is always there to probe and challenge. Victimology should never cease scrutinising new victim related policies and never relent in questioning underlying motives, suggested methods as well as ultimate objectives.

In fact, the preceding account only serves to confirm the old adage that it is easy to adopt or issue legal rules, but that it is much harder to make them work. This has always been the case in connection to the international protocols dealing with victims' rights.

The United Nations stands out as an organisation which is keenly aware of the limitations in merely adopting solemn Declarations. Hence, it followed up the 1985 Declaration with some questionnaires on implementation, which have led to a 'Handbook on Justice for Victims' and a separate 'Guide for

Policymakers' on how to get the job really done.¹⁸ But that was basically it. After the turn of the century no major new initiatives have ensued to supervise any progress or otherwise in compliance with the standards defined by the UN Declaration.

Since 1985, the Council of Europe has never even bothered to make systematic enquiries whether or not their members have paid serious attention to its 1985 Recommendation. Only in 2000, the comprehensive comparative study by Brienen and Hoegen provided ample information on the 'law in action' in this respect (Brienen&Hoegen 2000). Their findings have been extremely instructive. The evidence these authors have collected confirms two basic insights. One is that many countries have made impressive progress in actually improving various bits and pieces of their criminal justice systems with an eye to the interests of victims of crime.¹⁹ The other is that not a single country can claim to respect all the basic victims' rights in each and every case it is confronted with. Just one example should suffice to clarify this point. The Recommendation stipulates that victims have a right to be informed about the possibilities of obtaining assistance, practical and legal advice, compensation from the offender and state compensation (articles A.2 and D.9). Empirical data revealed that even the very best performing jurisdiction could not exceed a rate of 70% of cases in which the required information was actually delivered. If we then bear in mind that the EU Framework Decision has considerably expanded the list of items on which information has to be supplied to the victim (e.g. where and how they can report a crime; how and under what conditions they can obtain protection; and - when certain conditions are met - notification when the person prosecuted or sentenced for an offence is released), there is no doubt that it is highly unlikely that any member state will be able to live up to the expectations raised by these new and sophisticated provisions.

The obvious conclusion here is that member states in the EU have all been clearly mistaken in presupposing that it would be easy to comply with the standards set by the new Framework Decision. Instead, it actually does pose a real challenge. Apart from the example of the right to information mentioned

18 Full details in the list of references.

19 Nor can it be overlooked that some countries who have signed the obligation to respect the Recommendation still are in an appalling state of ignorance or neglect in this area.

before, I'll identify two perspectives from which it should have been clear from the outset that drastic changes would be called for to adapt domestic legislation.

The first one is that the Framework Decision forces member states to recognize the role of the victim in the criminal justice system in his/her capacity *as a victim*.²⁰ Obvious as this may look at first sight, as far as I can see, very few jurisdictions meet this requirement at present. In most countries, the victim is only acknowledged within a Code of Criminal Procedure when he has also acquired an additional legally relevant capacity as a reporter of the crime, or as a witness or a civil claimant (the 'partie civile' referred to before).²¹

And secondly, the Framework Decision has undoubtedly introduced some new or refined standards which will serve as *new benchmarks* to assess progress on a comparative basis. This can be illustrated by the following examples:

- Article 8 obliges Member States to ensure that random contact between victims and offenders within court houses may be avoided. To that end, the countries must "progressively provide that court premises have special waiting areas for victims". In my honest opinion, this constitutes genuine innovation: who could have predicted 20 years ago that the architecture of court buildings would now be part of the subject matter of victims' rights in criminal justice?
- Likewise, article 10 stipulates in general that Member States shall seek to promote mediation in criminal cases for offenses which it considers appropriate for this sort of measure. Again, this is unprecedented insofar as I am unaware of any other legally binding international protocol promoting mediation in this way.²²
- As a final example, art. 13 calls on the Member States to promote the

20 Recommendation no. 2 of the Workshop in Support of Module 4 of the Phare Rule of Law Horizontal Programme, Dublin, October 2002: "It was agreed that the *victim* should be explicitly recognised as a category in law and criminal procedure on all fours with other legal categories."

21 Some jurisdictions have adopted a "Victims Bill of Rights" or a "Victims Charter". In most systems on the European continent separate chapters in Codes of Criminal Procedure dealing with victims as such are completely absent; the best one can find is guidelines, policy directives and administrative rules dealing with victims in general.

22 I'll return to mediation in section 3.2 below.

involvement of victim support systems. In cases of cross border victimisation, the Framework Decision demands additional protection of victims' interests "whether in the form of networks directly linked to the judicial system or of links between victim support organisations" (article 12).

So, the logical next question to address is: what has actually been achieved since March 15, 2001? Member States were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with most parts of the Framework Decision by March 2002 (the deadline for articles 5&6 being March 2004 and for article 10 in March 2006). This extremely tight time frame was probably unwise to start with. It was plainly unrealistic; and hence it raised expectations with stakeholders which could never be fulfilled. Being a legally binding document, the Framework Document furthermore provides for a system of monitoring compliance. Article 18 puts each Member State under the obligation to forward to the relevant EU-institutions the text of the provisions enacting into national law the requirements laid down by the Framework Decision. Subsequently, the EU shall assess the measures taken by Member States to comply with the provisions of this Framework Decision, by means of a report drawn up by the General Secretariat on the basis of the information received from Member States and a report in writing submitted by the Commission.

So much for procedure. Let us turn to substance. As a preliminary observation, it has to be noted that not a single European country followed up on the Framework Decision by introducing a comprehensive legislative project. Where 'Victim Charters' were in place, they had all been established before 2001. Not a single Code of Criminal Procedure was amended in a systematic way with an eye to implementation of the Framework Decisions' requirements. The second preliminary remark is that in quite a few countries, mediation appears to be (unexpectedly and perhaps unexplainably) popular for governments as implementation spearheads. This is especially hard to account for, since the time limit for art. 10 only expires in 2006!

The Framework Decision calls on Member States to submit a report on progress made. Interestingly, at the time when the reports were due to have arrived, *none* of the Member States had formally notified the Commission of

the measures taken to transpose the Framework Decision. Following stiff reminders by the EU, most of the Member States subsequently filed their reports, which varied immensely both in length and in content. With the help of the membership of the European Forum for Victim Services, I have had the opportunity to study most of the national reports. This has led to a number of interesting findings.

First, I encountered a strange atmosphere of mysteriousness surrounding these reports. They were not published on the internet; they could not be simply accessed by approaching either national governments²³ or EU-institutions; and nobody was able or willing to explain any reason for the apparent shyness in supplying this basic information.

Secondly, it quickly became evident that the reports by the member states were written by the same government officials who were responsible for drafting and executing national victims policies. Thus, the individuals having a personal interest in a favourable assessment, were charged with answering the question to what extent the domestic system conforms to the standards set by the Framework Decision. No independent evaluation took place anywhere. In most member states, Victim Support organisations with an NGO status were not even consulted when the reports were being prepared. It is significant that in the few instances where these NGO actually have been involved in the process (notably in Belgium and in Hungary), the national reports tended to be somewhat more self-critical.

Thirdly and finally, it was striking to see that the national reports submitted to the European Commission generally showed a high level of complacency. The self-confidence which had been so prevalent during the negotiating stages leading up to the Framework Decision was simply sustained some two years later. Even the slightest amendments to the national system were reported on in a gloating tone; and - more importantly - where shortcomings were identified the reports tended to use evasive language and contained no more than vague promises for improvements.

23 Naturally, there were some exceptions to this rule. The Scottish government, for instance, published a glossy paper outlining their position in connection with the Framework Decision in great detail. By contrast, some members of the EFVS were only able to get hold of a copy of their countries' report after promising that no direct quotes would appear in the present contribution.

The governments of the Member States could hardly have been more wrong in the assessment of their own achievements in this respect. From the outset, practitioners in Victim Support had recognised and warned against many gaps in domestic legislation and national policies. In March 2004, their judgement was corroborated by the official report by the European Commission on what is called the current “transposal situation”.²⁴

The report is devastatingly critical. It starts by reminding the reader that the formulation of the Framework Decision leaves the Member States with considerable room for manoeuvre in transposing it. And it specifically points out that one of the evaluation criteria to be applied is that transposition need not necessarily require enactment in precisely the same words in an express legal provision; the existence of general legal principles (arising, for example, from appropriate measures already into force) may suffice if they actually guarantee the full implementation and create a sufficiently precise and clear legal situation. After these mild preliminaries, though, the analysis in the report reveals serious and large scale shortcomings. The Commission complains that - because of lack of information supplied - it could acquire only a superficial impression of the state of transposal of the Framework Decision. But the impression gained makes it possible to conclude that the current state of transposal is unsatisfactory. The bottom line is then coined in the following overall assessment: “no Member State can claim to have transposed all the obligations arising from the Framework Decision *and no Member State has correctly transposed the first paragraph of Article 2*” (italics added). Mind you, the paragraph referred to reads as follows: “Each Member State shall ensure that victims have a real and appropriate role in its criminal legal system. It shall continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings and shall recognise the rights and legitimate interests of victims with particular reference to criminal proceedings.” This general conclusion is substantiated by a long list of specific omissions. For instance, the possibility for the victim to be heard during the procedure and providing evidence largely depends on its status as party to the

24 Report from the Commission of the European Communities on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Brussels March 3, 2004, COM (2004)54 final

proceedings. Only one country (Finland) fully transposed the obligation to inform the victim of the release of the accused or convicted offender. The Member States took very little action on the right of the victim *not* to receive information (the right to opt-out). The refunding of the expenses incurred by the victim is still unreliable in most countries. Again, only very few jurisdictions have correctly transposed the requirements on mandatory training for officials - judges included! - who come into contact with victims.

And so on, and so forth. It would not be useful to expand on this disappointingly long list of exposed deficiencies. Nor would it really matter to engage in a long discussion on items where the Commission report itself is vulnerable to credible rebuttals. On the latter item, let me just note that the Commission appears to be so preoccupied with demanding evidence of *transposal*, that - in my opinion - it tends to focus exclusively on *implementation* whereas the more important criterion should be *compliance*.²⁵

It is interesting to compare this brief little history with the way in which the so-called accession States have been treated in this respect. This concerns the ten countries who have joined the EU from May 1, 2004. Before they were admitted as full members, though, they had to satisfy the EU that they could meet basic standards, some of which were related to the domain of criminal justice. This included the requirements of the Framework Decision on the position of victims of crime. In this area, the accession states were not allowed the luxury of the Member States to perform their own internal evaluation. Instead, the EU sent inspection teams composed of experts in victims' issues to the accession states in order to make an independent assessment of the level of compliance. The teams included the following conclusion in the executive summary of their findings:

“States had in the main, but not invariably, busied themselves with

25 One example must suffice to elucidate this observation. The Commission report states that only Germany has correctly transposed the requirement of setting up separate waiting areas for victims in court buildings. The United Kingdom, *inter alia*, is criticised for not having notified provisions fully transposing the relevant article. Yet anyone familiar with service provision and obtaining policies is aware of the fact that it is the UK which is a role model in operating victim-witness-to-court programs, fully satisfying (and even reaching beyond) the objectives of this provision in the Framework Decision.

preparations for accession by incorporating or anticipating relevant legal instruments in their own domestic legislation, including the European Framework Decision. In many cases (...) that process of preparation was often chiefly a matter of drafting law, of creating what might be called paper compliance, rather than of actively considering the strategic, financial and administrative implications of adherence. There was no firm instance of any state having purposefully devised properly costed budgets, plans, aims, objectives, targets and timetables for implementation, and it appeared that they had either radically underestimated what the Decision's application would entail, or had taken legislation to be an effective surrogate for action.”²⁶

In my opinion, this conclusion is as robust as it is fair. The preceding paragraphs have made it abundantly clear, however, that similar remarks equally apply to the other member States of the EU.

What, then, are the lessons to be drawn from this episode? Probably the most obvious conclusion is that we need to reexamine the basic conditions or requirements for effective implementation of (inter)national protocols on victims' rights.

Self-evident as it may seem, as a preliminary we need accurate information. Even though this precondition borders on the obvious, it is a sad truth that reliable data is more often than not completely absent. It is here that the academic discipline of victimology has an important role to play in the future. Victimology could and should greatly enhance the relevance of international protocols on victims' rights. Lawmakers and those responsible for shaping and executing policy can only hope to achieve real progress when their actions are closely monitored by independent and critical researchers. And this type of evaluation should be organised on a systematic basis, which will usually have to include indepth studies stretched over a longer period of time. One shot questionnaires are - as a rule - insufficient to yield the kind of knowledge required for the present purposes. This was made painfully clear by the

26 Phare report (2002), p. 53.

virtual absence of critical follow-up research in the aftermath of the 1985 UN Declaration; yet similar deficiencies are now visible in Europe in connection with the Framework Decision. Admittedly, there are several research projects in place and running, but not all of these appear to be well designed and methodologically sound²⁷. The community of victimologists should take up this challenge and fill the gaps in existing sets of available data.

In doing so, we do not have to start from scratch. Fortunately, we can build on results of previously published, evidence-based research. Existing studies have revealed that effective reform can only be achieved if there is a comprehensive strategy which provides coherence to the various specific measures to be taken. From that perspective, several critical variables for success or failure have been identified. Without attempting to be exhaustive, I mention a number of prominent ones²⁸:

a. Probably more important than the content of the legal rules is the *attitude* of the officials who come into contact with the victims. This may be particularly relevant for the police (Wemmers 1996). Considering the very high attrition-rate in every jurisdiction, most victims will never get beyond the stage of reporting the crime. For this majority, the satisfaction with the criminal justice system will largely depend on the way they have been treated by the police. And police performance in this respect can only be acceptable if the officers radiate a spirit of empathy; when they execute their job on the basis of the conviction that decent treatment of victims is of equal importance than investigating crime and catching criminals.

b. No matter how important the attitude-factor may be, it has to be recognised that good intentions alone do not suffice. The right mindset has to be backed up by basic *knowledge* on victims issues. This requires training of police, prosecutors and judges. Many countries have been able to secure mandatory training modules for police and for prosecutors. Experience has

27 Studies like Wergens (1999) are based on information supplied by people unknown to the researcher, the reliability and validity of the data cannot be checked by the researcher, and hence these projects produce inadequate tools for policy formation or adjustment.

28 A similar list of critical steps to improve protection of victims is provided by Waller 2003, p. 48 ff.

shown that it is much more difficult to persuade the judiciary to accept compulsory courses in this area. Quite often representatives of the courts have invoked their right to independence as an argument to refuse this type of training. Victim Support organisations have frequently countered this argument by stating that the right to independence does not include the right to ignorance or the right to arrogance. Of course, when this kind of language is exchanged, the debate is not likely to be productive. It is much more useful to look at examples of best practice. In the United Kingdom a project was started on 'judicial studies'; this new label proved to be helpful in bypassing the initial reluctance to engage in mandatory 'training'. Another example is the 'Judicial Education Project', organised by the Office for Victims of Crime in the United States. The goal of this project is to develop a curriculum to provide judges and court personnel with initial and continuing education about the laws concerning victims' rights, the impact of crime on victims and their families, and how the judiciary can comply with victims' rights laws without infringing on defendants' rights.

c. Taking care of legitimate victims' rights and interests is an additional responsibility for the authorities. Since the agencies operating the criminal justice systems have never been overfunded or overstaffed, it is obvious that this relatively new obligation can only be executed properly when adequate resources are provided. Simply stated, this basic condition turns out to be hard to meet. Even in the most affluent societies, it is increasingly difficult to appropriate earmarked funds for this purpose. In the long run, this might jeopardise the viability of any reform project on behalf of victims of crime.²⁹

d. Effective implementation of (inter)national protocols requires close cooperation between all the stakeholders. Government agencies from different departments (justice; public health), police, the prosecution service, the judiciary, probation, victim support and welfare agencies should all be represented as partners in a network. The network should serve as a platform to exchange information and to smooth out problems.

29 Interestingly, in the Recommendations of PHARE (2002), p. 58 we read: "The accession states guarantee the viability of properly accredited victim service organisations by apportioning 1% of their criminal justice budgets to the third sector (i.e. NGO's; MG), having regard for the need for a comprehensive pattern of service delivery." I doubt whether this level of funding is available in more than a tiny fraction of even the first world countries.

e. On top of that, strong leadership is essential for success. Two elements may be highlighted here. One is that in every country, named senior officials in the relevant ministries and criminal justice agencies be charged with express responsibility for the identification and promotion of policies and programmes for victims of crime (PHARE 2002, p. 57). The second is that service providing organisations should act as ‘problem owner’, by permanently appealing to the government when discrepancies between the law in the books and the law in action have been discovered.

3. New Horizons in Victimology. Reflections on International Developments.

3.1 Restorative justice and mediation

Restorative justice is hot. All over the globe, experiments with special projects are taking place and we are truly inundated by a stream of academic publications on the topic. Yet perspectives vary. For instance, it is common knowledge that a victimologist in Canada can quite frequently be confronted with the question how he or she can possibly be in favour of restorative justice. Conversely, in Europe we are often asked why victimological researchers can oppose some forms of restorative justice. This is a fascinating phenomenon, since colleagues on both sides of the Atlantic obviously are supposed to have the best interests of victims in mind. How is this difference in perspective to be explained and how are we to deal with it in the near future? Let me start with the observation that at least some common ground seems to be emerging. Most victimologists nowadays would not object to being labeled as a *critical advocate* of restorative justice. The problem remains, though, what exactly is being advocated when one is a proponent of restorative justice. Restorative justice still is a general concept which covers the most diverse of ideas, intellectual approaches, projects and activities. Against this background, I would suggest there are two main issues which need to be addressed in the next years.

1) The first one is: is restorative justice a literally alternative approach, which is essentially incompatible with traditional ways of administering criminal justice? In other words: is restorative justice a new paradigm, with the objective and the potential to replace the conventional retributive paradigm of

criminal justice?

This question has been raised many times before, yet the answers still are inconclusive.

On the one hand there is a powerful school of thought arguing that restorative justice is a new paradigm meant to replace the existing criminal justice system (Fattah 1993; Barnett 1977; Zehr 1990). For these writers - often referred to as the 'true believers' - there is no room for compromise. The system can only be either retributive or restorative. Crime is either viewed as a wrongful, sinful, immoral behavior that must be punished (old fashioned) or as a harmful, injurious behavior that needs to be redressed in the present and prevented in the future (new and attractive). Similarly, crime is either presented as an offence against the State and Society (old and obsolete) or it is regarded as a human conflict, a dispute between two parties (new and modern). In the same vein, the repressive paradigm is supposed to be guilt oriented, moralistic, stigmatizing and primarily looking backward, whereas the restorative paradigm distinguishes itself by being consequence oriented, utilitarian and looking forward.

I have to admit of being worried about this way of presenting the case as a binary choice between two irreconcilable opposites. Advocating restorative justice in this way comes dangerously close to the claims of the abolitionist movement of some 25 years ago (Hulsman 1982). That is not an appealing prospect. And I have no hesitations in maintaining that there are many instances of serious crime where there can be no doubt that there is more at stake than a 'problematic situation' or a 'conflict' between 'parties'. Unfortunately there is no way of denying that yes, some people commit terrible crimes and that it is the responsibility of society to recognise the suffering of the victims of these acts and to show solidarity with them by taking some kind of repressive action on their behalf. Some of the 'true believers' have expressed concern about the fact that elements of restorative justice have been 'hijacked' by the traditional criminal justice system. Others have complained that the conventional system has adopted some of the language of restorative justice. I can see no wrong here. In my opinion, restorative justice is a great idea, a convincing philosophy and a wonderful inspiration. It is not, however, a new paradigm in the technical meaning of the word (Groenhuijsen 2004). As Martin

Wright (1996) correctly asserted, it is better to think not of alternatives but of a continuum, and to work to move the centre of gravity from the repressive towards the restorative. So the real challenge appears to be to make the current system more responsive to the actual needs of real people.

Anyway, and in conclusion, victimology should urgently address the issue of further conceptualising restorative justice and determining its exact epistemological status.

2) The second main question to deal with in this domain is how to protect legitimate victims' rights and interests in restorative justice projects. I'll take just one example, mediation. Some academics and practitioners have heralded mediation as a panacea, as a solution of all the problems connected with conventional retributive criminal justice. Of course, it is not that simple. Quite often, it is too easily assumed that these projects are in the best interests of victims because this is part of the definition of the objectives of mediation. But again, reality is much more complex. So, what we need is serious research on the conditions which must be met in order to assure that mediation and related restorative justice projects truly serve the best interests of the victims involved.

In order to illustrate this point, I refer to the 'Statement on the position of the victim within the process of mediation', adopted in May 2004 by the European Forum for Victim Services. This policy paper means to cover some items which are neglected or underestimated in the previously published international protocols on mediation. For instance, as a starting point it should be recognised that in the aftermath of crime, the desire to meet the offender is rarely a priority for most victims. And we have to accept the fact that the invitation to meet the offender is a powerful intervention which could impose unwanted responsibilities on the victim. It follows that new light should be shed on the precondition that mediation is only possible on the basis of voluntary participation. The requirement of 'free and informed consent' (which is included in every national and international protocol) must be more substantial than offering the victim the mere opportunity to refuse to take part. To this end, the EFVS-statement outlines a full policy of what 'free and informed consent' should include. One element is that the offer of mediation should only be made by a person who has been fully trained to recognise the variable impact of the offer on each victim and the potential of adverse

consequences. Next, victims should be given not only full information about the process and the possible outcomes, but also information about where they can obtain independent support and advice. Thirdly - and interestingly - according to the EFVS-statement consent can never be free of pressure if the alternative consequences for the offender are substantially greater if the victim feels unable to take part in mediation.³⁰ And finally, the victim must be given sufficient time, a minimum of three weeks is suggested, to consider their decision.

This is just one example of many more issues relating to mediation which need to be considered in much more detail than has been done so far. Last year, during the Stellenbos-symposium, Paul Friday was absolutely right when he observed: “Research on mediation is a mile wide, but only an inch deep.” Here is another big challenge for victimology.

3.2 Terrorism

September 11, 2001 has changed the USA and rest of the world, it will also profoundly affect victimology. The massacres at the WTC and the Pentagon constitute conclusive evidence that over the past few decades terrorism has changed face. First, there is the feature of magnitude. Prior to September 11, out of more than 10.000 incidents of international terrorism recorded since 1968, only 14 had resulted in more than 100 casualties (Separovic, 2003). Then, there is the matter of motive. During the final quarter of the 20th century, terrorism was mainly inspired by political ideology or narrow nationalism. In the last decade, however, proclaimed religious beliefs became increasingly important as the main driving force. Both of these shifts have serious implications for the academic discipline of victimology.

a. It will not be possible to eliminate terrorism anymore than it is possible to eliminate crime. We have to get used to living in an imperfect world. Instead of dreaming about a violence-free utopia, our maxim must be:

30 This is clarified as follows: “Where the diversion of the offender from the criminal justice process is being considered, an alternative diversionary remedy should be available - for example, community service. Where a case has been referred for mediation by a court, there should be an understanding that any sentence discount which would be available following a succesful mediation will also be available if the offender had been motivated but the offer was declined.”

be prepared! Being prepared involves developing a strategy composed of preventive elements and reactive measures. The former are aimed at reducing the risk of massive terrorism, for instance by efforts to delegitimize terrorism and by calling on Islamic countries and moderate Muslims to publicly speak out against the cult of martyrdom through suicide bombings (Separovic 2003). The latter parts deserve separate attention.

b. It is extremely difficult to determine the best way to respond to the threat of terrorism. Obviously, as a bare minimum it is necessary to increase the level of police and judicial cooperation, including the exchange of information (Fijnaut et al 2004). The real question, however, will be where to draw the line in expanding police powers and increasing repressive and punitive measures. The objective here must be to preserve the rule of law and to protect the integrity of the legal system. Fighting terrorism can easily lead to hip-shooting, where careful consideration of conflicting interests is the more appropriate course of action. Modern societies need to strike a delicate balance of national security interests and civil liberties. The fight against terrorism can never be an excuse or a justification for violations of basic human rights (Lemmens 2004).

c. And how about the victims in the context of modern terrorism? One feature is that terrorism leads to mass victimisation. Another attribute is that according to the definition of terrorism the individual victims are targeted in order to inspire fear or to make governments move in a certain direction.³¹ Should these specifics affect the way in which domestic legal orders respond to their victims' immediate and long term needs and interests? I feel that we are faced with a real dilemma in this respect. Basically, there are two options, both of them highly unsatisfactory. One is to allow for no special benefits for victims of terrorism. In that case, the victims will quite often be left without any legal remedies. The perpetrators of the act are usually either unknown, or at large, or dead. So at best, the victims can claim State compensation according to the standards of the general compensation schemes, which is generally considered to be insufficient. The other option is to create special provisions, awarding victims of terrorism a privileged status. This is the case in

31 I'll not dwell on the endless debates about the correct definition of terrorism.

quite a few countries, particularly in jurisdictions with extensive experience with terrorism. Understandable as this approach may look at first sight, it leads to the inevitable question why the same advantages should not be extended to victims of other types of intentional violent crime.

This dilemma is just one of the many new problems created by modern-type terrorism. Easy solutions are not in stock. Victimology should contribute some conceptual thinking in order to confirm its academic relevance.

3.3 The International Criminal Court and ad hoc Tribunals

In 1998, countries from all continents agreed in Rome to sign the Statute for the International Criminal Court.³² In my opinion, this Statute - with the accompanying Rules of Evidence and Procedure - constitutes a milestone in victimology.

In the old days, warfare was a matter of soldiers. Hence, most of the casualties came from the armed forces. During the last century, things have changed in this respect. In World-war II, some 50% of the casualties were civilians. In the Vietnam war, this proportion had risen to 70% and it is well known that in more recent armed conflicts such as in Rwanda and the former Yugoslavia, with well-documented instances of 'ethnic cleansing', even more ordinary citizens paid the ultimate price for being at the wrong place at the wrong time (Keijzer 1997).

The international legal community responded to these cases of mass victimisation by establishing two *ad hoc* criminal Tribunals.³³ From a comparative perspective, it is remarkable that the procedural rules governing the operation of these Tribunals included innovative provisions on behalf of the victims of the armed conflicts. Among these were the creation of "Victims and Witness Units" and special protective measures for victims, with additional facilities for particularly vulnerable victims such as women and children (van Boven 1999). Building on these examples, the Rome Statute and complementary RPE provided an even more sophisticated system. Protection

32 Adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (A/Conf. 183/9, 1998).

33 In 1993, the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY); to be followed one year later by the International Criminal Tribunal for Rwanda (ICTR).

of victims/witnesses was extended, victims were allowed their own legal representation during proceedings, and the Rome Statute attempts to create a reparation scheme (Garkawe 2001 & 2003).

There are several reasons why I think this body of rules on the ICC is extremely fascinating and attractive.

First, it transcends different properties of the main criminal justice systems which are in place in various regions of the world. It has to be born in mind that the basic rules of procedure had to be agreed by nations representing the most diverse of legal traditions. Countries with a common law system and parties with a civil law heritage had to find common ground. The same is true for jurisdictions with a strictly adversarial system and others accustomed to a more inquisitorial style of conducting criminal trials. The end result offers a kind of *universal model* when it comes to protecting the rights of victims in the environment of criminal proceedings.

The second reason concerns the selection of staff. According to the ICC Statute, when recruiting the staff of the Victim-Witness-Unit *and* the judges, the prosecutors and their assistants, attention shall be paid to their expertise in the field of sexual violence. To this end, article 36 (8)(b) reads: “judges shall be included with legal expertise on specific issues, including (...) Violence against women or children”. Additionally, the organisational structure of the International Tribunals should be an inspiration for national jurisdictions. To start with, they should all emulate the model of Victim-Witness-Units attached to the courts.

Then there is the issue of training. As we have seen in section 2 above there are many gaps in most of the national training programmes. The ICC again offers an example of best practice in this respect. The staff of the VWU is responsible for the training of *all organs* of the Court. And according to rule 17 of the RPE this mandatory training has to include “issues of trauma, sexual violence, security and confidentiality”.

Finally, the Statute and RPE contain many provisions to prevent or minimize secondary victimisation. It offers various options to avoid face to face confrontations between the victim and the defendant (screens, video conferencing). It allows for restrictions on questioning of the victim by the defence. When certain conditions are met, it even leaves scope for the non

disclosure to the defence of the identity of the victim/witness (Garkawe 2003). Admittedly, the ICC Statute and its RPE are not unique in this respect. Many national legal orders have provided similar examples of sparing victims the agony of participating in a criminal trial (Brienen & Hoegen 2000). Giving testimony does not by nature or necessity have to be an ordeal for the victim. The ICC is not the first institution to have discovered this encouraging fact. Nevertheless, the systematic application of its provisions to prevent avoidable damage for victims might serve as a valuable role model for those countries which have yet to make a lot of progress in this respect.

3.4 Cultural diversity and criminal justice

Perhaps the biggest challenge of all stems from cultural diversity in modern society. Cultural pluralism is an old phenomenon, but it has recently acquired a new dimension because we are living in an age of massive migration (Groenhuijsen 2001a). The claims made by large numbers of refugees have revealed the fragility of feelings of self-righteousness in many western democracies. The sheer number of dislocated people in our times makes us more aware of real problems which have always existed, but have usually been comfortably hidden behind a veil of ignorance. Not so anymore. There is no way of escaping the fallacy of cultural neutrality.³⁴ And the large influx of foreign people with different cultural backgrounds has once again impressed us with the inescapable conclusion that the criminal justice system is one of the last forms of institutionalised discrimination. It is clear that this has major implications for victimology.

On a micro level, providing victim support to members of ethnic minorities proves to be difficult in many countries. It is hard to reach them and even when initial contact has been made it turns out that quite often the trust and mutual confidence is lacking which is a precondition for an effective working relationship. Quite a few service providing organisations experiment with projects attracting minorities as volunteer visitors. Although initial results are generally satisfactory, a lot of work remains to be done in this area.

A completely different problem arises when the impact of crime is

34 The term 'fallacy of cultural neutrality' was used by Paul Omaji during the Symposium in Stellenbos.

aggravated by the cultural background of the victim. How to deal with that situation in the criminal justice system? Can a distinction like that be taken into account in sentencing? An example which has divided public opinion in my own country is the case where a young Muslim woman was raped. Apart from the profound emotional damage the crime would cause for any victim, this particular woman also had to suffer from the fact that her religious background seriously impaired her chances of being married because she had been sexually violated. Can this contingency be accepted as an aggravating circumstance in sentencing? Neglecting the culturally determined impact of crime would seem to be cruel to the victim. On the other hand, some would argue that imposing a more severe penalty in this case would be unfair to the offender or would be demeaning for other rape victims with a different religious background. This kind of dilemma is inescapable and will demand an intellectual effort for some time to come (Groenhuijsen 1997).

Yet another example of the problems posed by ethnic or cultural pluralism is caused by difficulties in interpreting certain types of behavior. A case in point is the *body language* of representatives of some of the ethnic minorities. Deviant body language can easily affect the perceived credibility of statements. For instance, in some cultures avoiding eye-contact is a sign of respect; yet a police officer faced with a victim who refuses to look him in the eye can misinterpret this conduct as a sign of potential unreliability of the report. It goes without saying that this is extremely unfair to minorities who can not be expected to drop their culturally determined habits in order to meet the standards of the criminal justice system which are clearly biased in favor of the 'ordinary citizen'.

Finally, to complete this shortlist from a much larger enumeration of issues arising in a multi-cultural society, let me refer to the danger of discrimination due to great disparities between victims and offenders in terms of ethnicity. To be quite specific: in some cultures it is virtually impossible for a male offender to admit to being guilty of wrongdoing in front of a female. This inability to confess and accept responsibility can decisively interfere with chances of successfully completing mediation procedures. So this cultural peculiarity (that is: peculiarity from the dominant western cultural perspective) needs to be accounted for in structuring the mediation procedure - i.e. in

selecting mediators - in order to avoid unwanted inequalities.

In all these instances, victimology urgently needs to contribute with research leading to evidence based answers. Large numbers of people are involved, so the stakes are high. We cannot neglect our academic responsibility in this area, if we still want to contribute to the integrity of the legal system.

3.5 The scope of victimology

The final issue to touch upon in this contribution concerns the scope of victimology as a relatively young academic discipline. This topic has been addressed many times before. It is impossible - and it would be pointless - to summarise the dominant views which have been put forward in the extensive literature dealing with the question. The sole aim in raising the issue in the present context is that one single aspect of it appears to be of specific relevance to the African continent and to some regions of the globe which are usually referred to as third world countries.

It is undisputed that the hard core business of victimology is victims of crime and abuse of power. For obvious reasons, the latter category is specifically covered by a separate section of the UN Declaration of 1985. Victimology could not claim either relevance or credibility if it would have turned a blind eye to victims of abuse of power; the very nature of mass victimisation by government officials usually makes it more serious than ordinary crime, even though it technically does not always qualify as a criminal offence according to national law.

The hard question, then, is whether or not to extend the scope of victimology beyond the categories of crime and abuse of power. Do victims of natural disasters, victims of poverty, victims of social deprivation etc. also belong to the subject matter of victimology? Scholars from the African continent have recently advocated this broad conception of victimology. One of the more compelling arguments to support this position is the claim that “the deadliest form of violence is poverty”. Indeed, it cannot be denied that more people die of starvation than the total number of casualties due to crime. I will add just one statistical finding. The 200 richest people on earth own as much property as the poorest 2 billion people alive. This appalling inequality in the distribution of wealth cannot leave us, the privileged victimologists of this

world, untouched. I have to admit that when visiting some of the poorest countries on this planet, I have felt that my remarks on the rights of victims of ordinary crime were almost futile in the face of so much suffering in the streets. Being amidst unspeakable human misery, it sounded nearly pathetic to hear myself expounding on the emotional impact of burglaries on victims in the industrialized first world who usually carry insurance for their material loss.

Against this background, it is obvious to me that the broad conception of victimology - i.e. including victims of poverty and socio-economic inequalities - is a legitimate one. However, that pronouncement is only one side of the coin. On the other hand, we do also have to recognise that when accepting this point of view, there will always be *different domains* in victimology. It does make a difference whether the focus is on crime victims or victims of abuse of power on the one hand, or the previously mentioned broader categories of victims on the other. These domains involve different bodies of knowledge, different theories, different methods of research, possibly even different paradigms, and without any doubt different government policies, international forms of cooperation and service providing organisations. Adopting the broader conception of victimology does not mean that we can throw every problem into the same bucket.

As a final remark on this topic, I would suggest not to spend too much time on the correct definition of victimology (or, for that matter, on the definition of 'victim'). In the spirit of 'critical rationalism' as it has been shaped by Sir Karl Popper, I do not believe it is ultimately productive to put too much weight to the exact meaning of words: "The attempt to solve a factual problem by reference to definitions usually means the substitution of a merely verbal problem for the factual problem."³⁵ The *real* problems of *real* people who have been victimised should direct the focus of our attention.

4. Conclusion

35 Popper (1966), p. 295; and on p. 9: "The development of thought since Aristotle could, I think, be summed up by saying that every discipline, as long as it used the Aristotelian method of definition, has remained arrested in a state of empty verbiage and barren scholasticism, and that the degree to which the various sciences have been able to make any progress depended on the degree to which they have been able to get rid of this essentialist method."

The preceding sections yield some general conclusions. The exposition on International Protocols has uncovered some good news and some bad news. The bad news is that reform measures on behalf of victims of crime cannot be taken at face value. Governments adopting or accepting these measures do not always aspire to actual improvements of their legal system. Sometimes this can be proved by exposing hidden agenda's of national representatives charged with negotiating the International agreements. In other instances this is evidenced by the fact that national governments are satisfied by the mere existence of legal provisions, without bothering to check whether or not these rules have any significant practical impact. Finally, there is the danger that promoting victims' rights is just a fashion of the day. The topic is so popular that no politician or other segment of society could credibly oppose it. But this very fact also contains a twofold risk. One: victims could be replaced by another target group which is suddenly embraced as the next 'sexy' issue. And second: since *everybody* is (superficially) in favour of expanding victims' rights, it may be hard to sustain a sense of problem ownership and genuine commitment in the ranks of the powerful decision makers.

But there is also lots of good news. There is no way of denying that the International protocols have sensitized national communities that something had to be done to emancipate victims of crime. Consequently, many jurisdictions have brought about more improvements in this area during the last 25 years than during the preceding century. And the standards contained in the protocols show progressive insight in the nature of criminal victimisation and how to reduce the resulting adverse effects. Article 15 of the EU Framework Decision reads: "Each Member State shall support the progressive creation, in respect of proceedings in general, and particular in venues where criminal proceedings may be initiated, of *the necessary conditions for attempting to prevent secondary victimisation* and avoiding placing victims under unnecessary pressure" (italics added). To my knowledge, this is the first time in history that a legally binding document expressly acknowledges that criminal procedures can actually lead to secondary victimisation.³⁶

36 This implication of art. 15 was brought to my attention by Dame Helen Reeves

The existence of International Protocols has further led to one specific obligation with a particularly positive symbolic value. I am referring to the inclusion in national Codes of Criminal Procedure of separate chapters listing victims' rights. This kind of legislative technique reflects the statutory recognition of the victim as one of the main participants in the criminal procedure. The word 'participant' is carefully used in this context; it indicates that the victim is involved in the procedure to an extent like few others, without necessarily having the capacity of a *party*.

Experience with International Protocols has also furnished domestic authorities with knowledge on the do's and don'ts for effective implementation. A government which takes victims' rights seriously must be aware that it needs a comprehensive strategy to achieve its ends. Part of that strategy must be to appoint senior officials in the relevant ministries charged with express responsibility for policies and programmes for the implementation of victims' rights. In the South African context, I add that international experience has taught me that it is extremely difficult to be successful in this area when victim care is primarily regarded as an issue of public health and/or welfare. Victims' rights and victim care are basically issues of administering justice. Consequently, the Justice Department should accept primary responsibility for this policy area, or face the risk of jeopardising the entire enterprise.

The observations on International Protocols are directly related to the main trends and developments which have been discussed in section 3. The lessons learned in how (not) to achieve legal reform should play an integral role in dealing with the new challenges facing us in victimology.

The first one is about clarifying the relationship between restorative justice (including mediation) and the traditional criminal justice system. Since I can envisage no way that restorative justice could survive as a genuine alternative paradigm, the real question shall turn out to be how to institutionalise restorative elements in the currently existing systems (Home Office 2003). Evidence based knowledge on implementation issues will then be valuable to the point of being indispensable.

As far as the threat of terrorism is concerned, experience with

International Protocols has shown that quick legislative responses, inspired by the spur of the moment, are usually not the most clever ones. Two big dangers are then likely to materialise. One is that the new statutory provisions raise hopes and expectations which will be dashed shortly after. This is a well known cause of secondary victimization. The other hazard is that the incident driven measures may have unforeseen negative side-effects, which can even outweigh their potential benefits.

The ICC and the other International Tribunals have been presented as examples of best practice in the historical development of victim care. The link with the subject matter of the section on International Protocols is obvious. National governments would be wise to study the provisions in the ICC Statute and appended RPE and actually consider them as inspirational standards, as benchmarks which should be taken into account as if they were included in international agreements binding on national jurisdictions.

The problems emanating from the multi-cultural composition of modern-day societies shall never be completely resolved. In an era of massive migration they ought to attract increasing attention from researchers in the field of victimology.

In the light of the developments outlined above, I propose the following final conclusion. Victimology is not an ideology, it is an academic discipline. Yet the objectives of this branch can only be fully achieved if research is conducted with conviction, compassion, commitment and with courage (Young, 1992). It is exciting to be a victimologist in the first quarter of the 21st century.

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