COMPENDIUM OF UNITED NATIONS STANDARDS AND NORMS IN CRIME PREVENTION AND CRIMINAL JUSTICE

UNITED NATIONS

United Nations Office at Vienna
Centre for Social Development and Humanitarian Affairs

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UNITED NATIONS
New York, 1992

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ST/CSDHA/16

UNITED NATIONS PUBLICATION
Sales No.: E.92.IV.1
ISBN 92-1-130148-3

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PREFACE

1. Since its foundation, the United Nations, drawing on the principles of the Charter and the International Bill of Human Rights, has formulated numerous international instruments in crime prevention and criminal justice. The United Nations congresses on the prevention of crime and the treatment of offenders have contributed to this process of standard-setting, beginning with the First Congress, in 1955, which adopted the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 663 C I(XXIV)).

2. In accordance with the recommendations of the congresses, other important instruments have been adopted in more recent years, such as the Declaration of the Fourth Congress, the Caracas Declaration, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)); the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169); the Safeguards guaranteeing the protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50); and the Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 1984/47).

3. The work of the United Nations in this field had been expanded by the additional standards adopted by the Seventh Congress (Milan, 1985) and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985, namely the Milan Plan of Action; the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; the Basic Principles on the Independence of the Judiciary; and the Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners.

4. Further, in 1989, the Economic and Social Council, on the recommendation of the Committee on Crime Prevention and Control, adopted the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (resolution 1989/65), the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (resolution 1989/60) and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (resolution 1989/61). On the same occasion the Council also adopted relevant resolutions on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (resolution 1989/57) and of the Standard Minimum Rules for the Administration of Juvenile Justice (resolution 1989/66). These instruments were endorsed by the General Assembly in its resolution 44/162 of 16 December 1989.

5. In 1990, a considerable number of new standards, guidelines and model treaties had been adopted by the Eighth United Nations Congress and welcomed by the General Assembly in its resolutions 45/121 of 14 December 1990 and 45/166 of 18 December 1990. These new standards, guidelines and model treaties are: International co-operation for crime prevention and criminal justice in the context of development; United Nations Guidelines for the Prevention of Juvenile Delinquency; United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Standard Minimum Rules for Non-custodial Measures; Basic Principles for the Treatment of Prisoners; Guidelines for the prevention and control of organized crime; Measures against international terrorism; Model Treaty on Extradition; Model Treaty on Mutual Assistance in Criminal Matters; Model Treaty on the Transfer of proceedings

in Criminal Matters; Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released; Basic Principles on the Role of Lawyers; Guidelines on the Role of Prosecutors; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.

6. In Economic and Social Council 1989/69, the Secretary-General was requested to prepare a compilation of all existing United Nations standards and norms in crime prevention and criminal justice. A preliminary version was prepared as part of the documentation of the Eighth United Nations Congress. 1/ In accordance with the programme budget for the biennium 1990-1991, the compendium has been finalized after the Congress and issued as a technical publication to include the newly adopted instruments, in a form similar to that of Human Rights: A Compilation of International Instruments. 2/

7. It is hoped that the compendium will contribute to a wider knowledge and an increased awareness of United Nations crime prevention and criminal justice standards, proving to be of value to all those who are both interested in crime control and concerned with the observance of human rights in the administration of justice.

Notes

1/ A/CONF.144/INF.2.

2/ United Nations publication, Sales No. E.88.XIV.1.

Part One

CRIME PREVENTION AND CRIMINAL JUSTICE

A. STANDARDS OF GENERAL APPLICATION

Introduction

The United Nations congresses on the prevention of crime and the treatment of offenders have placed special emphasis on the general issues of criminal policy, in addition to dealing with specific aspects of crime prevention and criminal justice. It is broadly understood that crime and delinquency should not be interpreted as merely a problem of illegal behaviour and law enforcement but also as phenomena closely associated with economic and social development.

While previous United Nations congresses had dealt with aspects of development as related to juvenile delinquency and policy responses to them, comprehensive statements on the subject were first made by the Fourth Congress, held at Kyoto in 1970. 1/ Thus, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, endorsed by the Economic and Social Council in its resolution 1584 (L) of 21 May 1971, stresses that effective steps should be taken to coordinate and intensify crime preventive efforts within the context of the economic and social development that each country envisages for itself.

Developing the basic strategies set forth in this Declaration, the Sixth Congress, held at Caracas in 1980, 2/ adopted the Caracas Declaration, which was endorsed by the General Assembly, in its resolution 35/171 of 15 December 1980. It affirms the need for the development of criminal policy and criminal justice in the context of economic development, political systems, social and cultural values and social change. The Caracas Declaration relates crime prevention to other human concerns, especially social conditions and the quality of life, seeking to improve them and to reduce the social and material costs of crime.

The Seventh Congress, held at Milan in 1985, adopted two important documents in the area of crime and development. 3/

First, the Milan Plan of Action contains a set of basic recommendations for strengthening crime prevention activities nationally and internationally. The plan underlines the importance of the promotion of exchanges of information and experience, as well as coordination of activities of the United Nations in all relevant areas and reinforced technical cooperation, advisory services and United Nations regional institutes. In its resolution 40/32 of 29 November 1985, the General Assembly approved the Plan as a useful and effective means of strengthening international cooperation in the field of crime prevention and criminal justice.

Second, the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order provide a comprehensive framework for the future course of crime prevention and criminal justice in the context of development needs. The Principles take into account the political, economic, social and cultural circumstances and traditions of each country and the need for crime prevention and criminal justice systems to be consonant with the basic tenet of social justice. The General Assembly, in its resolution 40/32 of 29 November 1985, recommended the Principles for national, regional and interregional action.

On the recommendation of the Eighth Congress, held at Havana in 1990, 4/ the General Assembly, in its resolution 45/107 of 14 December 1990, adopted the Recommendations on international co-operation for crime prevention and criminal justice in the context of development. They outline comprehensive strategies to cope with crime prevention and criminal justice in their broader context and call for the intensification of the struggle against crime by promoting the rule of law, with due regard to human rights of individuals and groups. The document reaffirms the importance of criminal law reform to keep pace with developments in crime, the incorporation of crime prevention policies into national development planning, and the promotion of international, scientific and technical cooperation in these areas.

Notes

1/ Report of the Fourth Congress (A/CONF.43/5).

2/ Report of the Sixth Congress (A/CONF.87/14/Rev.1).

3/ Report of the Seventh Congress (A/CONF.121/22/Rev.1).

4/ Report of the Eighth Congress (A/CONF.144/28).

[1] *DECLARATION OF THE FOURTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS*

The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, meeting at Kyoto, Japan, in August 1970, attended by participants from eighty-five countries representing all regions of the world,

Being deeply concerned with the increasing urgency of the need for the world community of nations to improve its planning for economic and social development by taking greater account of the effects that urbanization, industrialization and the technological revolution may have upon the quality of life and the human environment,

Affirming that inadequacies in the attention paid to all aspects of life in the process of development are manifest in the increasing seriousness and proportions of the problem of crime in many countries,

Observing that the world-wide crime problem has many ramifications, covering the range of conventional crime as well as the more subtle and sophisticated types of organized crime and corruption, and subsuming the violence of protest and the danger of increasing escapism through the abuse of drugs and narcotics, and that crime in all its forms saps the energies of a nation and undermines its efforts to achieve a more wholesome environment and a better life for its people,

Believing that the problem of crime in many countries in its new dimensions is far more serious now than at any other time in the long history of these Congresses, and

Feeling an inescapable obligation to alert the world to the serious consequences for society of the insufficient attention which is now being given to measures of crime prevention, which by definition include the treatment of offenders,

1. *Calls upon* all Governments to take effective steps to co-ordinate and intensify their crime preventive efforts within the context of the economic and social development which each country envisages for itself;

2. *Urges* the United Nations and other international organizations to give high priority to the strengthening of international co-operation in crime prevention and, in particular, to ensure the availability of effective technical aid to countries desiring such assistance for the development of action programmes for the prevention and control of crime and delinquency;

3. *Recommends* that special attention be given to the administrative, professional and technical structure necessary for more effective action to be taken to move directly and purposefully into the area of crime prevention.

[2] **35/171. Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders**

The General Assembly,

Bearing in mind the importance to all nations of making rapid progress in the prevention of crime and the treatment of offenders, in view of the significant increase in crime, including new forms of crime, in various parts of the world,

Considering that the phenomenon of crime, through its impact on society, impairs the over-all development of nations, undermines people's spiritual and material well-being, compromises human dignity and creates a climate of fear and violence that endangers personal security and erodes the quality of life,

Considering that the international community should make concerted, systematic efforts to co-ordinate and stimulate technical and scientific co-operation and policies directed towards crime prevention in the context of political, economic, social and cultural development,

Recalling the responsibility assumed by the United Nations in crime prevention under General Assembly resolution 415 (V) of 1 December 1950, which was affirmed in Economic and Social Council resolutions 731 F (XXVIII) of 30 July 1959 and 830 D (XXXII) of 2 August 1961, and in the promotion and strengthening of international co-operation in this field in accordance with Assembly resolution 3021 (XXVII) of 18 December 1972,

Bearing in mind its resolutions 2542 (XXIV) of 11 December 1969 containing the Declaration on Social Progress and Development, 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, 3281 (XXIX) of 12 December 1974 containing the Charter of Economic Rights and Duties of States, 3362 (S-VII) of 16 September 1975 on development and international economic co-operation and 35/56 of 5 December 1980, the annex to which contains the International Development Strategy for the Third United Nations Development Decade,

Recalling its resolutions 32/59 and 32/60 of 8 December 1977, in which it noted the importance of the United Nations congresses on the prevention of crime and the treatment of offenders,

Acknowledging the role played by the United Nations through its efforts in crime prevention and the treatment of offenders and the need to strengthen this role, especially at the regional level, in order to make the application of the relevant agreements effective and to ensure that the functioning of the technical advisory and co-ordination services of the United Nations becomes more systematic and efficient,

Having considered the report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980,[1]

Emphasizing the importance of the work of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in crime prevention and the treatment of offenders and stressing the spirit of co-operation and the progress achieved,

1. *Takes note with satisfaction* of the report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

2. *Endorses* the Caracas Declaration contained in that report and adopted by consensus at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, annexed to the present resolution;

3. *Affirms* that crime prevention and criminal justice should be considered in the context of economic development, political, social and cultural systems and social values and changes, as well as in the context of a new international economic order;

4. *Requests* the Secretary-General to take the necessary steps to provide sufficient resources to ensure that the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat is able to discharge its responsibilities in accordance with its mandate and the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

5. *Also requests* the Secretary-General to take such steps as may be appropriate for the necessary strengthening of activities, especially at the regional and subregional levels, taking into account the specific needs of each region, including the establishment of institutes for research, training and technical assistance in those regions that are without such institutes, as well as the

[1] A/CONF.87/14/Rev.1.

strengthening of existing institutes, in order to facilitate international co-operation in the field of crime prevention;

6. *Urges* the Secretary-General to implement the conclusions concerning the new perspectives for international co-operation in respect of crime prevention adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

7. *Calls upon* all relevant organizations of the United Nations system to take the necessary measures to ensure a concerted and sustained effort to implement the principles contained in the Caracas Declaration;

8. *Invites* Governments to make continuous efforts to implement the principles contained in the Caracas Declaration and other relevant resolutions and recommendations, as adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in accordance with the economic, social, cultural and political circumstances of each country;

9. *Further requests* the Secretary-General to circulate the report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders among Member States and intergovernmental organizations, in order to ensure that it is disseminated as widely as possible, and to strengthen information activities in this field;

10. *Invites* the Secretary-General to submit to the General Assembly, at its thirty-sixth session, a report on the measures taken to implement the present resolution;

11. *Decides* to include in the provisional agenda of its thirty-sixth session an item entitled "Crime prevention and criminal justice and development".

96th plenary meeting
15 December 1980

ANNEX

Caracas Declaration

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the importance to all nations of making rapid progress in the prevention of crime and the treatment of offenders, in view of the significant increase in crime, including new forms of crime, in various parts of the world,

Considering that the phenomenon of crime, through its impact on society, impairs the over-all development of nations, undermines people's spiritual and material well-being, compromises human dignity and creates a climate of fear and violence that erodes the quality of life,

Considering that the international community should make concerted, systematic efforts to co-ordinate and stimulate technical and scientific co-operation and policies directed towards crime prevention in the context of social, cultural, political and economic development,

Acknowledging the role played by the United Nations through its efforts at the international level in the field of crime prevention and the treatment of offenders,

Considering that this role should, by common accord, be strengthened at the international level, and especially at the regional level, in order to make the agreements concluded in this field truly effective and to ensure that the functioning of the technical advisory and co-ordination services is more systematic and efficient,

Welcoming the spirit of co-operation and the progress achieved in the field of crime prevention and the treatment of offenders during the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

1. *Declares* the following:

1. The success of criminal justice systems and strategies for crime prevention, especially in the light of the growth of new and sophisticated forms of crime and the difficulties encountered in the administration of criminal justice, depends above all on the progress achieved throughout the world in improving social conditions and enhancing the quality of life; it is thus essential to review traditional crime prevention strategies based exclusively on legal criteria.

2. Crime prevention and criminal justice should be considered in the context of economic development, political systems, social and cultural values and social change, as well as in the context of the new international economic order.

3. It is a matter of great importance and priority that programmes for crime prevention and the treatment of offenders should be based on the social, cultural, political and economic circumstances of each country, in a climate of freedom and respect for human rights, that Member States should develop an effective capacity for the formulation and planning of criminal policy, and that all crime-prevention policies should be co-ordinated with strategies for social, economic, political and cultural development.

4. There is a need to promote scientific research, taking into account the particular circumstances and priorities of each country or region.

5. Member States should ensure that those responsible for the functioning of the criminal justice system at all levels should be properly qualified for their tasks and should perform them in a manner which is independent of personal or group interest.

6. Criminal policy and the administration of justice should be based on principles that will guarantee the equality of everyone before the law without any discrimination, as well as the effective right of defence and the existence of judicial organs that are equal to the task of providing speedy and fair justice and of ensuring greater security and protection of the rights and freedoms of all people.

7. Continuous efforts should be made to seek new approaches and to develop better techniques for crime prevention and the treatment of offenders, and to that end criminal law should be developed in such a way as to play an effective and important role in creating stable social conditions free from oppression and manipulation.

8. The family, school and work have a vital part to play in encouraging the development of social policy and of positive attitudes that will assist in preventing crime, and these factors should be taken into consideration in national planning and in the development of criminal policy and crime prevention programmes.

9. Having regard to the vital role played by the United Nations in encouraging international co-operation and the development of norms and guidelines in the field of criminal policy, it is important that the General Assembly and the Economic and Social Council should ensure that appropriate measures are taken to strengthen, as necessary, the activities of the competent United Nations organs concerned with crime prevention and the treatment of offenders, especially activities at the regional and subregional levels, taking into account the specific needs of each region, including the establishment of institutes for research, training and technical assistance in those regions which lack such bodies, and the strengthening of existing institutes, and, further to give effect to the conclusions of the Sixth United Nations Congress, including those relating to new perspectives for international co-operation in crime prevention, and to ensure that all United Nations organs co-operate effectively with the Committee on Crime Prevention and Control in pursuance of the relevant resolutions of the General Assembly.

2. *Invites* the General Assembly, in the light of the importance attached to the terms of the present Declaration by the States participating in the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to take appropriate action at the earliest opportunity in accordance with the Declaration.

[3] Adoption of the Milan Plan of Action

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the Caracas Declaration, 1/ unanimously approved by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having extensively discussed and carefully considered the results of the regional and interregional preparatory meetings, including the Meeting of the Panel of Eminent Persons on the New Dimensions of Criminality and Crime Prevention in the Context of Development, held at New Delhi from 22 to 26 April 1985, 2/

Adopts the Milan Plan of Action set out below and submits it to the United Nations General Assembly at its fortieth session for consideration:

MILAN PLAN OF ACTION

1. Crime is a major problem of national and, in some cases, international dimensions. Certain forms of crime can hamper the political, economic, social and cultural development of peoples and threaten human rights, fundamental freedoms, and peace, stability and security. In certain cases it demands a concerted response from the community of nations in reducing the opportunities to commit crime and address the relevant socio-economic factors, such as poverty, inequality and unemployment. The universal forum of the United Nations has a significant role to play and its contribution to multilateral co-operation in this field should be made more effective.

2. The past years have witnessed rapid and far-reaching social and economic transformations in many countries. Development is not criminogenic per se, especially where its fruits are equitably distributed among all the peoples,

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1/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A; see also General Assembly resolution 35/171, annex.

2/ For the report of the meeting, see A/CONF.121/IPM/5.

thus contributing to the improvement of overall social conditions; however, unbalanced or inadequately planned development contributes to an increase in criminality.

3. The success of criminal justice systems and strategies for crime prevention depend on the progress achieved in preserving peace, improving social conditions, making progress towards a new international economic order and enhancing the quality of life. The multisectoral and interdisciplinary nature of crime prevention and criminal justice, including their linkages to peace, demands the co-ordinated attention of various agencies and disciplines.

4. Crime prevention and criminal justice should be considered in the context of economic development, political systems, social and cultural values and social change, as well as in the context of the new international economic order. The criminal justice system should be fully responsive to the diversity of political, economic and social systems and to the constantly evolving conditions of society.

5. In the light of those general considerations, the following recommendations are made as essential elements of an effective plan of action for consideration by the United Nations General Assembly:

(a) Governments should accord high priority to crime prevention and criminal justice through, inter alia, the strengthening of national crime prevention mechanisms and the allocation of adequate resources;

(b) Interested Governments should co-operate bilaterally and multilaterally, to the fullest extent possible, with a view to strengthening crime prevention measures and the criminal justice process by undertaking action-oriented programmes and projects;

(c) Since criminality is a dynamic concept, the United Nations and Member States should continue to strengthen their research capacity and to take action to develop the required data bases on crime and criminal justice. In particular, attention should be given to possible interrelationships between criminality and specific aspects of development, such as population structure and growth, urbanization, industrialization, housing, migration and employment opportunities;

(d) There is also need for further study of crime and criminality in relation to human rights and fundamental freedoms and for investigation of traditional and new forms of crime;

(e) Member States should adopt concrete and urgent measures to eradicate racial discrimination, particularly apartheid, and other forms of oppression and discrimination against peoples, and should refrain from committing any acts which would undermine the sovereignty and independence of countries;

(f) Priority must be given to combating terrorism in all its forms including, when appropriate, by co-ordinated and concerted action by the international community;

(g) It is imperative to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime, both of which disrupt and destabilize societies;

(h) Continued attention should be given to the improvement of criminal justice systems so as to enhance their responsiveness to changing conditions and requirements in society and to the new dimension of crime and criminality. The United Nations should facilitate the exchange of information and experiences between Member States and should undertake study and policy research, drawing on available expertise;

(i) Non-governmental organizations should continue to be effectively involved in the work of the United Nations in the field of crime prevention and criminal justice;

(j) The Secretary-General of the United Nations is requested to review, in consultation with the Committee on Crime Prevention and Control, the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice, including the United Nations regional and interregional institutes, in order to establish priorities and to ensure the continuing relevance and responsiveness of the United Nations to emerging needs. In such a review, special attention should be given to improving the co-ordination of relevant activities within the United Nations in all related areas. Given the diversity of economic, social and cultural situations, it is also imperative to initiate and strengthen the subregional, regional and interregional programmes of the United Nations in the field of crime prevention and criminal justice with the concurrence of concerned Member States;

(k) The regional and interregional institutes of the United Nations should be strengthened and their programmes reinforced to meet the requirements of their respective constituencies. Action should be taken for the immediate establishment in Africa of the long-delayed regional institute for the prevention of crime and the treatment of offenders;

(l) The capacity of the United Nations to extend technical co-operation to developing countries, upon their request, should be urgently reinforced, particularly in the areas of training, planning, exchange of information and experiences, reappraisal of legal systems in relation to changing socio-economic conditions and appropriate measures to combat criminality in all forms. Necessary action should be taken to promote regional advisory services in this field. All of those efforts require adequate resources;

(m) Member States should intensify their efforts in developing the widest possible public participation in preventing and combating crime and to this end efforts should be made to engender the widest public education.

6. Member States are urged to implement the Plan of Action as the collective endeavour of the international community to deal with a major problem whose disruptive and destabilizing impact on society is bound to increase unless concrete and constructive action is taken on an urgent and priority basis.

[4] Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Caracas Declaration, unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 3/

Recalling also General Assembly resolution 35/171 of 15 December 1980, in which the Assembly endorsed the Caracas Declaration and urged implementation of the recommendations relating to the new perspective for international co-operation in crime prevention in the context of development adopted by the Sixth Congress,

Recalling further General Assembly resolution 36/21 of 9 November 1981, in which the Seventh Congress was invited to consider current and emerging trends in crime prevention and criminal justice with a view to defining new guiding principles for the future course of crime prevention and criminal justice in the context of development needs and the goals of the International Development Strategy for the Third United Nations Development Decade and a new international economic order, taking into account the political, economic, social and cultural circumstances and traditions of each country and the need for crime prevention and criminal justice systems to be consonant with the principles of social justice,

Bearing in mind Economic and Social Council resolution 1982/29 of 4 May 1982, in which the Council approved the provisional agenda for the Seventh Congress, encouraged Governments to make adequate preparations and requested the Secretary-General to take all necessary measures to ensure the success of the preparatory activities and of the Congress itself,

Bearing in mind also General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, which is one of the principal guarantees for the creation of better conditions so that all peoples may attain a decent life,

Mindful further that the International Development Strategy for the Third United Nations Development Decade 4/ declares that the ultimate aim of development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom,

Emphasizing the responsibility assumed by the United Nations in crime prevention under General Assembly resolution 415 (V) of 1 December 1950, which was reconfirmed by the Economic and Social Council in resolutions 731 F (XXVIII) of 30 July 1959 and 830 D (XXXII) of 2 August 1961, and in the promotion and strengthening of international co-operation in this field, in accordance with

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3/ Sixth United Nations Congress ..., chap. I, sect. A.

4/ General Assembly resolution 35/56, annex.

Assembly resolutions 3021 (XXVII) of 18 December 1972, 32/59 and 32/60 of 8 December 1977, 35/171 of 15 December 1980 and 36/21 of 9 November 1981,

Bearing in mind also the importance of preserving peace as a condition for development and international co-operation, and that the theme of the Congress was "crime prevention for freedom, justice, peace and development",

Alarmed by the growth and seriousness of crime in many parts of the world, including both conventional and non-conventional criminality, which have a negative impact on the quality of life,

Considering that crime, particularly in its new forms and dimensions, seriously impairs the development process of many countries, as well as their international relations, thus, inter alia, compromising the attainment of the objectives of the International Development Strategy for the Third United Nations Development Decade and the establishment of a new international economic order,

Noting that the function of the criminal justice system is to contribute to the protection of the basic values and norms of society,

Aware also of the importance of enhancing the efficiency and effectiveness of criminal justice systems,

Noting also that to limit the harm caused by modern economic and unconventional crime effectively, policy measures should be based on an integrated approach, the main emphasis being placed on the reduction of opportunities to commit crime and on the strengthening of norms and attitudes against it,

Aware of the importance of crime prevention and criminal justice, which embrace policies, processes and institutions aimed at controlling criminality and ensuring equal and fair treatment for all those involved in the criminal justice process,

Mindful that the inclusion of crime prevention and criminal justice policies in the planning process can help to improve the life of people in the world, promote the equality of rights and social security, enhance the effectiveness of crime prevention, especially in such spheres as urbanization, industrialization, education, health, population growth and migration, housing and social welfare and substantially reduce the social costs directly and indirectly related to crime prevention and control by ensuring social justice, respect for human dignity, freedom, equality and security,

Convinced that due attention should be paid to crime prevention and criminal justice and the related processes, including the fate of victims of crime, the role of youth in contemporary society and the application of United Nations standards and norms,

Recognizing that the formulation of new guiding principles can assist in the enhancement of the role of crime prevention and criminal justice in relation to cultural and political development, to be pursued at the various stages of local, national, subregional, regional and interregional planning,

Acknowledging the urgent need for more effective international co-operation between Governments, keeping in mind that the international and national economic

and social orders are closely related and are becoming more and more interdependent and that, as a growing socio-political problem, crime may transcend national boundaries,

1. Reaffirms the crucial role of the United Nations in the field of international co-operation in crime prevention and criminal justice, and the treatment of offenders in the broader context of socio-economic development and the establishment of a new international economic order;

2. Recommends the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, annexed to the present resolution, for national, regional and international action, as appropriate, taking into account the political, economic, social and cultural circumstances and traditions of each country on the basis of the principles of the sovereign equality of States and non-interference in their internal affairs;

3. Invites Governments to be guided by the principles annexed hereto in the formulation of appropriate legislation and policy directives;

4. Also invites Member States systematically to monitor the steps being taken to ensure co-ordination of efforts in the planning and execution of effective and humane measures to reduce the social costs of crime and its negative effects on the development process, as well as to explore new avenues for international co-operation in this field;

5. Urges the regional commissions, the regional and international institutes in the field of crime prevention and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the guiding principles;

6. Calls upon the Committee on Crime Prevention and Control to consider necessary ways and means to ensure appropriate action to follow up on the implementation of the present resolution;

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the guiding principles, and the intensification of information activities in this field;

8. Also requests the Secretary-General, in his current review of existing priorities and programmes, to strengthen crime prevention and criminal justice activities in order to ensure more effective international co-operation in this field, including technical assistance to requesting countries and regional and subregional programmes of training, research and exchange of information;

9. Further requests the Secretary-General to prepare a report on the implementation of the present resolution for consideration by the General Assembly;

10. Invites the Economic and Social Council and the General Assembly to consider the above issues, as a matter of priority.

ANNEX

Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order

A. Crime prevention and a new international economic order

International order and national structures

1. In view of the relationship between crime prevention, development and a new international economic order, changes in the economic and social structure should be accompanied by appropriate reforms in criminal justice, so as to ensure the responsiveness of the penal system to the basic values and goals of society, as well as to the aspirations of the international community.

New international economic order and individual guarantees

2. A just, fair and humane criminal justice system is a necessary condition for the enjoyment by the citizens of all countries of fundamental human rights. It contributes to an equal opportunity for economic, social and cultural life. In this connection, international co-operation should be encouraged to foster balanced economic developments of Member States, through restructuring of the international economic system, with due emphasis on the aspects of crime prevention and proper functioning of the criminal justice system.

Development objectives and elimination of causes of injustice

3. Human development objectives including the prevention of crime, should be one of the main aims of the establishment of a new international economic order. In this context, policies for crime prevention and criminal justice should take into account the structural causes, including socio-economic causes, of injustice, of which criminality is often but a symptom.

New directions and approaches

4. New directions and approaches should be explored at the national and international levels regarding concepts, measures, procedures and institutions of crime prevention and criminal justice.

Relations between States

5. In conformity with the purposes of the United Nations, Member States should refrain in their relations with other States from committing such acts aimed at harming the development of other countries, leading to massive human suffering and even causing death. In such relations, Member States should assist each other, as far as they are able, in all efforts and measures serving crime prevention and criminal justice, and thus promote the development and progress of those countries.

Especially harmful crimes

6. The prevention of crime as a global phenomenon should not be confined to common criminality, but should address itself also to those acts which are

especially harmful, for example, economic crime, environmental offences, illegal trafficking in drugs, terrorism, apartheid and offences of comparable severity impinging on the legal peace and internal security to an unusual extent. These would embrace crimes in which public and private institutions, organizations and individuals may be directly and indirectly involved.

Protection against industrial crime

7. In view of the characteristics of contemporary post-industrial society and the role played by growing industrialization, technology and scientific progress, special protection against criminal negligence should be ensured in matters pertaining to public health, labour conditions, the exploitation of natural resources and the environment and the provision of goods and services to consumers.

Economic crimes

8. The laws governing the functioning of business enterprises should be reviewed and strengthened as necessary to ensure their effectiveness for preventing, investigating and prosecuting economic crime. In addition, consideration should be given to having complex cases of economic crime heard by judges familiar with accounting and other business procedures. Adequate training should also be provided to officials and agencies responsible for the prevention, investigation and prosecution of economic crimes.

Issues of corporate responsibility

9. Due consideration should be given by Member States to making criminally responsible not only those persons who have acted on behalf of an institution, corporation or enterprise, or who are in a policy-making or executive capacity, but also the institution, corporation or enterprise itself, by devising appropriate measures that would prevent or sanction the furtherance of criminal activities.

Adequate sanctioning

10. Every effort should be made to achieve equivalent penalization of economic crimes and of conventional crimes of comparable gravity by means of appropriate sentencing policies and practices, so as to eliminate any undue inequality between sanctions for conventional property offences and those for new forms of economic crime. With that aim in view, more appropriate penalties or sanctions for economic crimes should be introduced whenever the existing measures do not correspond to the extent and gravity of those offences.

Damage and financial resources

11. When determining the nature and severity of penalties for economic crimes and related offences, both the harmfulness and potential harmfulness of the offence and the degree of guilt of the offender should be taken into account. Economic sanctions, in particular severe economic penalties, should be graded in such a way as to ensure that they are equally exemplary for both poor and wealthy offenders, taking into account the financial resources of those criminally responsible. Sanctions and legal measures should in the first place aim at taking away any financial or economic advantages obtained through such crimes.

Victim compensation

12. The necessary legislative and other measures should be taken in order to provide the victims of crimes with effective means of legal protection, including compensation for damage suffered by them as a result of the crimes.

B. National development and the prevention of crime

Development, peace and justice

13. Development aimed at fostering economic growth and social progress and at ensuring peace in the world and social justice by means of a comprehensive and integrated approach should be planned and properly implemented on the basis of the contributions of various factors, including fair policies of crime prevention and criminal justice.

Crime prevention and planning

14. Integrated or co-ordinated crime prevention and criminal justice policies should not only reduce the human and social costs of traditional and new forms of criminality, but should also, where appropriate, help provide safeguards to ensure equitable and full public participation in the development process, thereby enhancing the viability of national development plans, programmes and actions.

Systematic approach

15. Crime prevention and criminal justice should not be treated as isolated problems to be tackled by simplistic, fragmentary methods, but rather as complex and wide-ranging activities requiring systematic strategies and differentiated approaches in relation to:

(a) The socio-economic, political and cultural context and circumstances of the society in which they are applied;

(b) The developmental stage, with special emphasis on the changes taking place and likely to occur and the related requirements;

(c) The respective traditions and customs, making maximum and effective use of human indigenous options.

Integrated or co-ordinated approach to planning

16. When making national plans, States should base those plans on a global, intersectoral and integrated or co-ordinated approach with short-term, medium-term and long-term objectives. This would permit the evaluation of the effects of the decisions taken, mitigate their possible negative economic and social consequences and decrease the opportunities for committing crimes, while increasing legitimate avenues for the fulfilment of needs.

Trends and social impact studies

17. Development projects and programmes that are to be planned and executed in conformity with local, regional and national realities should be based on reliable assessment and forecast of present and future socio-economic trends, including

crime, and on studies of the social impact and consequences of the policy decisions and investments. Feasibility studies, which usually involve considerations of economic viability, should also include social factors and be complemented by research on the possible criminogenic consequences of such projects, with alternative strategies for avoiding them.

Intersectoral planning

18. Efforts towards intersectoral planning should be designed to achieve interaction and co-operation between economic planners, agencies and the criminal justice sector, in order to establish or strengthen appropriate co-ordination mechanisms and to increase the responsiveness of crime prevention policies to developmental requirements and changing conditions.

Sectoral planning

19. Crime prevention and criminal justice planning should be carried out from a dynamic and systematic perspective, taking into account the interrelationships of activities and functions in the areas of legislation, law enforcement, the judicial process, the treatment of offenders and juvenile justice, with a view to ensuring greater coherence, consistency, accountability, equity and fairness within the broad framework of national development objectives. A systematic weighting of social costs and benefits would permit, in the case of alternatives, the selection of that option which exacts the least human and material costs while yielding the maximum benefits.

Crime prevention planning and co-ordination

20. The establishment of one or several planning and co-ordinating bodies or mechanisms, at both the national and the local levels, with the participation of representatives of the different criminal justice subsystems and other experts and with the involvement of members of the community, should be promoted because of its special value in assessing needs and priorities, improving resource allocation, and monitoring and evaluating policies and programmes. The following should also be included in the objectives of such planning and co-ordinating bodies or mechanisms:

(a) Encouraging local research potential and developing indigenous capabilities in respect of planning for crime prevention;

(b) Assessing the social costs of crime and the efforts to control it and generating awareness of the significance of its economic and social impact;

(c) Developing means for more accurately collecting and analysing data concerning crime trends and criminal justice, as well as studying the various socio-economic factors bearing on them;

(d) Keeping under review crime prevention and criminal justice measures and programmes in order to evaluate their effectiveness and to determine whether they require improvement;

(e) Maintaining working relations with other agencies dealing with national development planning in order to secure the necessary co-ordination and mutual feedback.

Crime prevention as part of social policy

21. The criminal justice system, besides being an instrument to effect control and deterrence, should also contribute to the objective of maintaining peace and order for equitable social and economic development, redressing inequalities and protecting human rights. In order to relate crime prevention and criminal justice to national development targets, efforts should be made to secure the necessary human and material resources, including the allocation of adequate funding, and to utilize as much as possible all relevant institutions and resources of society, thus ensuring the appropriate involvement of the community.

Interrelations between development and criminality

22. Further study and research on the possible interrelationships between criminality and certain aspects of development, such as population structure and growth, urbanization, industrialization, housing, migration, health, education and employment opportunities, should be undertaken in order to increase the responsiveness of crime prevention and criminal justice policies, in a dynamic way, to changing socio-economic, cultural and political conditions. Those studies should be conducted, when possible, from an interdisciplinary perspective and should be directed towards policy formulation and practical action.

C. The responsiveness of the criminal justice system to development and human rights 5/

Development and fundamental human rights

23. Socio-economic programmes and national planning should be conducive to the promotion, protection and efficacy of social justice, fundamental freedoms and human rights. Existing socio-economic policies and programmes should be examined in the light of their implications for the achievement of those objectives.

Legal systems, criminal justice and development

24. Legal systems, including criminal justice, should be instrumental in promoting beneficial and equitable development and due regard to human rights and social justice considerations, in ensuring that those performing judicial or quasi-judicial functions exercise them in a manner that is independent of personal or group interest and in maintaining impartiality in the staffing of the courts, in the conduct of criminal court proceedings and in the provision of public access to them.

Periodic reappraisal of criminal justice policies and practices

25. There should be in every country, regardless of its stage of development, a periodic reappraisal of the existing criminal justice policies and practices in relation to both formal and informal means of social control, so as to foster their concordance and responsiveness to emerging requirements deriving from socio-economic, cultural and other changes.

5/ As defined in relevant United Nations legislation.

Written laws and societal structures and values

26. The conflicts existing in many countries between indigenous institutions and traditions for the solution of socio-legal problems and the frequently imported or superimposed foreign legislation and codes should be reviewed with a view to assuring that official norms appropriately reflect current societal values and structures.

Unrestricted access to the legal system

27. Legal systems should endeavour, through appropriate policies aimed at overcoming socio-economic, ethnic, cultural and political inequalities or disparities whenever they exist, to optimize access to justice for all segments of society, especially the most vulnerable ones. Apropriate mechanisms for legal aid and the protection of basic human rights, in accordance with the demands of justice, should be established wherever they do not exist. Legal systems should also provide readily available, less costly and non-cumbersome procedures for the peaceful settlement of disputes and litigation or arbitration, so as to ensure prompt and just parajudicial and judicial action for everybody while offering the means for widespread legal assistance for the effective defence of all those in need.

Community participation

28. Various forms of community participation should be explored and encouraged in order to create suitable alternatives to purely judicial interventions, which would provide more readily accessible methods of administering justice, such as mediation, arbitration and conciliation courts. Community participation in all phases of crime prevention and criminal justice processes should, therefore, be further promoted and strengthened, paying full attention to the protection of human rights.

Mass media and education

29. The role of the mass media and its impact on aspects of crime prevention and criminal justice should be examined and evaluated, since public perceptions of criminal policies and public attitudes are central to the effectiveness and fairness of the legal system. In this connection, the mass media should be encouraged to contribute positively to the education of the public on issues of crime prevention and criminal justice, as an important tool of socialization, together with programmes of civic and legal education.

Human rights, social justice and effective crime prevention

30. While protecting human rights and promoting social justice, improvements in the effectiveness of crime prevention and criminal justice policies should be encouraged through the use of community and other alternatives to incarceration, by avoiding unnecessary delay in the administration of justice, by fostering staff training, evaluation and by scientific and technological innovations and action-oriented research, especially when there is need to maximize limited financial and human resources.

Traditional forms of social control

31. When new crime prevention measures are introduced, necessary precautions should be taken not to disrupt the smooth and effective functioning of traditional systems, full attention being paid to the preservation of cultural identities and the protection of human rights.

New forms of crime and criminal sanctions

32. Criminal sanctions, generally applied to counteract conventional criminality, should also be oriented towards new forms and dimensions of crime through the adoption of new legislative instruments and measures adequate to meet the challenges and by means of innovative techniques for detection, investigation, prosecution and sentencing. Appropriate instruments and mechanisms for international co-operation should likewise be devised and applied in order to cope effectively with such new and dangerous manifestations of crime.

Overall re-examination of criminal justice measures

33. The limited resources of the criminal justice system should be allocated on the basis of careful consideration of the benefits and costs associated with alternative strategies, taking into account not only the direct and indirect costs of crime, but also the social consequences associated with its control. In this connection, constant efforts should be made to consider the use of alternatives to judicial intervention and institutionalization procedures, including community-oriented alternatives, thus decreasing the level of undue criminalization and penalization and reducing its social and human costs.

Modern technology and potential for abuses

34. New developments in science and technology should be used everywhere in the interest of the people and thus also for effective crime prevention. However, since modern technology may produce new forms of crime, appropriate measures should be taken against potential abuses. In particular, as computer systems may result in the accumulation of personal data that could be used to violate human rights, including the right to privacy, or to engage in other abuses, appropriate safeguards should be adopted, confidentiality ensured and a system of individual access to such data and of correction of errors should be established, together with appropriate procedures for expurgating such data in order to alleviate these and other discriminatory aspects deriving from their possible abuse.

Social marginality and inequality

35. In view of the staggering dimensions of social, political, cultural and economic marginality of many segments of the population in certain countries, criminal policies should avoid transforming such deprivation into likely conditions for the application of criminal sanctions. Effective social policies should, on the contrary, be adopted to alleviate the plight of the disadvantaged, and equality, fairness and equity in the processes of law enforcement, prosecution, sentencing and treatment should be ensured so as to avoid discriminatory practices based on socio-economic, cultural, ethnic, national or political backgrounds, on sex or on material means. It is necessary to proceed from the principle that the establishment of genuine social justice in the distribution of material and spiritual goods among all members of society, the elimination of all forms of exploitation and of social and economic inequality and oppression, and the real

assurance of all basic human rights and freedoms represent a principal hope for the successful combating of crime and its eradication from the life of society in general.

D. International co-operation in crime prevention and criminal justice

Importance of international co-operation

36. All States and entities should co-operate through the United Nations or otherwise in the prevention and control of crime as an indispensable element for contributing to the promotion of the peace and security of mankind, while enhancing the effectiveness, viability and fairness of criminal justice. 6/

International law and criminal justice

37. Since international co-operation on crime prevention and criminal justice is desirable, the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation.

International instruments

38. In order to render the prosecution and adjudication of transnational and international crimes more effective, existing international instruments governing such crimes should be ratified and implemented.

6/ The need for international co-operation in crime prevention and criminal justice in terms of existing international instruments has so far been recognized in the following specific instruments: the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV); the International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly resolution 3068 (XXVIII); the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166 (XXVIII), annex); the International Convention against the Taking of Hostages (General Assembly resolution 34/146); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX); the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169); the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963 (United Nations, Treaty Series, vol. 704, No. 10106, p. 219); The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970 (United Nations, Treaty Series, vol. 860, No. 12325, p. 105); the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971 (United Nations, Treaty Series, vol. 974, No. 14118, p. 177); the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 (United Nations Treaty Series, vol. 976, No. 14151, p. 1); and the Convention on Psychotropic Substances of 1971 (United Nations, Treaty Series, vol. 1019, No. 14956, p. 175).

Modalities of international co-operation

39. Ways and means of international co-operation in penal matters, such as extradition, various forms of investigative and judicial assistance, including letters and commissions rogatory, service of writs and record of decisions, appearances of witnesses abroad, transfer of proceedings, transfer of foreign prisoners and execution of sentences abroad, including supervision of the conditionally released in other countries, should be made less cumbersome and more effective. In order further to promote the use of such mechanisms in all countries, thus maximizing the effectiveness of international co-operation in the struggle against crime, the United Nations should develop appropriate model instruments for use by interested countries and should contribute to the formulation of comprehensive regional agreements. Furthermore, efforts should be made to strengthen existing arrangements for international co-operation between the various agencies of criminal justice systems in order to combat criminality at the international level.

International legal standards and legal systems

40. International co-operation in criminal justice should be in accordance with the respective legal systems of the co-operating States and with due regard to human rights and internationally accepted legal standards, which should be further implemented and strengthened.

Technical co-operation

41. Technical co-operation in various forms should be increased in view of the shortage of technical and human resources in many developing countries, such as trained personnel in all branches of the crime prevention and criminal justice systems, research personnel and centres of study, readily available data and scientific resources, information exchange systems and educational facilities. Accordingly, existing bodies within the United Nations system and Member States with the capability and resources should make available technical assistance to other countries in need, on either a bilateral or a multilateral basis or as a part of broader development programmes and as a form of transfer of technology, in accordance with United Nations principles concerning a new international economic order. Similarly, developing countries might share with developed countries indigenous approaches and experiences that might be useful to them.

Co-operation among developing countries

42. Technical co-operation among developing countries on a regional and interregional level should be further promoted in order to share relevant common experiences, preserve particular cultural characteristics, strengthen indigenous institutions of social control and increase self-reliance.

Role of international and regional bodies and organizations

43. International agencies and bodies, including the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders, the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat and other international, intergovernmental and non-governmental organizations enjoying consultative status with the Economic and Social Council and

dealing with crime prevention issues, should, within their mandates, assist States in their struggle against crime and in the implementation of international co-operation in this field.

Regional and interregional activities

44. In promoting an international strategy of crime prevention and criminal justice in the context of development, the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders and the Crime Prevention and Criminal Justice Branch should continue further to enhance their functions as useful instruments for the effective implementation of this global approach, while their co-operation with the respective United Nations regional commissions and other relevant regional organizations should be strengthened.

Co-ordination among the institutes

45. Co-ordination of activities among the above-mentioned institutes should be fostered by institutionalizing contacts and exchanges of information and experience between them, so as to increase their potential for training, research and technical assistance to interested countries. To the extent appropriate, the specialized agencies and international development institutions and bodies should be closely involved in such activities.

Scientific co-operation

46. The United Nations should make more intensive efforts to secure support and co-operation from scientific and professional governmental and non-governmental organizations and institutions that have an established reputation in the field of crime prevention and criminal justice, so as to make greater use of those resources on subregional, regional, interregional and international levels. To that end, the possibility of establishing an international council of scholarly, scientific, research and professional organizations and academic institutions should be explored. Such a council, consisting of selected representatives of the above-mentioned organizations and institutions in various parts of the world, should strengthen international co-operation in this field by furthering the exchange of information and providing technical and scientific assistance to the United Nations and the world community which it serves.

United Nations congresses on the prevention of crime and the treatment of offenders

47. The quinquennial United Nations congresses on the prevention of crime and the treatment of offenders are designed to promote an exchange of knowledge and experience between specialists of different States and to strengthen and develop international and regional co-operation in the fight against crime, being a principal forum for that co-operation. States and the United Nations, along with other intergovernmental and non-governmental organizations, should contribute in every way possible to enhancing the effectiveness of the work of these congresses.

[5] 45/107. International co-operation for crime prevention and criminal justice in the context of development

The General Assembly,

Reaffirming the purposes and principles of the United Nations and the commitment of all States to respect the obligations assumed by them, in accordance with the Charter of the United Nations,

Convinced that crime prevention and criminal justice in the context of development should be oriented towards the observance of the principles contained in the Caracas Declaration, 1/ the Milan Plan of Action, 2/ the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order 3/ and other relevant resolutions and recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling its resolution 43/99 of 8 December 1988, in which it stressed the need for Member States to continue to make concerted and systematic efforts to

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1/ Resolution 35/171, annex.

2/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

3/ Ibid., sect. B.

strengthen international co-operation in crime prevention and criminal justice, as identified in the Milan Plan of Action, and to facilitate the adoption by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders of viable and constructive action-oriented strategies against crime,

Recalling also its resolution 44/72 of 8 December 1989,

Recalling further Economic and Social Council resolution 1989/68 of 24 May 1989, in which the Council reaffirmed its conviction of the importance of the programme of the United Nations in the field of crime prevention and criminal justice and the necessity of strengthening it in order to make it fully responsive to the needs and expectations of Member States,

Adopts the recommendations on international co-operation for crime prevention and criminal justice in the context of development, as contained in the annex to the present resolution.

68th plenary meeting
14 December 1990

ANNEX

Recommendations on international co-operation for crime prevention and criminal justice in the context of development

A. CRIME PREVENTION AND CRIMINAL JUSTICE IN THE CONTEXT OF DEVELOPMENT

1. Governments should reaffirm their commitment to respect the existing international treaties and their adherence to principles expressed in the Charter of the United Nations and in other relevant international instruments. Crime can also be prevented by ensuring that those principles are not sacrificed.

2. Member States should intensify the struggle against international crime by respecting and promoting the rule of law and legality in international relations and, for that purpose, they should complete and further develop international criminal law, fully implement the obligations following from international treaties and instruments in this field (pacta sunt servanda), and examine their national legislation in order to ensure that it meets the needs of international criminal law.

3. Governments should accord priority attention to the promulgation and implementation of appropriate laws and regulations to control and combat transnational crime and illegal international transactions, especially by the provision of proper collaborative schemes and trained personnel. Also, national laws should be reviewed in order to ensure a more effective and adequate response to the new forms of criminal activity, not only through the application of criminal penalties, but also through civil or administrative measures.

4. The national, regional and international aspects of growing pollution and the exploitation and destruction of the environment should be recognized and controlled as a matter of urgency, in view of the increasing and alarming devastation, deriving from various sources. Besides measures of administrative law and liability under civil law, the role of criminal law as an instrument that can help to achieve such control should be kept under review. The desirability of elaborating guiding principles for the prevention of crimes against the environment should be considered.

5. In view of the fact that advanced technology and specialized technical knowledge are employed in criminal activities pursued in international trade and commerce, including computer fraud, by the misuse of banking facilities and the manipulation of tax laws and customs regulations, law enforcement and criminal justice officials should be properly trained and provided with adequate legal and technical means to be able to detect and investigate such offences. The co-ordination and co-operation of other relevant agencies at the national level should be ensured and their capacities further improved. The development and strengthening of direct arrangements of international co-operation between the various agencies of national criminal justice systems should also be pursued.

6. Since even legitimate enterprises, organizations and associations may sometimes be involved in transnational criminal activities affecting national economies, Governments should adopt measures for the control of such activities. They should also collect information from various sources so as to have a solid base for the detection and punishment of enterprises, organizations and associations, their officials, or both, if they are involved in such criminal activities, with a view also to preventing similar conduct in the future.

7. Note should be taken of the fact that many countries lack adequate laws to deal with the emerging manifestations of transnational crime, and that the adoption and implementation of appropriate instruments and measures to prevent this type of criminality are urgently needed. In this regard, the exchange of information on existing laws and regulations should be encouraged in order to facilitate the dissemination and adoption of appropriate measures.

8. Because the corrupt activities of public officials can destroy the potential effectiveness of all types of governmental programmes, hinder development, and victimize individuals and groups, it is of crucial importance that all nations should (a) review the adequacy of their criminal laws, including procedural legislation, in order to respond to all forms of corruption and related actions designed to assist or to facilitate corrupt activities, and should have recourse to sanctions that will ensure adequate deterrence; (b) devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power; (c) adopt procedures for the detection, investigation and conviction of corrupt officials; (d) create legal provisions for the forfeiture of funds and property from corrupt practices; and (e) take appropriate measures against enterprises involved in corruption. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat should co-ordinate the elaboration of materials to assist countries in these efforts, including the development of a manual to combat corruption, and

should provide specialized training to judges and prosecutors that would qualify them to deal with the technical aspects of corruption, as well as with the experiences derived from specialized courts handling such matters.

9. Noting the alarming threat posed by illicit trafficking in narcotic drugs and psychotropic substances, which is among the worst crimes that humanity is facing, and the action taken by United Nations drug control units and bodies in this field, and concerned that, despite all the efforts made at the national, regional and international levels, this phenomenon persists unabated, it is important that efforts to combat this type of criminality be given a central place in all crime prevention and criminal justice plans and programmes. The work of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs in this area should be strengthened. Special assistance should be extended to developing countries for the implementation of drug abuse control programmes and the elaboration of collaborative prevention and control strategies.

10. The process of developing comprehensive model codes, especially at the regional and subregional levels, to combat crimes of transnational and international dimensions, should be encouraged. Also, efforts should be made to harmonize national criminal laws, so as to make them fully responsive to the realities and ramifications of such crimes. Practical arrangements, such as extradition, mutual assistance in criminal justice and the sharing and exchange of expertise and information, should be pursued. Adequate attention should be given to effective enforcement mechanisms in order to minimize the consequences of transborder crimes, including their effect on countries not directly involved.

11. Appropriate educational policies should be developed for making the populations of Member States more sensitive to the problem through formal educational systems and general public information programmes, with a view to promoting awareness of the ways and means by which criminal victimization can be avoided, as well as acquainting the public at large with the objectives and processes of the criminal justice system.

12. In recognition of the need for specific preventive measures related to such types of criminality as burglary, violent theft and street crime, an inventory of preventive measures should be prepared by the United Nations on the basis of an in-depth assessment and evaluation of their effectiveness in various cultural, social, economic and political contexts.

13. With respect to the victims of crime and abuse of power, a guide containing an inventory of comprehensive measures for education on the prevention of victimization, and on the protection of, and assistance and compensation to, victims should be prepared. This guide should be applied in accordance with the legal, socio-cultural and economic circumstances of each nation, taking into account the important role of non-governmental organizations in this sphere.

14. In view of its crucial function in crime prevention, the criminal justice system should be developed on the basis of the progressive rationalization and humanization of criminal laws and procedures, sentencing policies and dispositional

alternatives, within the overall framework of social justice and societal aspirations.

15. A systematic approach to crime prevention planning should be pursued to provide for the incorporation of crime prevention policies into national development planning, starting from an overall reassessment of substantive criminal and procedural laws whenever appropriate. This approach would include the introduction of the processes of decriminalization, depenalization and diversion, as well as reforms of procedures that would ensure the support of members of the public and review of existing policies with a view to assessing their impact. It would also include appropriate links to be established between the criminal justice system and other development sectors, including education, employment, health, social policy and other related fields.

16. The trial process should be consonant with the cultural realities and social values of society, in order to make it understood and to permit it to operate effectively within the community it serves. Observance of human rights, equality, fairness and consistency should be ensured at all stages of the process.

B. INTERNATIONAL, SCIENTIFIC AND TECHNICAL CO-OPERATION

17. In order to increase the effectiveness of international co-operation in crime prevention and criminal justice, concerted efforts should be made towards (a) the ratification and implementation of existing international instruments; (b) the development of bilateral and multilateral instruments; and (c) the preparation and elaboration of model instruments and standards for use at the national, bilateral, multilateral, subregional, regional and interregional levels.

18. The formulation of international instruments, standards and norms should include the following specific areas of concern: (a) judicial assistance treaties, in particular between common law and civil law countries, dealing with the means for obtaining evidence conforming to the requirements of the requesting State; (b) development of standardized requests for extradition and mutual assistance; (c) development of the means of providing assistance to victims of crime and abuse of power, with emphasis on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 4/ and of providing adequate protection for witnesses; (d) further consideration of issues of transnational jurisdiction in order to assist in the process of responding to requests for extradition and mutual assistance and in the implementation of international instruments; and (e) elaboration of standards for international assistance in respect of bank secrecy, facilitating the seizure and confiscation of proceeds in bank accounts derived from criminal acts. In particular, banks and other financial institutions should be urged to standardize their reporting requirements and documents so that these can be used more rapidly and effectively as evidence. More effective international standards to inhibit the laundering of money and investment connected with criminal activities, such as narcotics trafficking and terrorism, should also be developed.

4/ Resolution 40/34, annex.

19. Member States, intergovernmental and non-governmental organizations and international, national and private funding agencies should assist the United Nations in the establishment and operation of a global crime prevention and criminal justice information network. Member States are urged to contribute to this endeavour by financing equipment and expertise. Consideration should also be given to determining the categories of criminal justice data that can be provided and exchanged on a regular basis.

20. In accordance with the numerous decisions and resolutions of relevant organs of the United Nations, including the quinquennial United Nations congresses on the prevention of crime and the treatment of offenders, measures should be taken to strengthen programmes of international technical and scientific co-operation in the field of crime prevention and criminal justice on a bilateral and multilateral basis, as substantive components of broader development programmes, taking into account the special needs of developing countries and, in particular, the worsening socio-economic situation in many of them, which contributes to the increase of structural inequality and criminality.

21. In order to formulate and develop proper regional and interregional strategies of international, technical and scientific co-operation in combating crime and improving the effectiveness of preventive and criminal justice activities, the programmes of technical and scientific co-operation should be directed especially towards (a) reinforcement of the technical capacities of the criminal justice agencies; (b) an upgrading of the human and technical resources in all sectors of the criminal justice system in order to stimulate technical assistance, model and demonstration projects, research activities and training programmes, in close co-operation with the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders and competent non-governmental organizations; (c) the further development and improvement, at the national, regional, interregional and international levels, of information bases for the collection, analysis and dissemination of data on crime trends, innovative ways and methods of crime prevention and control, and the operation of criminal justice agencies, in order to provide an appropriate basis for policy-formulation and programme implementation; (d) the promotion, through educational programmes and training activities, of the implementation of United Nations norms, guidelines and standards in crime prevention and criminal justice; and (e) the elaboration and implementation of joint strategies and collaborative arrangements to deal with crime problems of mutual concern.

22. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, as the focal point of United Nations activities in this field, the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders, the co-operating entities like the Arab Security Studies and Training Centre, the interregional advisory services in crime prevention and criminal justice, and other relevant United Nations bodies, as well as intergovernmental and non-governmental organizations enjoying consultative status with the Economic and Social Council, should be strengthened so as to increase the scope of their operations, improve their co-ordination and diversify forms and methods of technical and scientific co-operation.

23. The role of the Committee on Crime Prevention and Control as the principal body dealing with crime prevention and criminal justice matters, which is entrusted, inter alia, with the preparations for the United Nations congresses on the prevention of crime and the treatment of offenders, should be further enhanced so as to enable it to fulfil its important functions.

24. The capacity of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, as the only professional and specialized entity within the United Nations system with overall responsibility for its crime prevention and criminal justice programme, should be strengthened in terms of both human and financial resources. Prompt implementation of the General Assembly and Economic and Social Council resolutions related thereto is urgently needed. In particular, priority attention should be given to the implementation of paragraphs 4 and 5 of General Assembly resolution 42/59 of 30 November 1987, in which the Assembly approved the recommendations contained in Economic and Social Council resolutions 1986/11 and 1987/53, concerning the review of the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice, 5/ and requested the Secretary-General, inter alia, to take measures to ensure that the programme of work is supported by adequate resources; and paragraph 3 (a) of Economic and Social Council resolution 1987/53, in which the Council requested the Secretary-General to develop the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs as a specialized body and facilitating agent in the field of crime prevention and criminal justice. Attention should also be given to other relevant resolutions of the General Assembly and the Economic and Social Council, as well as to the recommendations of the regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and of the Committee on Crime Prevention and Control.

25. The United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders should further develop their research, training and technical assistance capacities, and widen their collaborative networks through more extensive reliance on non-governmental organizations and national research and educational institutions, in order to meet the growing requests from developing countries for technical and scientific assistance. The Governments concerned, relevant regional bodies and organizations and United Nations entities should actively assist the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders, and, in particular, should assist the African Institute for the Prevention of Crime and the Treatment of Offenders, in consolidating its status and further promoting its activities.

26. Governments should be invited to fund regional advisory services in their regions, directly or through the United Nations Development Programme, so as to develop further and complement existing structures and possibilities in this

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5/ See E/1987/43.

field. The regional commissions should be encouraged to do likewise and should be supported in their efforts to that end.

27. Special attention should be paid to strengthening the collaborative ties in the field of crime prevention and criminal justice between the Centre for Social Development and Humanitarian Affairs and the Department of Technical Co-operation for Development of the Secretariat, the United Nations Development Programme, the World Bank and other relevant entities, with a view to ensuring adequate resources for technical co-operation activities in crime prevention and criminal justice. Interested Governments should give priority to the inclusion of crime prevention and criminal justice projects in the national and regional programmes proposed for the support of the United Nations Development Programme.

28. In order to fully implement the mandates emerging from the crime prevention and criminal justice programme and to provide additional technical and scientific expertise and resources for matters of international co-operation in this field, broader involvement of, and assistance by, non-governmental organizations are required.

29. Governments and other funding agencies should contribute to the United Nations Trust Fund for Social Defence in order to enable the United Nations to implement, in an adequate and effective manner, programmes of technical and scientific co-operation in this field.

B. INTERNATIONAL COOPERATION

Introduction

International cooperation in crime prevention and criminal justice has been called for on many occasions. It has become increasingly evident that a collaborative action is required to prevent transnational criminality, especially organized crime and terrorism, which have become rampant world wide, taking advantage of modern means of transportation, developed technology and the internationalization of commerce and finance.

Continued United Nations efforts to promote international cooperation in these areas culminated at the Eighth Congress, 1/ which adopted international guidelines on organized crime and terrorism and recommended to the General Assembly the adoption of model treaties on international cooperation in criminal justice matters, such as extradition, mutual assistance and transfer of proceedings in criminal matters. The Congress also adopted a model treaty on the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property. 2/

The first two guidelines, on organized crime and on terrorism, were developed on the recommendation of the interregional preparatory meeting for the Eighth Congress on topic III 3/ and contain a series of recommendations on steps to be taken at the national and international levels to combat these especially grave forms of transnational criminality.

The Guidelines for the prevention and control of organized crime set out 24 recommendations for national action and international cooperation. Preventive strategies, broadened criminal legislation, coordinated criminal investigation and strengthened law enforcement are proposed at the national level. Measures recommended to improve international cooperation in this area include model legislation, the creation of an international data base and specific strategies to establish stronger barriers between legitimate financial markets and the market in illegally acquired capital.

The Measures against international terrorism call for international, regional and bilateral cooperation through law enforcement agencies, prosecutors and the judiciary. States are encouraged to have greater uniformity in their laws concerning criminal jurisdiction and to develop and facilitate international extradition treaties. They also call for effective mutual cooperation and assistance between States in securing evidence for prosecution or extradition, and recommend a study on the development of a new international convention to protect particularly vulnerable targets, such as hydroelectric or nuclear facilities. Among other measures proposed to combat terrorism are control of weapons, ammunition and explosives, protection of the judiciary, criminal justice personnel, victims and witnesses, and treatment of offenders, as well as the establishment of an international criminal court.

The model treaties mentioned above have been formulated to assist Member States, enabling them to cope effectively with transnational crime. As far as possible, the model treaties avoid mandatory rules since the legal and administrative systems and penal philosophy of States belonging to different regions, as well as cultural and legal traditions, differ greatly. The majority of issues are regulated by optional rules and it is left to specific bilateral arrangements or multilateral conventions to transform them into mandatory ones, in accordance with the needs and possibilities of inter-State relations.

The Model Treaty on Extradition was adopted by the General Assembly in its resolution 45/116 of 14 December 1990. 1/ The Committee on Crime Prevention and Control as well as interregional and regional preparatory meetings for the Eighth Congress had elaborated the model treaty, 4/ in pursuance of resolution 1 of the Seventh Congress.

The Model Treaty provides States with a mechanism to enable them to request the extradition of wanted persons from any other State party, if they present the requisite documents on an extraditable offence, and if the requested State cannot invoke a valid reason for refusal.

Under the general principle of the obligation to extradite, the Model Treaty deals, inter alia, with the question of extraditable offences; mandatory and optional grounds for refusal to extradite; provisional arrest; simplified extradition procedure; postponed or conditional surrender of the person and of property; and the rule of speciality. In addition to utilizing existing treaties, new trends in extradition guided the elaboration of the Model Treaty. They include a wider basis for extradition arrangements, disregarding the requirement to establish a prima facie case, abolition of the list-of-specific offences approach in favour of referring to offences with a minimum penalty and permitting a State to prosecute its own citizens for offences committed in another country where extradition is not possible.

In particular, the Model Treaty seeks to impose limits on the mandatory political offence exception by excluding from the exception crimes recognized by the international community in multilateral treaties as being especially serious. Finally, the Treaty identifies the channels of communication and the documents required as well as certification and authentication methods.

The elaboration of the Model Treaty on Mutual Assistance in Criminal Matters, adopted by the General Assembly in its resolution 45/117 of 14 December 1990, was also initiated by resolution 1 of the Seventh Congress and developed by the Committee on Crime Prevention and Control as well as interregional and regional preparatory meetings for the Eighth Congress. 5/ Special consideration was given to the following issues: scope of application; refusal of assistance; contents and execution of a request; protection of confidentiality; obtaining of evidence; availabilty of persons in custody and other persons to give evidence or assist in investigations; safe conduct; provision of documents; and search and seizure.

The Model Treaty seeks to enhance mutual assistance in criminal matters between Member States in order to cope with serious transnational criminality. The assistance may involve arrangements, subject to appropriate safeguards, for prisoners and other persons to travel from a State to a foreign country, at that country's request, and vice versa, to give evidence in criminal proceedings or to assist in a criminal investigation.

The Model Treaty also sets forth which authorities can request assistance and how they should deal with such requests. It lays down procedures and specifies which types of requests are acceptable and which can be refused. Assistance may be refused, inter alia, if the requested State is of the opinion that the assistance would prejudice its sovereignty, security, public order or other essential public interest; if the assistance would be incompatible with the requested State's law; and if the act would be an offence only under military law.

Further, the Treaty provides guarantees for the safe conduct of persons required to give information or evidence and specifies that all publicly available records and documents should be provided.

An Optional Protocol to the Model Treaty provides that States could also develop mutual assistance in connection with the seizure of the proceeds of crime, foreign forfeiture registration, pecuniary penalties and restraining orders; warrants in relation to goods and property that are the proceeds of crime; applications for interim restraining orders pending registration of corresponding foreign orders; and application for monitoring and production orders in relation to accounts in financial institutions and documents relevant to the money trail. The Protocol also provides for requested States to ascertain whether any proceeds of alleged crimes are located within its jurisdiction. To this effect, the State should endeavour to trace assets, investigate financial dealings and obtain other evidence that may help to secure the recovery of the proceeds of crime. The results of inquiries should be passed back to the requesting State. That State should, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds.

The Model Treaty on the Transfer of Proceedings in Criminal Matters, adopted by the General Assembly in its resolution 45/118 of 14 December 1990, outlines a framework for States to process criminal cases more effectively. Following resolution 12 of the Seventh Congress, the Model Treaty was elaborated by the Committee on Crime Prevention and Control, the interregional and regional preparatory meetings for the Eighth Congress and the International Expert Meeting on the United Nations and Law Enforcement, held at Baden, Austria. 6/ Primary importance is accorded to the interests of the States involved, while the interests of both the suspected offenders and the victims are also taken into consideration. The most frequent field of application for such a treaty would be when the accused has returned to his or her State of nationality and an extradition request would be futile since that State refuses to extradite nationals.

The Model Treaty specifies that proceedings can only be transferred when the act in question is a crime in both States concerned (principle of dual criminality). It stipulates that the requested State may refuse acceptance of a request for proceedings if the suspected person is not a national of, or ordinarily resident in, the requested State; if the act is an offence only under military law; if the offence is connected with taxes, duties, customs or exchange regulations; or for an act the requested State considers a political offence.

The Model Treaty states that the suspected person or his legal representative or close relatives may express their interest in the transfer. The rights of the victim should also be respected, in particular his right to restitution or compensation. If such claims would not have been completed before the proceedings are transferred, they could also be moved. States that request a transfer are required to stop prosecution within their own jurisdictions. The requested State may, upon receipt of the request, initiate provisional measures such as detention and seizure.

The Model Treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property is intended to assist Member States in the development of similar bilateral or multilateral agreements in this area.

The Economic and Social Council, in its resolution 1989/62 of 24 May 1989, decided that the topics of transnational crimes against the cultural patrimony of countries should be considered by the Eighth Congress in order to explore the possibilities of formulating comprehensive policies of international cooperation for the prevention of such offences, including the imposition of sanctions. The Model Treaty was elaborated in cooperation between the United

Nations, United Nations Educational, Scientific and Cultural Organization, the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders as well as other organizations and experts from different regions. The draft, informally considered by the Committee on Crime Prevention and Control at its eleventh session, was further revised in an expert group meeting held at Chicago in 1990 7/ and adopted by the Eighth Congress with some modification.

States parties to such a Treaty are expected to prohibit the import of stolen cultural property or property that is illicitly exported from the other State party. Each State party would legislate to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property. A State party would also introduce a system to legally export cultural property through the issuance of a certificate of export; and undertake to recover and return, at the request of the other State party, any movable cultural property that had been illegally acquired.

Sanctions would be imposed on persons or institutions responsible for the illicit import or export of cultural property, those who knowingly acquire or deal in stolen or illicitly imported cultural property, and on those that enter into international conspiracies to obtain, export, or import movable cultural property by illicit means.

Requests for recovery should be made through diplomatic channels. All expenses incidental to the return and delivery of the property are to be borne by the requesting party, and no one would be entitled to claim any compensation from the returning State. While the requesting State may pay fair compensation to anyone who acquired the property in good faith, it would not be required to compensate anyone who may have participated in an illegal export of the property.

The Model Treaty also provides that each State party should provide information concerning its stolen movable cultural property to an international data base agreed upon between the States parties. It may be recalled, in this connection, that the Eighth Congress adopted a resolution entitled "Use of automated information exchange to combat crimes against movable cultural property" in which it requested the Secretary-General to make arrangements, in cooperation with Member States, intergovernmental and non-governmental and other organizations, for the establishment of national and international data bases that would be used for the purposes of preventing and combating crime against cultural heritage. 1/

Notes

1/ Report of the Eighth Congress (A/CONF.144/28).

2/ For Model Treaties, see Clark, "Crime: The UN agenda on international cooperation in the criminal process", 15 Nova Law review 475 (1991).

3/ A/CONF.144/IPM.2.

4/ The first draft of the model treaty was submitted by Prof. Cherif Bassiouni to the Interregional Preparatory Meeting. (See A/CONF.144/IPM.1.)

5/ The first draft of the model treaty was submitted by the Australian Government to the Interregional Preparatory Meeting. (See footnote 4 above.)

6/ Report of the International Expert Meeting on the United Nations and Law Enforcement; the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987.

7/ A/CONF.144/L.2.

[6] Prevention and control of organized crime

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recognizing that the growing threat of organized crime, with its highly destabilizing and corrupting influence on fundamental social, economic and political institutions, represents a challenge demanding accrued and more effective international co-operation,

Recalling that the Milan Plan of Action, 202/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recommended that it was imperative to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime,

Recalling also that the Seventh Congress, in its resolution 1, 203/ recommended that the Committee on Crime Prevention and Control should be requested to develop a comprehensive framework of guidelines and standards that would assist Governments in the development of measures to deal with organized crime at the national, regional and international levels,

Recalling further that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

Noting that the General Assembly, in its resolutions 41/107, 42/59 and 43/99, of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council, in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action,

Recalling the provisions set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 204/ adopted in 1988,

Recognizing that illicit trafficking in narcotic drugs and psychotropic substances is a criminal activity and that its suppression requires a high priority and concerted action at the national, regional and international levels by all States, including rapid ratification of, and accession to, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

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202/ Seventh United Nations Congress ..., chap. I, sect. A.

203/ Ibid., sect. E.

204/ E/CONF.82/15 and Corr.2.

Noting also that the Economic and Social Council, in its resolution 1989/70 of 24 May 1989, called upon Governments, international organizations and interested non-governmental organizations to co-operate with the Committee on Crime Prevention and Control in giving special attention to promoting international co-operation in combating organized crime,

Noting further that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action and requested the Eighth Congress, inter alia, to propose viable control measures aimed at eradicating the activities of organized crime,

1. Adopts the Guidelines contained in the annex to the present resolution as valuable recommendations for national and international action against organized crime;

2. Urges Member States to give favourable consideration to their implementation at both national and international levels, as appropriate;

3. Invites Member States, on request, to make available to the Secretary-General the provisions of their legislation relating to money laundering, to tracing, monitoring and forfeiture of the proceeds of crime, the monitoring of large-scale cash transactions and other measures enabling these to be made available to such Member States desiring to enact or further develop legislation in these fields.

ANNEX

Guidelines for the prevention and control of organized crime

A. National measures

Preventive strategies

1. Raising public awareness and mobilizing public support are important elements of any preventive action. Education and promotional programmes and the process of public exposure have been successful in changing community attitudes and in enlisting public support. Measures of this kind can help to counter public revenue fraud and can be further developed and utilized on a systematic basis by targeting areas of special social and economic harm to the community and by enlisting the co-operation of the mass media in playing a positive role.

2. Research into the structure of organized crime and the evaluation of the effectiveness of existing countermeasures should be encouraged, since it can contribute to the establishment of a more informed basis for prevention programmes. For example, research in relation to corruption, its causes, nature and effect, its links to organized crime and anti-corruption measures is a prerequisite to the development of preventive programmes.

3. Possible devices to prevent or minimize the impact of organized crime should be continuously explored. While the whole question of crime prevention is an underdeveloped area in many countries, specific measures in a number of spheres have been effective. Detailed programmes that are designed to place obstacles in the way of a potential offender, reduce opportunities for crime and make its

commission more conspicuous should be encouraged. Fraud control programmes represent a significant and positive step in this direction. Other measures include risk analysis to assess vulnerability to fraud, control strategies in relation to such areas as systems and procedures, management and the supervision of staff, physical security, information and intelligence, computers, investigative strategies and training programmes. The creation of anti-corruption agencies or similar mechanisms should also be pursued. Crime impact studies and the identification of criminogenic factors of new development programmes would provide opportunities for the adoption of remedial and preventive measures at the planning stage.

4. Improvements in the efficiency of law enforcement and criminal justice are important preventive strategies based on more efficient and fair processes that act as a deterrent to crime and strengthen guarantees of human rights. Planning processes designed to integrate and co-ordinate relevant criminal justice agencies that often operate independently of each other, as stressed in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 205/ will also serve as a deterrent to crime.

5. Better training to upgrade skills and professional qualifications of law enforcement and judicial personnel should be undertaken to improve effectiveness, consistency and fairness in national criminal justice systems. Regional and joint training programmes should be developed in order to exchange information on successful techniques and new technology.

6. The efforts of drug-producing countries aimed at the eradication of the illicit production and processing of drugs should be recognized and supported. In particular, developed countries should grant adequate technical and financial assistance for the implementation of crop substitution programmes. The latter should also increase their efforts to achieve a radical reduction in illicit drug demand and consumption within their national borders.

Criminal legislation

7. Legislation should be encouraged that defines new offences with respect to money laundering and organized fraud and the offence of opening and operating accounts under a false name. Computer crime is another area that requires consideration. In addition, there is a need for reform in civil, fiscal and regulatory legislation that relates to the control of organized crime. Information on significant innovations that have occurred in recent years should be widely shared through the United Nations, with a view to facilitating the development of a solid basis for the harmonization of criminal law dealing with organized crime.

8. Forfeiture of the proceeds of crime represents one of the most significant recent developments. Measures which States could consider in this context might include the following: provision for the freezing or withholding, and the confiscation or forfeiture, of property used in, or derived from, the commission of an offence; and orders for pecuniary penalties representing a court assessment of the monetary value of the benefit derived by the offender from the commission of

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205/ Seventh United Nations Congress ..., chap. I, sect. B.

the offence. Viable remedies that have been developed in several countries on those matters should be brought, in a systematic way, to the attention of other interested countries, with a view to their more widespread utilization. The final disposition of property forfeited by one country, at the request of another, may be made subject to bilateral arrangements.

Criminal investigation

9. Attention should be focused on new methods of criminal investigation and the techniques developed in various countries of "following the money trail". Important in this context are the following: orders requiring financial institutions to provide all the information necessary to follow the money trail, including details of accounts belonging to a particular person, and orders requesting them to report suspect or unusual cash transactions to the appropriate authorities. Banks and other financial institutions should not resort to the principle of secrecy once there exists a judicial order issued by the competent judicial authority.

10. The interception of telecommunications and the use of electronic surveillance are also a relevant and effective procedure, subject to human rights considerations.

11. Schemes for the protection of witnesses against violence and intimidation are becoming increasingly important in the criminal investigation and trial process and in enforcement efforts against organized crime. These procedures include the provision of ways of shielding the identity of witnesses from the accused and his lawyer, protected accommodation and physical protection, relocation and monetary support.

Law enforcement and criminal justice administration

12. Law enforcement plays a crucial role in programmes against organized crime. It is important to ensure that law enforcement agencies have adequate powers, subject to proper human rights safeguards. Consideration should be given to the necessity of establishing a specialized interdisciplinary agency to deal specifically with organized crime.

13. Major emphasis should also be placed on the application of technical and organizational measures designed to increase the effectiveness of the investigative and sentencing authorities, including prosecutors and the judiciary. Furthermore, courses on professional ethics should be incorporated into the curricula of law enforcement and judicial training institutions. Some of the instruments developed by the United Nations could be used for this purpose, such as the Basic Principles on the Independence of the Judiciary 206/ and the Code of Conduct for Law Enforcement Officials. 207/

206/ Ibid., sect. D.

207/ General Assembly resolution 34/169, annex.

B. International co-operation

14. The transnational dimensions of organized crime require the urgent development of new and effective co-operative arrangements on a more comprehensive basis. The exchange of information between relevant agencies of Member States is also an important activity that needs to be strengthened and developed further.

15. Governments should vigorously support all useful initiatives by countries and international institutions to combat illicit drug-trafficking, and should warn others of the imminent danger represented by it. All countries must be involved in combating organized crime on the basis of shared concern. In this respect, consistent and continuous global efforts, combining the exchange of the necessary data and operational resources, should be encouraged and undertaken.

16. Model legislation for the forfeiture of the proceeds of crime should be developed and implemented.

17. Specific strategies and methods should be developed for erecting stronger barriers between legitimate financial markets and the market in illegally acquired capital.

18. Technical co-operation in its various forms, with expanded advisory services, should be strengthened in order to share common experiences and innovations and to assist countries in need. International, regional and subregional conferences bringing together members of the law enforcement, prosecution and judicial authorities should be encouraged.

19. Modern technological advances should be used in the area of passport and travel controls, and efforts should be encouraged to monitor and identify cars, boats and aircraft used in transnational theft or transfer, or for illicit trans-shipments.

20. Data bases containing law enforcement, financial and offenders' records should be established or expanded with due regard for the protection of privacy.

21. Mutual assistance, the transfer of criminal proceedings and the enforcement of criminal judgements, including confiscation and forfeiture of illegal assets, as well as extradition procedures, should receive priority attention.

22. Comparative research and data collection related to issues of transnational organized crime, its causes, its links to domestic instability and other forms of criminality, as well as its prevention and control, should be supported.

23. The United Nations regional and interregional institutes for crime prevention and control and the intergovernmental and non-governmental organizations concerned should give increased attention to the issue of organized crime.

24. The United Nations Development Programme and other funding agencies of the United Nations system, as well as Member States, should be urged to strengthen their support for national, regional and international programmes addressed to the prevention and control of organized crime.

[7] Terrorist criminal activities

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Aware of the grave menace that national and international terrorist criminal activities pose to social and political stability and to the lives of countless human beings,

Concerned by the rapid internationalization of these criminal operations,

Convinced that the trend towards the internationalization of terrorist activities makes imperative an appropriate internationally co-ordinated response of global dimensions,

Recalling that in the Milan Plan of Action 208/ the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders affirmed that priority must be given to combating terrorism in all its forms, including, when appropriate, co-ordinated and concerted action by the international community,

Recalling also that the Seventh Congress, in its resolution 23, 209/ requested that the Committee on Crime Prevention and Control should consider the development of recommendations for international action to strengthen law enforcement measures, including extradition procedures and other arrangements for legal assistance and co-operation, with respect to offences of a terrorist nature,

Noting that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

Noting further that the General Assembly, in its resolutions 41/107, 42/59 and 43/99 of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council, in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action,

Aware that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, inter alia, to propose viable control measures for combating terrorist criminal activities,

Recalling the concern about, and condemnation of, terrorism expressed by the General Assembly in its resolutions 3034 (XXVII), 31/102, 32/147, 34/145, 36/109, 38/130, 40/61, 42/59 and 44/29 of 18 September 1972, 15 December 1976, 16 December 1977, 17 December 1979, 10 December 1981, 19 December 1983, 9 December 1985, 30 November 1987 and 4 December 1989, respectively,

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208/ Seventh United Nations Congress ..., chap. I, sect. A.

209/ Ibid., sect. E.

Recalling also General Assembly resolution 42/159 of 7 December 1987, in which the Assembly, inter alia, recognized that the effectiveness of the struggle against terrorism could be enhanced by the establishment of a generally agreed definition of international terrorism,

1. Agrees that the text of the following annex represents valuable guidance for appropriate, co-ordinated and concerted action against international terrorism at both the national and the international level;

2. Urges Member States to give favourable consideration to following this guidance at both the national and the international level.

ANNEX

Measures against international terrorism

A. Definition

1. Since the first study 210/ of international terrorism was conducted by the United Nations in 1972, the international community has been unable to arrive at a universally agreed meaning of what is included in the term "international terrorism". Nor has it reached sufficient general agreement on the measures needed to prevent and control the harmful manifestations of acts of terrorist violence.

2. Without prejudice to the discussion of the subject in the General Assembly of the United Nations and until such time as a universally acceptable definition of international terrorism is agreed, it would be useful to work with a view to identifying behaviour that the international community regards as unacceptable and that requires the application of effective preventive and repressive measures that are consistent with the recognized principles of international law.

3. Furthermore, the international community should understand better the underlying causes that bring about such conduct in order to develop measures for its prevention and control.

B. Identification of the problems

4. Existing international norms may not in certain areas be sufficient to control all forms and manifestations of terrorist violence. Among the issues of concern are: State policies and practices that may be considered by other States as constituting a violation of international treaty obligations; the absence of

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210/ Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: Study prepared by the Secretariat in accordance with the decision taken by the Sixth Committee at its 1314th meeting, on 27 September 1972 (A/C.6/418).

specific norms on State responsibility regarding the failure to carry out existing international obligations; the abuse of the privilege of diplomatic immunity and the diplomatic pouch; the absence of norms concerning the responsibility of States for acts not prohibited by international law; the absence of international regulation and control of the traffic and trade in arms; the inadequacy of international mechanisms for the peaceful resolution of conflicts and for the enforcement of internationally protected human rights; the lack of universal acceptance of the principle of aut dedere aut iudicare; and the shortcomings of international co-operation in the effective and uniform prevention and control of all forms and manifestations of terrorist violence.

C. International co-operation for the effective and uniform prevention and control of terrorism

5. Effective measures for international co-operation in the prevention of terrorist violence should be developed at the international, regional and bilateral levels. These include: co-operation between law enforcement agencies, prosecution authorities and the judiciary; increasing integration and co-operation within the various agencies responsible for law enforcement and criminal justice, with due regard to fundamental human rights; inclusion of modalities of inter-State co-operation in penal matters at all levels of enforcement and criminal justice; increasing education and training of law enforcement personnel with regard to crime prevention and modalities of international co-operation in penal matters, including the development of specialized courses on international criminal law and comparative penal law and procedures, as a part of legal education as well as professional and judicial training; and the development of both general educational and public awareness programmes through the mass media in order to enlighten the public on the dangers of terrorist violence.

D. Jurisdiction

6. Greater uniformity in the laws and practices of States concerning criminal jurisdiction should be encouraged, while over-extension of national jurisdiction should be avoided in order to prevent unnecessary legal conflicts between States.

7. Jurisdictional priorities should be established giving territoriality the first priority.

E. Extradition

8. States should endeavour to develop and implement effectively international extradition treaties, be they part of multilateral conventions, regional conventions or bilateral agreements.

9. The political offence exception should not be a bar to extradition for crimes of terrorist violence under existing international conventions, except in cases when the requested State undertakes to submit the case to its competent authorities for the purpose of prosecution or transfers the proceedings to another State to conduct the prosecution.

10. States are encouraged to rely on existing extradition provisions in multilateral treaties whenever there is an absence of bilateral treaties.

11. Member States are encouraged to extend their bilateral extradition relationships using as a basis for negotiations the Model Treaty on Extradition elaborated by the United Nations and adopted by the Eighth Congress on the Prevention of Crime and the Treatment of Offenders. In addition, Member States could also consider elaborating multilateral conventions on extradition to remove gaps and loopholes in existing treaties and current extradition procedures.

12. Voluntary return subject to appropriate judicial guarantees, should be encouraged.

F. Mutual assistance and co-operation

13. The prevention and control of terrorist violence depends on effective mutual co-operation and assistance between States in securing evidence with respect to the prosecution or extradition of the offenders.

14. States are encouraged to lend each other the widest possible mutual assistance and co-operation in penal matters, subject to respect for internationally recognized human rights, and to rely on the provisions of multilateral treaties and specific regional and bilateral agreements. To achieve this end, the model treaty on mutual assistance in criminal matters constitutes a basis for strengthened international co-operation.

G. Non-applicability of defence

15. Defence based on obedience to superior orders, or acts of State, or immunities granted for the commission of the crime should not apply with respect to persons who have violated international conventions prohibiting acts of terrorist violence.

H. Conduct of States

16. Resort to practices of terrorist violence supported, carried out or acquiesced in by States should be more effectively curbed by the international community, and the United Nations should develop mechanisms for the control of such conduct, particularly through the strengthening of United Nations machinery for the preservation of peace and security and the protection of human rights.

17. Measures by the international community to curb terrorism that is supported, carried out or acquiesced in by States should be encouraged.

I. Targets of high vulnerability

18. A study concerning the feasibility of the development of an international convention that would enhance the protection of targets that are particularly vulnerable, the destruction of which would cause great harm to populations or cause

severe damage to society, such as hydroelectricity or nuclear facilities, should be undertaken.

19. The United Nations should assist any country that suffers from terrorism or from the presence of terrorist organizations on its territory to put an end to that phenomenon.

J. Control of weapons, ammunition and explosives

20. States should develop appropriate national legislation for the effective control of weapons, ammunition and explosives and other dangerous materials that find their way into the hands of persons who could use them for the purposes of terrorism.

21. International regulations on the transfer, import, export and storage of such objects should be developed so that customs and border controls can be harmonized to prevent their transnational movement, except for established lawful purposes.

K. Protection of the judiciary and of criminal justice personnel

22. States should adopt measures and policies aimed at the effective protection of the judiciary and of criminal justice personnel, including jurors and lawyers involved in trials of terrorism cases, and should also co-operate between themselves in the implementation of such measures.

L. Protection of victims

23. States should establish appropriate mechanisms for the protection, and introduce relevant legislation as well as allocate sufficient resources for the assistance and relief, of victims of terrorism, in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 211/

24. International exchange of experiences concerning the subject referred to in the previous paragraph should be encouraged.

M. Protection of witnesses

25. States should adopt measures and policies aimed at the effective protection of witnesses of terrorist acts.

26. States with experience in the field of witness protection programmes should consider lending assistance to other States contemplating similar programmes.

211/ Seventh United Nations Congress ..., chap. I, sect. C.

N. Treatment of offenders

27. States should endeavour to diminish existing disparities of sentencing in the field of terrorist offences.

28. Persons charged with, or convicted of, terrorist offences, must be treated without discrimination and in accordance with internationally recognized human rights standards and norms, such as enunciated in the Universal Declaration of Human Rights, 212/ the International Covenant on Civil and Political Rights, 213/ the Slavery Convention, 214/ the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 215/ the Abolition of Forced Labour Convention, 215/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 216/ and the Standard Minimum Rules for the Treatment of Prisoners. 217/

O. Role of the mass media

29. States should consider the development of guidelines for the mass media or encourage the establishment of voluntary guidelines to control the following: sensationalizing and justifying terrorist violence; disseminating strategic information on potential targets; and disseminating tactical information while terrorist acts are taking place, thereby possibly endangering the lives of innocent civilians and law enforcement personnel or impeding effective law enforcement measures to prevent or control such acts and to apprehend the offenders. These guidelines are in no way intended to restrict the internationally recognized basic human right of freedom of speech and information or to encourage interference in the domestic affairs of other States.

P. Codification of international criminal law and creation of an international criminal court

30. The work of the International Law Commission on codification of aspects of international criminal law should be encouraged. The Committee on Crime Prevention and Control should have an opportunity to present its views.

212/ General Assembly resolution 217 A (III).

213/ General Assembly resolution 2200 A (XXI), annex.

214/ General Assembly resolution 794 (VIII).

215/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. F.

216/ General Assembly resolution 39/46, annex.

217/ Human Rights: A Compilation ..., sect. G.

31. The International Law Commission should be encouraged to continue to explore the possibility of establishing an international criminal court or some other international mechanism to have jurisdiction over persons who have committed offences (including offences connected with terrorism or with illicit trafficking in narcotic drugs or psychotropic substances), in accordance with General Assembly resolution 44/39 of 4 December 1989. Similarly, and in the light of the report that the International Law Commission will submit on this particular subject to the General Assembly at its forty-fifth session, the possibility might be considered of establishing an international criminal court or appropriate mechanism with each and all of the procedural and substantive arrangements that might guarantee both its effective operation and absolute respect for the sovereignty and the territorial and political integrity of States and the self-determination of peoples. States could also explore the possibility of establishing separate international criminal courts of regional or sub-regional jurisdiction in which grave international crimes, and particularly terrorism, could be brought to trial and the incorporation of such courts within the United Nations system.

Q. Enhancing the effectiveness of international co-operation

32. The United Nations, in co-operation with specialized agencies such as the International Civil Aviation Organization, the International Maritime Organization, and the International Atomic Energy Agency, should prepare periodic reports on compliance with existing international conventions, including detailed reporting on incidents and cases (arrest, prosecution, adjudication and sentencing), to be made available for international circulation.

33. States that are signatories to international conventions prohibiting terrorist violence are urged to ratify those conventions at the earliest opportunity and to take effective measures to enforce their provisions.

34. States that are not signatories to international conventions prohibiting terrorist violence are urged to accede to such conventions at the earliest opportunity and to take effective measures to enforce their provisions.

35. States are urged to sign and ratify the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, adopted by the conference of the International Maritime Organization, held at Rome in 1988, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted by the International Conference on Air Law, which was convened by the International Civil Aviation Organization at Montreal, from 9 to 24 February 1988.

36. The United Nations should consider developing ways and means of encouraging prevention policies, strategies and action by States to ensure the effective implementation of international conventions, including enhanced co-operation at the law enforcement, prosecution and judicial levels.

37. The central role of the United Nations, and in particular of the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, as well as the relevant specialized agencies, should be strengthened in order to fulfil the above-mentioned objectives and other purposes of the Organization, including the preservation of peace, the strengthening of world order and the fight against crime under the rule of law.

[8] 45/116. Model Treaty on Extradition

The General Assembly,

Bearing in mind the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, 3/ on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

Recalling also resolution 23 of the Seventh Congress, 3/ on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen co-operation, inter alia, in the area of extradition,

Calling attention to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 4/

Acknowledging the valuable contributions of Governments, non-governmental organizations and individual experts, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned by the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for extradition will greatly contribute to the development of more effective international co-operation for the control of crime,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Conscious that in many cases existing bilateral extradition arrangements are outdated and should be replaced by modern arrangements which take into account recent developments in international criminal law,

Recognizing the importance of a model treaty on extradition as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. Adopts the Model Treaty on Extradition contained in the annex to the present resolution as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty on Extradition;

3. Urges all States to strengthen further international co-operation in criminal justice;

4/ E/CONF.82/15 and Corr.2.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex.

4. Requests the Secretary-General to bring the present resolution, with the Model Treaty, to the attention of Member States;

5. Urges Member States to inform the Secretary-General periodically of efforts undertaken to establish extradition arrangements;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field;

7. Also requests the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation that would enable giving effect to the obligations in such treaties as are to be negotiated on the basis of the Model Treaty on Extradition;

8. Invites Member States, on request, to make available to the Secretary-General the provisions of their extradition legislation so that these may be made available to those Member States desiring to enact or further develop legislation in this field.

68th plenary meeting
14 December 1990

ANNEX

Model Treaty on Extradition

The _____ and the _____

Desirous of making more effective the co-operation of the two countries in the control of crime by concluding a treaty on extradition,

Have agreed as follows:

ARTICLE 1

Obligation to extradite

Each Party agrees to extradite to the other, upon request and subject to the provisions of the present Treaty, any person who is wanted in the requesting State for prosecution for an extraditable offence or for the imposition or enforcement of a sentence in respect of such an offence. 7/

7/ Reference to the imposition of a sentence may not be necessary for all countries.

ARTICLE 2

Extraditable offences

1. For the purposes of the present Treaty, extraditable offences are offences that are punishable under the laws of both Parties by imprisonment or other deprivation of liberty for a maximum period of at least [one/two] year(s), or by a more severe penalty. Where the request for extradition relates to a person who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition shall be granted only if a period of at least [four/six] months of such sentence remains to be served.

2. In determining whether an offence is an offence punishable under the laws of both Parties, it shall not matter whether:

(a) The laws of the Parties place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;

(b) Under the laws of the Parties the constituent elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting State shall be taken into account.

3. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, exchange control or other revenue matters, extradition may not be refused on the ground that the law of the requested State does not impose the same kind of tax or duty or does not contain a tax, customs duty or exchange regulation of the same kind as the law of the requesting State. 8/

4. If the request for extradition includes several separate offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraph 1 of the present article, the requested Party may grant extradition for the latter offences provided that the person is to be extradited for at least one extraditable offence.

ARTICLE 3

Mandatory grounds for refusal

Extradition shall not be granted in any of the following circumstances:

8/ Some countries may wish to omit this paragraph or provide an optional ground for refusal under article 4.

(a) If the offence for which extradition is requested is regarded by the requested State as an offence of a political nature; 9/

(b) If the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;

(c) If the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law;

(d) If there has been a final judgement rendered against the person in the requested State in respect of the offence for which the person's extradition is requested;

(e) If the person whose extradition is requested has, under the law of either Party, become immune from prosecution or punishment for any reason, including lapse of time or amnesty; 10/

(f) If the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights, article 14; 6/

(g) If the judgement of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defence and he has not had or will not have the opportunity to have the case retried in his or her presence. 11/

9/ Some countries may wish to add the following text: "Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purposes of extradition."

10/ Some countries may wish to make this an optional ground for refusal under article 4.

11/ Some countries may wish to add to article 3 the following ground for refusal: "If there is insufficient proof, according to the evidentiary standards of the requested State, that the person whose extradition is requested is a party to the offence". (See also footnote 14.)

ARTICLE 4

Optional grounds for refusal

Extradition may be refused in any of the following circumstances:

(a) If the person whose extradition is requested is a national of the requested State. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person in respect of the offence for which extradition had been requested;

(b) If the competent authorities of the requested State have decided either not to institute or to terminate proceedings against the person for the offence in respect of which extradition is requested;

(c) If a prosecution in respect of the offence for which extradition is requested is pending in the requested State against the person whose extradition is requested;

(d) If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out; 12/

(e) If the offence for which extradition is requested has been committed outside the territory of either Party and the law of the requested State does not provide for jurisdiction over such an offence committed outside its territory in comparable circumstances;

(f) If the offence for which extradition is requested is regarded under the law of the requested State as having been committed in whole or in part within that State. 13/ Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested;

(g) If the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;

12/ Some countries may wish to apply the same restriction to the imposition of a life, or indeterminate, sentence..

13/ Some countries may wish to make specific reference to a vessel under its flag or an aircraft registered under its laws at the time of the commission of the offence.

(h) If the requested State, while also taking into account the nature of the offence and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of that person would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

ARTICLE 5

Channels of communication and required documents

1. A request for extradition shall be made in writing. The request, supporting documents and subsequent communications shall be transmitted through the diplomatic channel, directly between the ministries of justice or any other authorities designated by the Parties.

2. A request for extradition shall be accompanied by the following:

(a) In all cases,

(i) As accurate a description as possible of the person sought, together with any other information that may help to establish that person's identity, nationality and location;

(ii) The text of the relevant provision of the law creating the offence or, where necessary, a statement of the law relevant to the offence and a statement of the penalty that can be imposed for the offence;

(b) If the person is accused of an offence, by a warrant issued by a court or other competent judicial authority for the arrest of the person or a certified copy of that warrant, a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the alleged offence, including an indication of the time and place of its commission; 14/

(c) If the person has been convicted of an offence, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by the original or certified copy of the judgement or any other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable, and the extent to which the sentence remains to be served;

14/ Countries that require a judicial assessment of the sufficiency of evidence may wish to add the following clause: "and sufficient proof in a form acceptable under the law of the requested State, establishing, according to the evidentiary standards of that State, that the person is a party to the offence". (See also footnote 11.)

(d) If the person has been convicted of an offence in his or her absence, in addition to the documents set out in paragraph 2 (c) of the present article, by a statement as to the legal means available to the person to prepare his or her defence or to have the case retried in his or her presence;

(e) If the person has been convicted of an offence but no sentence has been imposed, by a statement of the offence for which extradition is requested and a description of the acts or omissions constituting the offence and by a document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

3. The documents submitted in support of a request for extradition shall be accompanied by a translation into the language of the requested State or in another language acceptable to that State.

ARTICLE 6

Simplified extradition procedure

The requested State, if not precluded by its law, may grant extradition after receipt of a request for provisional arrest, provided that the person sought explicitly consents before a competent authority.

ARTICLE 7

Certification and authentication

Except as provided by the present Treaty, a request for extradition and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication. 15/

ARTICLE 8

Additional information

If the requested State considers that the information provided in support of a request for extradition is not sufficient, it may request that additional information be furnished within such reasonable time as it specifies.

15/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

ARTICLE 9

Provisional arrest

1. In case of urgency the requesting State may apply for the provisional arrest of the person sought pending the presentation of the request for extradition. The application shall be transmitted by means of the facilities of the International Criminal Police Organization, by post or telegraph or by any other means affording a record in writing.

2. The application shall contain a description of the person sought, a statement that extradition is to be requested, a statement of the existence of one of the documents mentioned in paragraph 2 of article 5 of the present Treaty, authorizing the apprehension of the person, a statement of the punishment that can be or has been imposed for the offence, including the time left to be served and a concise statement of the facts of the case, and a statement of the location, where known, of the person.

3. The requested State shall decide on the application in accordance with its law and communicate its decision to the requesting State without delay.

4. The person arrested upon such an application shall be set at liberty upon the expiration of [40] days from the date of arrest if a request for extradition, supported by the relevant documents specified in paragraph 2 of article 5 of the present Treaty, has not been received. The present paragraph does not preclude the possibility of conditional release of the person prior to the expiration of the [40] days.

5. The release of the person pursuant to paragraph 4 of the present article shall not prevent rearrest and institution of proceedings with a view to extraditing the person sought if the request and supporting documents are subsequently received.

ARTICLE 10

Decision on the request

1. The requested State shall deal with the request for extradition pursuant to procedures provided by its own law, and shall promptly communicate its decision to the requesting State.

2. Reasons shall be given for any complete or partial refusal of the request.

ARTICLE 11

Surrender of the person

1. Upon being informed that extradition has been granted, the Parties shall, without undue delay, arrange for the surrender of the person sought and the

requested State shall inform the requesting State of the length of time for which the person sought was detained with a view to surrender.

2. The person shall be removed from the territory of the requested State within such reasonable period as the requested State specifies and, if the person is not removed within that period, the requested State may release the person and may refuse to extradite that person for the same offence.

3. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other Party. The two Parties shall mutually decide upon a new date of surrender, and the provisions of paragraph 2 of the present article shall apply.

ARTICLE 12

Postponed or conditional surrender

1. The requested State may, after making its decision on the request for extradition, postpone the surrender of a person sought, in order to proceed against that person, or, if that person has already been convicted, in order to enforce a sentence imposed for an offence other than that for which extradition is sought. In such a case the requested State shall advise the requesting State accordingly.

2. The requested State may, instead of postponing surrender, temporarily surrender the person sought to the requesting State in accordance with conditions to be determined between the Parties.

ARTICLE 13

Surrender of property

1. To the extent permitted under the law of the requested State and subject to the rights of third parties, which shall be duly respected, all property found in the requested State that has been acquired as a result of the offence or that may be required as evidence shall, if the requesting State so requests, be surrendered if extradition is granted.

2. The said property may, if the requesting State so requests, be surrendered to the requesting State even if the extradition agreed to cannot be carried out.

3. When the said property is liable to seizure or confiscation in the requested State, it may retain it or temporarily hand it over.

4. Where the law of the requested State or the protection of the rights of third parties so require, any property so surrendered shall be returned to the requested State free of charge after the completion of the proceedings, if that State so requests.

ARTICLE 14

Rule of speciality

1. A person extradited under the present Treaty shall not be proceeded against, sentenced, detained, re-extradited to a third State, or subjected to any other restriction of personal liberty in the territory of the requesting State for any offence committed before surrender other than:

(a) An offence for which extradition was granted;

(b) Any other offence in respect of which the requested State consents. 16/ Consent shall be given if the offence for which it is requested is itself subject to extradition in accordance with the present Treaty. 17/

2. A request for the consent of the requested State under the present article shall be accompanied by the documents mentioned in paragraph 2 of article 5 of the present Treaty and a legal record of any statement made by the extradited person with respect to the offence.

3. Paragraph 1 of the present article shall not apply if the person has had an opportunity to leave the requesting State and has not done so within [30/45] days of final discharge in respect of the offence for which that person was extradited or if the person has voluntarily returned to the territory of the requesting State after leaving it.

ARTICLE 15

Transit

1. Where a person is to be extradited to a Party from a third State through the territory of the other Party, the Party to which the person is to be extradited shall request the other Party to permit the transit of that person through its territory. This does not apply where air transport is used and no landing in the territory of the other Party is scheduled.

2. Upon receipt of such a request, which shall contain relevant information, the requested State shall deal with this request pursuant to procedures provided by its

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16/ Some countries may wish to add, as a third case, explicit consent of the person.

17/ Some countries may not wish to assume that obligation and may wish to include other grounds in determining whether or not to grant consent.

own law. The requested State shall grant the request expeditiously unless its essential interests would be prejudiced thereby. 18/

3. The State of transit shall ensure that legal provisions exist that would enable detaining the person in custody during transit.

4. In the event of an unscheduled landing, the Party to be requested to permit transit may, at the request of the escorting officer, hold the person in custody for [48] hours, pending receipt of the transit request to be made in accordance with paragraph 1 of the present article.

ARTICLE 16

Concurrent requests

If a Party receives requests for extradition for the same person from both the other Party and a third State it shall, at its discretion, determine to which of those States the person is to be extradited.

ARTICLE 17

Costs

1. The requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.

2. The requested State shall also bear the costs incurred in its territory in connection with the seizure and handing over of property, or the arrest and detention of the person whose extradition is sought. 19/

3. The requesting State shall bear the costs incurred in conveying the person from the territory of the requested State, including transit costs.

18/ Some countries may wish to agree on other grounds for refusal, which may also warrant refusal for extradition, such as those related to the nature of the offence (e.g. political, fiscal, military) or to the status of the person (e.g. their own nationals).

19/ Some countries may wish to consider reimbursement of costs incurred as a result of withdrawal of a request for extradition or provisional arrest.

ARTICLE 18

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which such notice is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

_____ _____

DONE at _____ on _____ in the _____
and _____ languages, [both/all] texts being equally authentic.

[9] 45/117. Model Treaty on Mutual Assistance in Criminal Matters

The General Assembly,

Bearing in mind the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress, 3/ on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

---

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

Recalling also resolution 23 of the Seventh Congress, 3/ on criminal acts of a terrorist character, in which all States were called upon to take steps to strengthen co-operation particularly, inter alia, in the area of mutual legal assistance,

Recalling further the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 4/

Acknowledging the valuable contributions to the development of a model treaty on mutual assistance in criminal matters that Governments, non-governmental organizations and individual experts have made, in particular the Government of Australia and the International Association of Penal Law,

Gravely concerned about the escalation of crime, both national and transnational,

Convinced that the establishment of bilateral and multilateral arrangements for mutual assistance in criminal matters will greatly contribute to the development of more effective international co-operation for the control of criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of a model treaty on mutual assistance in criminal matters as an effective way of dealing with the complex aspects and serious consequences of crime, especially in its new forms and dimensions,

1. Adopts the Model Treaty on Mutual Assistance in Criminal Matters together with the Optional Protocol thereto, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the matter of mutual assistance in criminal matters, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Treaty;

4/ E/CONF.82/15 and Corr.2.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex.

3. Urges all States to strengthen further international co-operation and mutual assistance in criminal justice;

4. Requests the Secretary-General to bring the present resolution, with the Model Treaty and the Optional Protocol thereto, to the attention of Governments;

5. Urges Member States to inform the Secretary-General periodically of efforts undertaken to establish mutual assistance arrangements in criminal matters;

6. Requests the Committee on Crime Prevention and Control to review periodically the progress attained in this field;

7. Also requests the Committee on Crime Prevention and Control, where requested, to provide guidance and assistance to Member States in the development of legislation which would enable giving effect to the obligations which will be contained in such treaties as are to be negotiated on the basis of the Model Treaty;

8. Invites Member States, on request, to make available to the Secretary-General the provisions of their legislation on mutual assistance in criminal matters so that these may be made available to those Member States desiring to enact or further develop legislation in this field.

68th plenary meeting
14 December 1990

ANNEX

Model Treaty on Mutual Assistance in Criminal Matters

The _____ and the _____

Desirous of extending to each other the widest measure of co-operation to combat crime,

Have agreed as follows:

ARTICLE 1

Scope of application 7/

1. The Parties shall, in accordance with the present Treaty, afford to each other the widest possible measure of mutual assistance in investigations or court proceedings in respect of offences the punishment of which at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

2. Mutual assistance to be afforded in accordance with the present Treaty may include:

(a) Taking evidence or statements from persons;

(b) Assisting in the availability of detained persons or others to give evidence or assist in investigations;

(c) Effecting service of judicial documents;

(d) Executing searches and seizures;

(e) Examining objects and sites;

(f) Providing information and evidentiary items;

(g) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records.

3. The present Treaty does not apply to:

(a) The arrest or detention of any person with a view to the extradition of that person;

(b) The enforcement in the requested State of criminal judgements imposed in the requesting State except to the extent permitted by the law of the requested State and the Optional Protocol to the present Treaty;

(c) The transfer of persons in custody to serve sentences;

(d) The transfer of proceedings in criminal matters.

7/ Additions to the scope of assistance to be provided, such as provisions covering information on sentences passed on nationals of the Parties, can be considered bilaterally. Obviously, such assistance must be compatible with the law of the requested State.

ARTICLE 2 8/

Other arrangements

Unless the Parties decide otherwise, the present Treaty shall not affect obligations subsisting between them whether pursuant to other treaties or arrangements or otherwise.

ARTICLE 3

Designation of competent authorities

Each Party shall designate and indicate to the other Party an authority or authorities by or through which requests for the purpose of the present Treaty should be made or received.

ARTICLE 4 9/

Refusal of assistance

1. Assistance may be refused if: 10/

(a) The requested State is of the opinion that the request, if granted, would prejudice its sovereignty, security, public order (ordre public) or other essential public interests;

(b) The offence is regarded by the requested State as being of a political nature;

(c) There are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;

8/ Article 2 recognizes the continuing role of informal assistance between law enforcement agencies and associated agencies in different countries.

9/ Article 4 provides an illustrative list of the grounds for refusal.

10/ Some countries may wish to delete or modify some of the provisions or include other grounds for refusal, such as those related to the nature of the offence (e.g. fiscal), the nature of the applicable penalty (e.g. capital punishment), requirements of shared concepts (e.g. double jurisdiction, no lapse of time) or specific kinds of assistance (e.g. interception of telecommunications, performing deoxyribonucleic-acid (DNA) tests). In particular, some countries may wish to include as grounds for refusal the fact that the act on which the request is based would not be an offence if committed in the territory of the requested State (dual criminality).

(d) The request relates to an offence that is subject to investigation or prosecution in the requested State or the prosecution of which in the requesting State would be incompatible with the requested State's law on double jeopardy (ne bis in idem);

(e) The assistance requested requires the requested State to carry out compulsory measures that would be inconsistent with its law and practice had the offence been the subject of investigation or prosecution under its own jurisdiction;

(f) The act is an offence under military law, which is not also an offence under ordinary criminal law.

2. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions.

3. The requested State may postpone the execution of the request if its immediate execution would interfere with an ongoing investigation or prosecution in the requested State.

4. Before refusing a request or postponing its execution, the requested State shall consider whether assistance may be granted subject to certain conditions. If the requesting State accepts assistance subject to these conditions, it shall comply with them.

5. Reasons shall be given for any refusal or postponement of mutual assistance.

ARTICLE 5

Contents of requests

1. Requests for assistance shall include: 11/

(a) The name of the requesting office and the competent authority conducting the investigation or court proceedings to which the request relates;

(b) The purpose of the request and a brief description of the assistance sought;

(c) A description of the facts alleged to constitute the offence and a statement or text of the relevant laws, except in cases of a request for service of documents;

(d) The name and address of the person to be served, where necessary;

11/ This list can be reduced or expanded in bilateral negotiations.

(e) The reasons for and details of any particular procedure or requirement that the requesting State wishes to be followed, including a statement as to whether sworn or affirmed evidence or statements are required;

(f) Specification of any time-limit within which compliance with the request is desired;

(g) Such other information as is necessary for the proper execution of the request.

2. Requests, supporting documents and other communications made pursuant to the present Treaty shall be accompanied by a translation into the language of the requested State or another language acceptable to that State.

3. If the requested State considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

ARTICLE 6

Execution of requests 12/

Subject to article 19 of the present Treaty, requests for assistance shall be carried out promptly, in the manner provided for by the law and practice of the requested State. To the extent consistent with its law and practice, the requested State shall carry out the request in the manner specified by the requesting State.

ARTICLE 7

Return of material to the requested State

Any property, as well as original records or documents, handed over to the requesting State under the present Treaty shall be returned to the requested State as soon as possible unless the latter waives its right of return thereof.

12/ More detailed provisions may be included concerning the provision of information on the time and place of execution of the request and requiring the requested State to inform promptly the requesting State in cases where significant delay is likely to occur or where a decision is made not to comply with the request and the reasons for refusal.

ARTICLE 8 13/

Limitation on use

The requesting State shall not, without the consent of the requested State, use or transfer information or evidence provided by the requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

ARTICLE 9

Protection of confidentiality 14/

Upon request:

(a) The requested State shall use its best endeavours to keep confidential the request for assistance, its contents and its supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed;

(b) The requesting State shall keep confidential evidence and information provided by the requested State, except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

13/ Some countries may wish to omit article 8 or modify it, e.g. restrict it to fiscal offences.

14/ Provisions relating to confidentiality will be important for many countries but may present problems to others. The nature of the provisions in individual treaties can be determined in bilateral negotiations.

ARTICLE 10

Service of documents 15/

1. The requested State shall effect service of documents that are transmitted to it for this purpose by the requesting State.

2. A request to effect service of summonses shall be made to a requested State not less than [...] 16/ days before the date on which the appearance of a person is required. In urgent cases, the requested State may waive the time requirement.

ARTICLE 11 17/

Obtaining of evidence

1. The requested State shall, in conformity with its law and upon request, take the sworn or affirmed testimony, or otherwise obtain statements of persons or require them to produce items of evidence for transmission to the requesting State.

2. Upon the request of the requesting State, the parties to the relevant proceedings in the requesting State, their legal representatives and representatives of the requesting State may, subject to the laws and procedures of the requested State, be present at the proceedings.

15/ More detailed provisions relating to the service of documents, such as writs and judicial verdicts, can be determined bilaterally. Provisions may be desired for the service of documents by mail or other manner and for the forwarding of proof of service of the documents. For example, proof of service could be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested State that service has been effected, with an indication of the form and date of such service. One or other of these documents could be sent promptly to the requesting State. The requested State could, if the requesting State so requests, state whether service has been effected in accordance with the law of the requested State. If service could not be effected, the reasons could be communicated promptly by the requested State to the requesting State.

16/ Depending on travel distance and related arrangements.

17/ Article 11 is concerned with the obtaining of evidence in judicial proceedings, the taking of a person's statement by a less formal process and the production of items of evidence.

ARTICLE 12

Right or obligation to decline to give evidence

1. A person who is required to give evidence in the requested or requesting State may decline to give evidence where either:

(a) The law of the requested State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requested State; or

(b) The law of the requesting State permits or requires that person to decline to give evidence in similar circumstances in proceedings originating in the requesting State.

2. If a person claims that there is a right or obligation to decline to give evidence under the law of the other State, the State where that person is present shall, with respect thereto, rely on a certificate of the competent authority of the other State as evidence of the existence or non-existence of that right or obligation.

ARTICLE 13

Availability of persons in custody to give evidence or to assist in investigations 18/

1. Upon the request of the requesting State, and if the requested State agrees and its law so permits, a person in custody in the latter State may, subject to his or her consent, be temporarily transferred to the requesting State to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the requested State, the requesting State shall hold that person in custody and shall return that person in custody to the requested State at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the requested State advises the requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 14 of the present Treaty.

18/ In bilateral negotiations, provisions may also be introduced to deal with such matters as the modalities and time of restitution of evidence and the setting of a time-limit for the presence of the person in custody in the requesting State.

ARTICLE 14

Availability of other persons to give evidence or assist in investigations 19/

1. The requesting State may request the assistance of the requested State in inviting a person:

(a) To appear in proceedings in relation to a criminal matter in the requesting State unless that person is the person charged; or

(b) To assist in the investigations in relation to a criminal matter in the requesting State.

2. The requested State shall invite the person to appear as a witness or expert in proceedings or to assist in the investigations. Where appropriate, the requested State shall satisfy itself that satisfactory arrangements have been made for the person's safety.

3. The request or the summons shall indicate the approximate allowances and the travel and subsistence expenses payable by the requesting State.

4. Upon request, the requested State may grant the person an advance, which shall be refunded by the requesting State.

ARTICLE 15 20/

Safe conduct

1. Subject to paragraph 2 of the present article, where a person is in the requesting State pursuant to a request made under article 13 or 14 of the present Treaty:

(a) That person shall not be detained, prosecuted, punished or subjected to any other restrictions of personal liberty in the requesting State in respect of any acts or omissions or convictions that preceded the person's departure from the requested State;

19/ Provisions relating to the payment of the expenses of the person providing assistance are contained in paragraph 3 of article 14. Additional details, such as provision for the payment of costs in advance, can be the subject of bilateral negotiations.

20/ The provisions in article 15 may be required as the only way of securing important evidence in proceedings involving serious national and transnational crime. However, as they may raise difficulties for some countries, the precise content of the article, including any additions or modifications, can be determined in bilateral negotiations.

(b) That person shall not, without that person's consent, be required to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation to which the request relates.

2. Paragraph 1 of the present article shall cease to apply if that person, being free to leave, has not left the requesting State within a period of [15] consecutive days, or any longer period otherwise agreed on by the Parties, after that person has been officially told or notified that his or her presence is no longer required or, having left, has voluntarily returned.

3. A person who does not consent to a request pursuant to article 13 or accept an invitation pursuant to article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any coercive measure, notwithstanding any contrary statement in the request or summons.

ARTICLE 16

Provision of publicly available documents and other records 21/

1. The requested State shall provide copies of documents and records in so far as they are open to public access as part of a public register or otherwise, or in so far as they are available for purchase or inspection by the public.

2. The requested State may provide copies of any other document or record under the same conditions as such document or record may be provided to its own law enforcement and judicial authorities.

ARTICLE 17

Search and seizure 22/

The requested State shall, in so far as its law permits, carry out requests for search and seizure and delivery of any material to the requesting State for evidentiary purposes, provided that the rights of bona fide third parties are protected.

21/ The question may arise as to whether this should be discretionary. This provision can be the subject of bilateral negotiations.

22/ Bilateral arrangements may cover the provision of information on the results of search and seizure and the observance of conditions imposed in relation to the delivery of seized property.

ARTICLE 18

Certification and authentication 23/

A request for assistance and the documents in support thereof, as well as documents or other material supplied in response to such a request, shall not require certification or authentication.

ARTICLE 19

Costs 24/

The ordinary costs of executing a request shall be borne by the requested State, unless otherwise determined by the Parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.

ARTICLE 20

Consultation

The Parties shall consult promptly, at the request of either, concerning the interpretation, the application or the carrying out of the present Treaty either generally or in relation to a particular case.

ARTICLE 21

Final provisions

1. The present Treaty is subject to (ratification, acceptance or approval). The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

23/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts, and, therefore, would require a clause setting out the authentication required.

24/ More detailed provisions may be included, for example, the requested State would meet the ordinary cost of fulfilling the request for assistance except that the requesting State would bear (a) the exceptional or extraordinary expenses required to fulfil the request, where required by the requested State and subject to previous consultations; (b) the expenses associated with conveying any person to or from the territory of the requested State, and any fees, allowances or expenses payable to that person while in the requesting State pursuant to a request under article 11, 13 or 14; (c) the expenses associated with conveying custodial or escorting officers; and (d) the expenses involved in obtaining reports of experts.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

_____ _____

DONE at _____ on _____ in the _____
and _____ languages, [both/all] texts being equally authentic.

Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime 25/

1. In the present Protocol "proceeds of crime" means any property suspected, or found by a court, to be property directly or indirectly derived or realized as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence.

2. The requested State shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting State of the results of its inquiries. In making the request, the requesting State shall notify the requested State of the basis of its belief that such proceeds may be located within its jurisdiction.

25/ The present Optional Protocol is included on the ground that questions of forfeiture are conceptually different from, although closely related to, matters generally accepted as falling within the description of mutual assistance. However, States may wish to include these provisions in the text because of their importance in dealing with organized crime. Moreover, assistance in forfeiting the proceeds of crime has now emerged as a new instrument in international co-operation. Provisions similar to those outlined in the present Protocol appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. An addition could, for example, be made to paragraph 4 of the present Protocol providing that the requested State shall, upon request, take such measures as are permitted by its law to require compliance with monitoring orders by financial institutions. Provision could be made for the sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis.

3. In pursuance of a request made under paragraph 2 of the present Protocol, the requested State shall endeavour to trace assets, investigate financial dealings, and obtain other information or evidence that may help to secure the recovery of proceeds of crime.

4. Where, pursuant to paragraph 2 of the present Protocol, suspected proceeds of crime are found, the requested State shall upon request take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the requesting State.

5. The requested State shall, to the extent permitted by its law, give effect to or permit enforcement of a final order forfeiting or confiscating the proceeds of crime made by a court of the requesting State or take other appropriate action to secure the proceeds following a request by the requesting State. 26/

6. The Parties shall ensure that the rights of bona fide third parties shall be respected in the application of the present Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Protocol.

DONE at _____ on _____ in the _____
and _____ languages, [both/all] texts being equally authentic.

26/ The Parties might consider widening the scope of the present Protocol by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution.

[10] 45/118. Model Treaty on the Transfer of Proceedings in Criminal Matters

The General Assembly,

Recalling the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling further resolution 12 of the Seventh Congress, 3/ on the transfer of proceedings in criminal matters, in which the Committee on Crime Prevention and Control was requested to study the question and to consider the possibility of formulating a model agreement in this area,

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of a model treaty on the transfer of proceedings in criminal matters, in particular the International Expert Meeting on the United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic V, "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting" 4/ and the regional preparatory meetings for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for the transfer of proceedings in criminal matters will greatly contribute to the development of more effective international co-operation aimed at controlling crime,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of a model treaty on the transfer of proceedings in criminal matters as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational crime,

1. Adopts the Model Treaty on the Transfer of Proceedings in Criminal Matters, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in regard to transfer of proceedings in criminal matters, or if they wish to revise existing treaty relations, to take the Model Treaty into account whenever doing so;

3. Urges Member States to strengthen international co-operation in criminal justice;

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements for the transfer of proceedings in criminal matters;

4/ See A/CONF.144/IPM.5 and Corr.1.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex.

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on the transfer of proceedings in criminal matters and to report regularly thereon to the Committee.

68th plenary meeting
14 December 1990

ANNEX

Model Treaty on the Transfer of Proceedings in Criminal Matters

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

Bearing in mind that the transfer of proceedings in criminal matters contributes to effective administration of justice and to reducing conflicts of competence,

Aware that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

Convinced, therefore, that the transfer of proceedings in criminal matters should be promoted,

Have agreed as follows:

ARTICLE 1

Scope of application

1. When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of the proper administration of justice so require, request another State which is a Contracting Party to take proceedings in respect of this offence.

2. For the purpose of applying the present Treaty, the Contracting Parties shall take the necessary legislative measures to ensure that a request of the requesting

State to take proceedings shall allow the requested State to exercise the necessary jurisdiction.

ARTICLE 2

Channels of communications

A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

ARTICLE 3

Required documents

1. The request to take proceedings shall contain or be accompanied by the following information:

(a) The authority presenting the request;

(b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;

(c) A statement on the results of investigations which substantiate the suspicion of an offence;

(d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;

(e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

2. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the documents in support thereof, as well as the documents and

other material supplied in response to such a request, shall not require certification or authentication. 7/

ARTICLE 5

Decision on the request

The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

ARTICLE 6

Dual criminality

A request to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

ARTICLE 7

Grounds for refusal

If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused if: 8/

(a) The suspected person is not a national of or ordinary resident in the requested State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

7/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

8/ When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

(d) The offence is regarded by the requested State as being of a political nature.

ARTICLE 8

The position of the suspected person

1. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the legal representative or close relatives of the suspected person.

2. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

ARTICLE 9

The rights of the victim

The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his or her right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

ARTICLE 10

Effects of the transfer of proceedings on the requesting State
(ne bis in idem)

Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

ARTICLE 11

Effects of the transfer of proceedings on the requested State

1. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision set forth in paragraph 2 of article 1 of the present Treaty, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

2. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements performed in the requesting State in accordance with its law shall have the same validity in the requested State as if the act had been performed in or by the authorities of that State.

3. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

ARTICLE 12

Provisional measures

When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

ARTICLE 13

The plurality of criminal proceedings

When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

ARTICLE 14

Costs

Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

ARTICLE 15

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

_____ _____

DONE at _____ on _____ in the _____
and _____ languages, [both/all] texts being equally authentic.

[11] Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action 110/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in resolution 40/32 of 29 November 1985,

Bearing in mind the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 111/ among which principle 37 requires that the United Nations should prepare model instruments suitable for use as international and regional agreements and as guides for national implementing legislation,

Recalling also resolution 1 of the Seventh Congress, 112/ in which Member States were urged to increase their activity at the international level, in order to combat organized crime and entering into bilateral assistance treaties,

Noting that the Economic and Social Council, in its resolution 1989/62 of 24 May 1989, decided that the topic of transnational crimes against the cultural patrimony of countries should be included under item 3 of the provisional agenda of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in order to explore the possibilities for formulating comprehensive policies of international co-operation for the prevention of such offences,

Desirous of promoting co-operation to prevent unlawful acts that encroach on the historical and cultural legacy of peoples,

Bearing in mind that the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 113/ adopted by the United Nations Educational, Scientific and Cultural Organization, which entered into force on 24 April 1972, establishes in its declarative section the duty of every State to protect the heritage represented by the cultural

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110/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

111/ Ibid., sect. B.

112/ Ibid., sect. E.

113/ United Nations Educational, Scientific and Cultural Organization, Records of the General Conference, Sixteenth Session, vol. I, Resolutions, pp. 135-141.

property located on its territory against the dangers of robbery, clandestine excavation and illicit export, as well as a commitment to combat these practices by every available means, particularly with respect to stopping them while in progress, eliminating their causes and providing the assistance required to secure the return of the property in question,

Mindful of the declarations and legal instruments that provide, as an essential undertaking, for the adoption, both nationally and internationally, of the most effective possible measures for adequately protecting, defending and recovering cultural property and for combating such acts as may damage or diminish those riches of an archaeological, historical and artistic nature that represent the expression of the national character of their respective peoples,

Convinced that the best way of achieving these objectives is through the co-operation and mutual help that must exist in order to succeed in preventing crimes against cultural heritage and in returning the property in question to the countries from which it has been illicitly removed,

Conscious of the need to respect human dignity and recalling the principles set forth in the Universal Declaration of Human Rights 114/ and the International Covenant on Economic, Social and Cultural Rights, as well as in the International Covenant on Civil and Political Rights, 115/

Recognizing the importance of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property as a means of preventing crimes of this type and securing the return of property that has been illicitly removed,

1. Recommends that Member States consider the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, contained in the annex to the present resolution, as a framework that may be of assistance to interested States in negotiating and drawing up bilateral agreements designed to improve co-operation in the area of crime prevention and criminal justice;

2. Invites those Member States that have not yet established treaty relations with other States for the prevention of crimes that infringe on the cultural heritage of peoples, or that wish to modify these relations if they already exist, to bear in mind, when so doing, the draft model treaty;

3. Urges all Member States to continue to strengthen international co-operation and mutual assistance in resolving these problems;

4. Calls upon Member States to inform the Secretary-General periodically of the efforts made to conclude agreements for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property;

5. Requests the Committee on Crime Prevention and Control to examine periodically the progress achieved in this area.

114/ General Assembly resolution 217 A (III).

115/ General Assembly resolution 2200 A (XXI), annex.

ANNEX

Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property 116/

The _____ and _____

Conscious of the need to co-operate in the field of criminal justice,

Wishing to add to the effectiveness of the co-operation between their two countries in combating criminal activities which involve movable cultural property through the introduction of measures for impeding illicit transnational trafficking in movable cultural property whether or not it has been stolen, the imposition of appropriate and effective administrative and penal sanctions and the provision of a means for restitution,

Have agreed as follows:

ARTICLE 1

Scope of application and definition 117/

1. For the purposes of this treaty, movable cultural property 118/ shall be understood as referring to property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by reason of its importance for archaeology, prehistory, history, literature, art or science, and as belonging to one or more of the folowing categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;

(b) Property relating to history, including the history of science and technology, military history, and the history of societies and religions, as well as to the lives of leaders, thinkers, scientists and artists and other national figures, and to events of national importance;

116/ An alternative title could be "Model treaty concerning crimes relating to the restitution of movable cultural property".

117/ Suggested alternatives to article 1, paragraph 1, are: (i) "This treaty covers all items of movable cultural property specifically designated as such by a State Party, and subject to export control by that State Party."; or (ii) "This treaty covers those items of movable cultural property specifically agreed to between the States Parties as being subject to export control."

118/ The categories follow closely the list contained in article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970. However, this list may not be exhaustive, and States Parties may wish to add other categories.

(c) Products of archaeological excavations or discoveries, including clandestine excavations or discoveries, whether on land or under water;

(d) Elements of artistic or historical monuments or archaeological sites which have been dismantled;

(e) Antiquities, including tools, ceramics, ornaments, musical instruments, pottery, inscriptions of all kinds, coins, engraved seals, jewels, weapons and funerary remains of any description;

(f) Materials of anthropological, historical or ethnological interest;

(g) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statuary art and sculpture in any material;

(iii) Original engravings, prints, lithographs and art photographs;

(iv) Original artistic assemblages and montages in any material;

(h) Rare manuscripts and incunabula, old books, documents and publications of special historical, artistic, scientific, literary or other interest, singly or in collections;

(i) Postage, revenue and similar stamps, either singly or in collections;

(j) Archives, including phonographic, photographic and cinematographic archives;

(k) Articles of furniture, furnishings and muscial instruments of more than 100 years of age.

2. This treaty applies to movable cultural property stolen in or illicitly exported from the other State Party after the coming into force of the treaty. 119/

ARTICLE 2

General principles

1. Each State Party undertakes:

(a) To take the necessary measures to prohibit the import and export of movable cultural property (i) which has been stolen in the other State Party or (ii) which has been illicitly exported from the other State Party;

119/ States Parties may wish to consider providing for a period of limitation after which the right to request recovery of stolen or illicitly exported movable cultural property will be extinguished.

(b) To take the necessary measures to prohibit the acquisition of, and dealing within its territory with, movable cultural property which has been imported contrary to the prohibitions resulting from the implementation of subparagraph (a) above;

(c) To legislate in order to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property;

(d) To provide information concerning its stolen movable cultural property to an international data base agreed upon between the States Parties; 120/

(e) To take the measures necessary to ensure that the purchaser of stolen movable cultural property which is listed on the international data base is not considered to be a purchaser who has acquired such property in good faith; 121/

(f) To introduce a system whereby the export of movable cultural property is authorized by the issue of an export certificate; 122/

(g) To take the measures necessary to ensure that a purchaser of imported movable cultural property which is not accompanied by an export certificate issued by the other State Party and who did not acquire the movable cultural property prior to the entry into force of this treaty shall not be considered to be a person who has acquired the movable cultural property in good faith; 123/

(h) To use all the means at its disposal, including the fostering of public awareness, to combat the illicit import and export, theft, illicit excavation and illicit dealing in movable cultural property.

2. Each State Party undertakes to take the necessary measures to recover and return, at the request of the other State Party, any movable cultural property which is covered by subparagraph (a) above.

120/ Further developments in this field will provide the international community, particularly potential States Parties, with an opportunity to implement this method of crime prevention. (See also resolution 6 below.) The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders may wish to develop initiatives in this direction.

121/ This provision is intended to supplement, and not be in substitution for, the normal rules relating to good faith acquisition.

122/ This procedure is consistent with the validation procedure described in article 6 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

123/ States Parties may wish to consider adding certain types of offences against movable cultural property to the list of extraditable offences covered by an extradition treaty. (See also sect. A, draft resolution 10 above.)

ARTICLE 3

Sanctions 123/

Each State Party undertakes to impose sanctions 124/ upon:

(a) Persons or institutions responsible for the illicit import or export of movable cultural property;

(b) Persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property;

(c) Persons or institutions that enter into international conspiracies to obtain, export or import movable cultural property by illicit means.

ARTICLE 4

Procedures

1. Requests for recovery and return shall be made through diplomatic channels. The requesting State Party shall furnish, at its expense, the documentation and other evidence, including the date of export, necessary to establish its claim for recovery and return.

2. All expenses incidental to the return and delivery of the movable cultural property shall be borne by the requesting State Party, 125/ and no person or institution shall be entitled to claim any form of compensation from the State Party returning the property claimed. Neither shall the requesting State Party be required to compensate in any way such persons or institutions as may have participated in illegally sending abroad the property in question, although it must pay fair compensation 125/ to any person or institution that in good faith acquired or was in legal possession of the property. 126/

3. Both parties agree not to levy any customs or other duties on such movable property as may be discovered and returned in accordance with the present treaty.

4. The States Parties agree to make available to each other such information as will assist in combating crimes against movable cultural property. 127/

124/ States Parties may wish to consider establishing minimum penalties for certain offences.

125/ States Parties may wish to consider whether the expenses and/or the expense of providing compensation should be shared between them.

126/ States Parties may wish to consider the position of a blameless possessor who has inherited or otherwise gratuitously acquired a cultural object which had been previously dealt with in bad faith.

127/ Some States Parties may wish to preface article 4, paragraph 3, by the following: "Subject to domestic laws, particularly those concerning access to information and the protection of privacy, ...".

5. Each State Party shall provide information concerning laws which protect its movable cultural property to an international data base agreed upon between the States Parties. 128/

ARTICLE 5

Final provisions 129/

1. This treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible, through diplomatic channels.

2. This treaty shall come into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

3. Either State Party may denounce this treaty by giving notice in writing to the other State Party. Such denunciation shall take effect six months after the date on which such notice is received by the other State Party.

4. This treaty is intended to be complementary to, and does not in any way exclude, participation in other international arrangements.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this treaty.

_____ _____

Done at _____ on _____
in the _____ and _____ languages, both texts being equally authentic.

128/ It should be noted that General Assembly resolution 44/18 of 6 November 1989 and quite a number of resolutions of the General Conference of UNESCO have invited member States to establish, with the assistance of UNESCO, national inventories of cultural property. At the date of the drafting of this treaty, national legislative texts on the protection of cultural movable property from 76 countries have been collected, published and disseminated by UNESCO.

129/ States Parties may wish to consider providing for a process for the resolution of disputes concerning the treaty.

C. TREATMENT OF OFFENDERS

Introduction

The treatment of offenders was one of the first areas in crime prevention and criminal justice to attract international attention. In fact, the International Penal and Penitentiary congresses, which preceded the United Nations congresses on the prevention of crime and the treatment of offenders, focused primarily on the response to crime, i.e. the treatment of offenders and prisoners.

The United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 by the First United Nations Congress, originated from the standards for the treatment of prisoners developed by the International Penal and Penitentiary Commission, as endorsed with some modifications by the League of Nations in 1934. 1/ While the Commission was dissolved in 1951 and succeeded by the International Penal and Penitentiary Foundation, its main function was transferred to the United Nations, which assumed leadership for the promotion of international work in crime prevention and criminal justice. 2/

The First Congress unanimously adopted the Rules, which were approved by the Economic and Social Council in its resolution 663 CI (XXIV) of 31 July 1957. 3/ The Rules embody the principles of humanity, respect for human dignity, social purpose and managerial performance, which comprise a coherent and effective basis for the administration of prison systems. They set out what is generally accepted as being good principle and practice in the treatment of prisoners and management of institutions. They are considered to serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application and represent the minimum conditions that are accepted as suitable by the United Nations. They are also intended to guard against mistreatment, particularly in connection with the enforcement of discipline and the use of instruments of restraint in penal institutions.

On the recommendation of the Fifth Congress, held in 1975, 4/ the Economic and Social Council, in its resolution 1993 (LX) of 12 May 1976, requested the Committee on Crime Prevention and Control to study the range of application of the Rules and to formulate a set of implementing procedures.

Upon the recommendation of the Committee on Crime Prevention and Control, 5/ the Economic and Social Council, in its resolution 2076 (LXII) of 13 May 1977, adopted an additional rule 95, which explicitly extends the scope of the Rules to protect persons arrested or imprisoned without charge by according them the same protection as persons under sentence, without any undue imposition of rehabilitative measures.

Also on the recommendation of the Committee, 6/ the Council, in its resolution 1984/47 of 25 May 1984, adopted the Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, and invited Member States to take them into consideration when implementing the Rules and when preparing their periodic reports to the United Nations. The Secretary-General was asked to assist Governments, if they so request, in implementing the Rules in accordance with the new procedures.

The procedures, accompanied by commentaries, set forth various measures to promote the implementation of the Rules, such as their embodiment in national legislation, wide distribution of the Rules to concerned personnel as well as to persons under detention, periodic reports to the Secretary-General on implementation and technical assistance through the United Nations or its regional research and training institutes.

So far, five reports on the implementation of the Rules have been submitted by the Secretary-General to the last five congresses, based on information provided by Governments and other parties concerned. 7/

The Model Agreement on the Transfer of Foreign Prisoners, adopted by the Seventh Congress 8/ and welcomed by the General Assembly in its resolution 40/146 of 13 December 1985, was elaborated by the Committee on Crime Prevention and Control as well as regional and interregional preparatory meetings for the Seventh Congress, in pursuance of resolution 13 of the Sixth Congress. 9/ Recognizing the problem of foreigners detained in prisons abroad, the Model Agreement emphasizes that the aim of social resettlement of offenders could best be achieved by affording foreign prisoners the opportunity to serve their sentences within their country of nationality or ordinary residence. Accordingly, the Model Agreement is intended to assist Member States in the development of bilateral and multilateral arrangements in order to facilitate the return of foreign prisoners to serve their sentences in their home countries. Based on the general principle of international cooperation and mutual respect for national sovereignty and jurisdiction, the Model Agreement includes articles concerning informed consent of the prisoners and other requirements, procedural regulations, enforcement and pardon.

The Recommendations on the treatment of foreign prisoners, also adopted by the Seventh Congress, complement this instrument. 8/ They include recommendations on equal access by foreign prisoners to education, work and vocational training in prison as well as equal eligibility to alternative measures; respect for their religion and customs; and their rights to contact with their consular authorities or families and assistance by interpreters.

The Basic principles for the treatment of prisoners, adopted by the General Assembly in its resolution 45/111 of 14 December 1990, on the recommendation of the Eighth Congress, were elaborated by the Latin American regional preparatory meeting for the Eighth Congress, 10/ on the basis of previous work accomplished by several non-governmental organizations. 11/ They confirm certain fundamental prisoners' rights and stipulate, inter alia, that all prisoners should be treated with due respect to their inhererent dignity and value as human beings, without discrimination of any kind. Except for the necessary limitation of the freedom of movement, all prisoners should be afforded the human rights and fundamental freedoms, as set out in universally recognized international instruments. By declaring those rights, the Basic Principles complement the provisions of the Standard Minimum Rules for the Treatment of Prisoners.

The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) are the result of a long and intensive debate which was initiated by the Seventh Congress. 12/ The Rules were principally elaborated by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Fuchu, Tokyo. 13/ They were extensively discussed by experts at an interregional preparatory meeting for the Eighth Congress on topic II 14/ and by the Committee on Crime Prevention and Control, 15/ as well as by the International Penal and Penitentiary Foundation. On the recommendation of the Eighth Congress, 16/ the General Assembly adopted the Rules in its resolution 45/110 of 14 December 1990.

The Rules form a set of recommendations representing a balanced approach, taking into account the views and experiences of Governments, legal scholars, experts in the field and practitioners. They emphasize that imprisonment should be considered as a last resort and encourage the promotion of non-custodial measures with due regard to an equilibrium between the rights of individual offenders, the rights of the victims and the concern of society. The Rules set forth a wide range of non-custodial measures at various stages of criminal procedures. They also contain rules on implementation of non-custodial measures, staff recruitment and training, involvement of the public at large and of volunteers, research, planning, policy formulation and evaluation, thus providing a comprehensive set of rules to enhance alternative measures to imprisonment.

The Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released was adopted by the General Assembly in its resolution 45/119 of 14 December 1990, also on the recommendation of the Eighth Congress. 16/ The Model Treaty was elaborated by the Committee on Crime Prevention and Control, the interregional and regional preparatory meetings for the Eighth Congress and the International Expert Meeting on the United Nations and Law Enforcement, held at Baden, Austria. 17/ Their purpose is to provide States with a framework to allow offenders on probation, parole or under suspended sentence to return to their home country or move to another country, by transferring responsibility for supervision and applying the terms of non-custodial measures. Two basic concepts motivated and supported the development of the Model Treaty: first, the possibility of the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released might contribute to an increase in the use of alternatives to imprisonment also with respect to foreign prisoners; and second, the supervision in the offender's home country rather than the enforcement of the sentence in a country where the offender has no roots is expected to contribute to an earlier and better reintegration into society.

Notes

1/ For the preparation of the Rules, see Bulletin of the International Penal and Penitentiary Commission, new series October 1929. League of Nations, Penal and Penitentiary Questions; and "Improvement in Penal Administration", Report of the Fifth Committee to the Assembly; Rapporteur: Prof. V. Pell, Geneva, 21 September 1931 (A.70.1931.IV). For the text of the resolution, see League of Nations resolution of 26 September 1934, Official Journal, Special Supplement No. 123, vol. VI, p. 4.

2/ General Assembly resolution 415 (V) of 1 December 1950.

3/ Report of the First Congress (A/CONF.6/1).

4/ Report of the Fifth Congress (A/CONF.56/10).

5/ Committee on Crime Prevention and Control, Report on the fourth session (E/CN.5/536).

6/ Committee on Crime Prevention and Control, Report on the eighth session (E/AC.57/1984/18). See also "Procedures for the effective implementation of Standard Minimum Rules for the Treatment of Prisoners", Report of the Secretary-General (E/AC.57/1984/10).

7/ The first survey was submitted to the Fourth Congress in 1970 (A/CONF.43/3, annex); the second to the Fifth Congress in 1975 (A/CONF.56/6, annex); the third to the Sixth Congress in 1980 (A/CONF.87/11 and Add.1); the fourth to the Seventh Congress in 1985 (A/CONF.121/15); and the fifth to the Eighth Congress in 1990 (A/CONF.144/11).

8/ Report of the Seventh Congress (A/CONF.121/22/Rev.1). For the preparation of the Model Agreement, see E/AC.57/1984/CRP.2 and A/CONF.121/10.

9/ Report of the Sixth Congress (A/CONF.87/14/Rev.1).

10/ A/CONF.144/RPM.3.

11/ Statement submitted by non-governmental organizations to the Committee on Crime Prevention and Control at its tenth session (E/AC.57/1988/NGO/3).

12/ Resolution 16 on reduction of the prison population, alternatives to imprisonment and social integration of offenders. (See also footnote 8 above.)

13/ UNAFEI Resource Material Series No. 32, 1987, p. 179; No. 34, 1988, p. 195.

14/ A/CONF.144/IPM.4.

15/ Committee on Crime Prevention and Control, Report on the eleventh session (E/AC.57/1990/8).

16/ Report of the Eighth Congress (A/CONF.144/28).

17/ Report of the International Expert Meeting on the United Nations and Law Enforcement; the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987.

[12] 663 (XXIV). World social situation

C

RECOMMENDATIONS OF THE FIRST UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

I

The Economic and Social Council

1. *Approves* the *Standard Minimum Rules for the Treatment of Prisoners* adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders; [37]

2. *Draws the attention* of Governments to those *Rules* and *recommends*:

(*a*) That favourable consideration be given to their adoption and application in the administration of penal and correctional institutions;

(*b*) That the Secretary-General be informed every five years of the progress made with regard to their application;

(*c*) That Governments arrange for the widest possible publicity to be given to the *Rules*, not only among governmental services concerned but also among non-governmental organizations interested in social defence;

3. *Authorizes* the Secretary-General to make arrangements for the publication, as appropriate, of the information received in pursuance of sub-paragraph 2 (*b*) above and to ask for supplementary information if necessary.

994th plenary meeting,
31 July 1957.

Standard Minimum Rules for the Treatment of Prisoners

Resolution adopted on 30 August 1955

The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having adopted the Standard Minimum Rules for the Treatment of Prisoners annexed to the present Resolution,

1. *Requests* the Secretary-General, in accordance with paragraph (*d*) of the annex to resolution 415(V) of the General Assembly of the United Nations, to submit these rules to the Social Commission of the Economic and Social Council for approval;

2. *Expresses* the hope that these rules be approved by the Economic and Social Council and, if deemed appropriate by the Council, by the General Assembly, and that they be transmitted to governments with the recommendation (*a*) that favourable consideration be given to their adoption and application in the administration of penal institutions, and (*b*) that the Secretary-General be informed every three years of the progress made with regard to their application;

3. *Expresses* the wish that, in order to allow governments to keep themselves informed of the progress made in this respect, the Secretary-General be requested to publish in the International Review of Criminal Policy the information sent by governments in pursuance of paragraph 2, and that he be authorized to ask for supplementary information if necessary;

4. *Expresses* also the wish that the Secretary-General be requested to arrange that the widest possible publicity be given to these rules.

Annex

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

PRELIMINARY OBSERVATIONS

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to "security measures" or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I. RULES OF GENERAL APPLICATION

Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

(*a*) Information concerning his identity;

(*b*) The reasons for his commitment and the authority therefor;

(*c*) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

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[37] A/CONF/6/1, annex I, A. United Nations publication, Sales No.: 1956.IV.4.

Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(*a*) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(*b*) Untried prisoners shall be kept separate from convicted prisoners;

(*c*) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(*d*) Young prisoners shall be kept separate from adults.

Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(*a*) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(*b*) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21. (1) Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

(*a*) The quantity, quality, preparation and service of food;

(*b*) The hygiene and cleanliness of the institution and the prisoners;

(*c*) The sanitation, heating, lighting and ventilation of the institution;

(*d*) The suitability and cleanliness of the prisoners' clothing and bedding;

(*e*) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

(*a*) Conduct constituting a disciplinary offence;

(*b*) The types and duration of punishment which may be inflicted;

(*c*) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(*a*) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(*b*) On medical grounds by direction of the medical officer;

(*c*) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their

interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45. (1) When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their examples and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

PART II. RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The régime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release régime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connexion with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

(*a*) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(*b*) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and co-operation of the prisoners in their treatment.

Work

71. (1) Prison labour must not be of an afflictive nature.

(2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

(3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

(4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.

(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

(6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.

(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

B. INSANE AND MENTALLY ABNORMAL PRISONERS

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

C. Prisoners under arrest or awaiting trial

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special régime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

D. Civil prisoners

94. In countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

E. Persons arrested or detained without charge

95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.

[13] **1984/47. Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners**

The Economic and Social Council,

Considering the importance of the recommendations contained in the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and approved by the Council in its resolution 663 C (XXIV) of 31 July 1957,

Noting with satisfaction the impact of the Rules on national laws and practices,

Concerned, however, that there still exist obstacles of various kinds to the full implementation of the Rules, as evidenced in the periodic United Nations reports on their implementation,

Recalling the recommendations of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[107] and Council resolution 1993 (LX) of 12 May 1976, in which the Committee on Crime Prevention and Control was requested at its fourth session to study the range of application of the Rules and to formulate a set of implementing procedures for the Rules,

Taking note with appreciation of the work accomplished in pursuance of that mandate by the Committee on Crime Prevention and Control at its fourth session in 1976[108] and at its eighth session[109] in pursuance of the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which invited the Committee to finalize the procedures in the light of its report,[110]

1. *Approves* the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, as set out in the annex to the present resolution;

2. *Invites* Member States to take the procedures annexed hereto into consideration in the process of implementing the Rules and in their periodic reports to the United Nations;

3. *Requests* the Secretary-General to bring the present resolution to the attention of the Governments of the Member States, and to assist them at their request in implementing the Rules in accordance with the procedures annexed hereto.

21st plenary meeting
25 May 1984

[107] See *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975: report prepared by the Secretariat* (United Nations publication, Sales No. E.76.IV.2 and corrigendum), para. 23.

[108] See E/CN.5/536.

[109] See *Official Records of the Economic and Social Council, 1984, Supplement No. 6* (E/1984/16), chap. IV.

[110] See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. C.6, para. 4.

ANNEX

Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners

Procedure 1

All States whose standards for the protection of all persons subjected to any form of detention or imprisonment fall short of the Standard Minimum Rules for the Treatment of Prisoners shall adopt the Rules.

Commentary

The General Assembly, in its resolution 2858 (XXVI) of 20 December 1971, invited the attention of Member States to the Standard Minimum Rules and recommended that they should be effectively implemented in the administration of penal and correctional institutions and that favourable consideration should be given to their incorporation in national legislation. Some States may have standards that are more advanced than the Rules, and the adoption of the Rules is therefore not requested on the part of such States. Where States feel that the Rules need to be harmonized with their legal system and adapted to their culture, the emphasis is placed on the substance rather than the letter of the Rules.

Procedure 2

Subject, as necessary, to their adaptation to the existing laws and culture but without deviation from the spirit and purpose of the Rules, the Standard Minimum Rules shall be embodied in national legislation and other regulations.

Commentary

This procedure emphasizes that it is necessary to embody the Rules within national legislation and regulations, thus covering also some aspects of procedure 1.

Procedure 3

The Standard Minimum Rules shall be made available to all persons concerned, particularly to law enforcement officials and correctional personnel, for purposes of enabling their application and execution in the criminal justice system.

Commentary

This procedure stresses that the Rules, as well as national statutes and regulations implementing the Rules, should be made available to all persons concerned with their implementation, in particular law enforcement officials and correctional personnel. The effective implementation of the Rules might also involve the organization of training courses by the central administration in charge of correctional matters. The dissemination of procedures is discussed in procedures 7 to 9.

Procedure 4

The Standard Minimum Rules, as embodied in national legislation and other regulations, shall also be made available and understandable to all prisoners and all persons under detention, on their admission and during their confinement.

Commentary

To achieve the goal of the Standard Minimum Rules, it is necessary to make the Rules, as well as the implementing national statutes and regulations, available to prisoners and all persons under detention (rule 95), in order to further the awareness that the Rules represent the minimum conditions that are accepted as suitable by the United Nations. Thus, this procedure supplements the provisions contained in procedure 3.

A similar requirement, that the Rules be made available to the persons for whose protection they have been elaborated, has been already established in the four Geneva Conventions of 12 August 1949,[11] of which articles 47 of the first Convention, 48 of the second, 127 of the third and 144 of the fourth state in common:

"The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains."

Procedure 5

States shall inform the Secretary-General of the United Nations every five years of the extent of the implementation and the progress made with regard to the application of the Standard Minimum Rules, and of the factors and difficulties, if any, affecting their implementation, by responding to the Secretary-General's questionnaire. This questionnaire should, following a specified schedule, be selective and limited to specific questions in order to secure an in-depth review and study of the problems selected. Taking into account the reports of Governments as well as other relevant information available within the United Nations system, the Secretary-General shall prepare independent periodic reports on progress made with respect to the implementation of the Standard Minimum Rules. In the preparation of those reports the Secretary-General may also enlist the co-operation of specialized agencies and of the relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

Commentary

It will be recalled that the Economic and Social Council, in its resolution 663 C (XXIV) of 31 July 1957, recommended that the Secretary-General be informed every five years of the progress made with regard to the application of the Standard Minimum Rules and authorized the Secretary-General to make arrangements for the publication, as appropriate, of such information and to ask for supplementary information if necessary. Seeking the co-operation of specialized agencies and relevant intergovernmental and non-governmental organizations is a well-established United Nations practice. In the preparation of his independent reports on progress made with respect to the implementation of the Standard Minimum Rules, the Secretary-General will take into account, *inter alia*, information available in the human rights organs of the United Nations, including the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Human Rights Committee functioning under the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Racial Discrimination. The implementation work under the future convention against torture could also be taken into account, as well as any information which might be gathered under the body of principles for the protection of prisoners and detainees currently under preparation in the General Assembly.

Procedure 6

As part of the information mentioned in procedure 5 above, States should provide the Secretary-General with:

(*a*) Copies or abstracts of all laws, regulations and administrative measures concerning the application of the Standard Minimum Rules to persons under detention and to places and programmes of detention;

(*b*) Any data and descriptive material on treatment programmes, personnel and the number of persons under any form of detention, and statistics, if available;

(*c*) Any other relevant information on the implementation of the Rules, as well as information on the possible difficulties in their application.

Commentary

This requirement derives from both resolution 663 C (XXIV) of the Economic and Social Council and the recommendations of the United Nations congresses on the prevention of crime and the treatment of offenders. Although the items of information suggested here are not specifically provided for, it seems feasible to collect such information in order to assist Member States in overcoming difficulties through an exchange of experience. Furthermore, the request for such information is analogous to the existing periodic reporting system on human rights originally established by the Economic and Social Council in its resolution 624 B (XXII) of 1 August 1956.

Procedure 7

The Secretary-General shall disseminate the Standard Minimum Rules and the present implementing procedures, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of the Rules and the present implementing procedures.

Commentary

The need for the widest possible dissemination of the Standard Minimum Rules is self-evident. Close co-operation with all appropriate intergovernmental and non-governmental organizations is important to secure more effective dissemination and implementation of the Rules. Therefore, the Secretariat should maintain close contacts with such organizations and should make relevant information and data available to them. It should also encourage those organizations to disseminate information about the Standard Minimum Rules and the implementing procedures.

Procedure 8

The Secretary-General shall disseminate his reports on the implementation of the Rules, including analytical summaries of the periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for the United Nations congresses on the prevention of crime and the treatment of offenders as well as the reports of the congresses, scientific publications and other relevant documentation as from time to time may be deemed necessary to further the implementation of the Standard Minimum Rules.

Commentary

This procedure reflects the present practice of disseminating such reports as part of the documentation for the United Nations bodies concerned, as United Nations publications or as articles in the *Yearbook on Human Rights* and the *International Review of Criminal Policy*, the *Crime Prevention and Criminal Justice Newsletter* and any other relevant publications.

Procedure 9

The Secretary-General shall ensure the widest possible reference to and use of the text of the Standard Minimum Rules by the United Nations in all its relevant programmes, including technical co-operation activities.

Commentary

It should be ensured that all relevant United Nations bodies include or make reference to the Rules and the implementing procedures, thus contributing to wider dissemination and increasing the awareness of specialized agencies, governmental, intergovernmental and non-governmental bodies and the general public of the Rules and of the commitment of the Economic and Social Council and the General Assembly to their implementation.

The extent to which the Rules have any practical effect on correctional administrations depends to a great extent on the measures through which they permeate local legislative and administrative practices. They should be known and understood by a wide range of professionals and non-professionals throughout the world. Therefore there is a great need for more publicity in

[11] United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

any form, which could also be attained by frequent references to the Rules, accompanied by public information campaigns.

Procedure 10

As part of its technical co-operation and development programmes the United Nations shall:

(*a*) Aid Governments, at their request, in setting up and strengthening comprehensive and humane correctional systems;

(*b*) Make available to Governments requesting them the services of experts and regional and interregional advisers on crime prevention and criminal justice;

(*c*) Promote national and regional seminars and other meetings at the professional and non-professional levels to further the dissemination of the Standard Minimum Rules and the present implementing procedures;

(*d*) Strengthen substantive support to regional research and training institutes in crime prevention and criminal justice that are associated with the United Nations.

The United Nations regional research and training institutes in crime prevention and criminal justice, in co-operation with national institutions, shall develop curricula and training materials, based on the Standard Minimum Rules and the present implementing procedures, suitable for use in criminal justice educational programmes at all levels, as well as in specialized courses on human rights and other related subjects.

Commentary

The purpose of this procedure is to ensure that the United Nations technical assistance programmes and the training activities of the United Nations regional institutes are used as indirect instruments for the application of the Standard Minimum Rules and the present implementing procedures. Apart from regular training courses for correctional personnel, training manuals and the like, particularly at the policy and decision-making level, provision should be made for expert advice on the questions submitted by Member States, including an expert referral system to interested States. This expert referral system seems particularly necessary in order to implement the Rules according to their spirit and with a view to the socio-economic structure of the countries requesting such assistance.

Procedure 11

The United Nations Committee on Crime Prevention and Control shall:

(*a*) Keep under review, from time to time, the Standard Minimum Rules, with a view to the elaboration of new rules, standards and procedures applicable to the treatment of persons deprived of liberty;

(*b*) Follow up the present implementing procedures, including periodic reporting under procedure 5 above.

Commentary

As most of the information collected in the course of periodic inquiries as well as during technical assistance missions would be brought to the attention of the Committee on Crime Prevention and Control, ensuring the effectiveness of the Rules in improving correctional practices rests with the Committee, whose recommendations would determine the future course in the application of the Rules, together with the implementing procedures. The Committee should therefore clearly define existing shortcomings in or the reasons for the lack of implementation of the Rules, *inter alia*, through contacts with the judiciary and ministries of justice of the countries concerned, with the view to suggesting appropriate remedies.

Procedure 12

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other United Nations human rights bodies, as appropriate, with recommendations relating to reports of *ad hoc* inquiry commissions, with respect to matters pertaining to the application and implementation of the Standard Minimum Rules.

Commentary

As the Committee on Crime Prevention and Control is the relevant body to review the implementation of the Standard Minimum Rules, it should also assist the above-mentioned bodies.

Procedure 13

Nothing in the present implementing procedures should be construed as precluding resort to any other means or remedies available under international law or set forth by other United Nations bodies and agencies for the redress of violations of human rights, including the procedure on consistent patterns of gross violations of human rights under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, the communication procedure under the Optional Protocol to the International Covenant on Civil and Political Rights[12] and the communication procedure under the International Convention on the Elimination of All Forms of Racial Discrimination.[13]

Commentary

Since the Standard Minimum Rules are only partly concerned with specific human rights issues, the present procedures should not exclude any avenue for redress of any violation of such rights, in accordance with existing international or regional standards and norms.

[14] Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling resolution 13 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 36/ in which States Members of the United Nations were urged to consider the establishment of procedures whereby transfers of offenders might be effected,

Recognizing the difficulties of foreigners detained in prison establishments abroad owing to such factors as differences in language, culture, customs and religion,

Considering that the aim of social resettlement of offenders could best be achieved by giving foreign prisoners the opportunity to serve their sentence within their country of nationality or residence,

Convinced that the establishment of procedures for the transfer of prisoners, on either a bilateral or a multilateral basis, would be highly desirable,

Taking note of the existing multilateral and bilateral international agreements on the transfer of foreign prisoners,

1. Adopts the Model Agreement on the Transfer of Foreign Prisoners contained in annex I to the present resolution;

2. Approves the recommendations on the treatment of foreign prisoners contained in annex II below;

3. Invites Member States, if they have not yet established treaty relations with other Member States in the matter of the transfer of foreign prisoners to their own countries, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Agreement on the Transfer of Foreign Prisoners annexed hereto;

4. Requests the Secretary-General to assist Member States, at their request, in the development of agreements on the transfer of foreign prisoners and to report regularly thereon to the Committee on Crime Prevention and Control.

36/ See Sixth United Nations Congress ..., chap. I, sect. B.

ANNEX I

Model Agreement on the Transfer of Foreign Prisoners

PREAMBLE

The _____ and the _____

Desirous of further developing mutual co-operation in the field of criminal justice,

Believing that such co-operation should further the ends of justice and the social resettlement of sentenced persons,

Considering that those objectives require that foreigners who are deprived of their liberty as the result of a criminal offence should be given the opportunity to serve their sentences within their own society,

Convinced that this aim can best be achieved by transferring foreign prisoners to their own countries,

Bearing in mind that the full respect for human rights, as laid down in universaly recognized principles, should be ensured,

Have agreed on the following:

I. GENERAL PRINCIPLES

1. The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of co-operation.

2. A transfer of prisoners should be effected on the basis of mutal respect for national sovereignty and jurisdiction.

3. A transfer of prisoners should be effected in cases where the offence giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the sending (sentencing) State and the State to which the transfer is to be effected (administering State) according to their national laws.

4. A transfer may be requested by either the sentencing or the administering State. The prisoner, as well as close relatives, may express to either State their interest in the transfer. To that end, the contracting State shall inform the prisoner of their competent authorities.

5. A transfer shall be dependent on the agreement of both the sentencing and the administering State, and should also be based on the consent of the prisoner.

6. The prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.

7. The administering State should be given the opportunity to verify the free consent of the prisoner.

8. Any regulation concerning the transfer of prisoners shall be applicable to sentences of imprisonment as well as to sentences imposing measures involving deprivation of liberty because of the commission of a criminal act.

9. In cases of the person's incapability of freely determining his will, his legal representative shall be competent to consent to the transfer.

II. OTHER REQUIREMENTS

10. A transfer shall be made only on the basis of a final and definitive sentence having executive force.

11. At the time of the request for a transfer, the prisoner shall, as a general rule, still have to serve at least six months of the sentence; a transfer should, however, be granted also in cases of indeterminate sentences.

12. The decision whether to transfer a prisoner shall be taken without any delay.

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

III. PROCEDURAL REGULATIONS

14. The competent authorities of the administering State shall: (a) continue the enforcement of the sentence immediately or through a court or administrative order; or (b) convert the sentence, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for a corresponding offence.

15. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.

16. In the case of conversion of sentence, the administering State shall be entitled to adapt the sanction as to its nature or duration according to its national law, taking into due consideration the sentence passed in the sentencing State. A sanction involving deprivation of liberty shall, however, not be converted to a pecuniary sanction.

17. The administering State shall be bound by the findings as to the facts in so far as they appear from the judgement imposed in the sentencing State. Thus the sentencing State has the sole competence for a review of the sentence.

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

20. Any costs incurred because of a transfer and related to transportation should be borne by the administering State, unless otherwise decided by both the sentencing and administering States.

IV. ENFORCEMENT AND PARDON

21. The enforcement of the sentence shall be governed by the law of the administering State.

22. Both the sentencing and the administering State shall be competent to grant pardon and amnesty.

V. FINAL CLAUSES

23. This agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

24. This agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in _____.

25. This agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

26. Either Contracting Party may denounce this agreement in writing to the _____. Denunciation shall take effect six months following the date on which the notification is received by the _____.

In witness whereof the undersigned, being duly authorized thereto by the respective Governments, have signed this treaty.

ANNEX II

Recommendations on the treatment of foreign prisoners

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.

2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.

3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.

4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison régime, including relevant rules and regulations.

5. The religious precepts and customs of foreign prisoners should be respected.

6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.

7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodation, special diets and religious representation and counselling.

8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Coss, should be given the opportunity to assist foreign prisoners.

9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

[15] 45/111. Basic Principles for the Treatment of Prisoners

The General Assembly,

Bearing in mind the long-standing concern of the United Nations for the humanization of criminal justice and the protection of human rights,

Bearing in mind also that sound policies of crime prevention and control are essential to viable planning for economic and social development,

Recognizing that the Standard Minimum Rules for the Treatment of Prisoners, 1/ adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, are of great value and influence in the development of penal policy and practice,

Considering the concern of previous United Nations congresses on the prevention of crime and the treatment of offenders, regarding the obstacles of various kinds that prevent the full implementation of the Standard Minimum Rules,

Believing that the full implementation of the Standard Minimum Rules would be facilitated by the articulation of the basic principles underlying them,

Recalling resolution 10 on the status of prisoners and resolution 17 on the

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1/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

human rights of prisoners, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 2/

Recalling also the statement submitted at the tenth session of the Committee on Crime Prevention and Control by Caritas Internationalis, the Commission of the Churches on International Affairs of the World Council of Churches, the International Association of Educators for World Peace, the International Council for Adult Education, the International Federation of Human Rights, the International Prisoners' Aid Association, the International Union of Students, the World Alliance of Young Men's Christian Associations and the World Council of Indigenous Peoples, 3/ which are non-governmental organizations in consultative status with the Economic and Social Council, category II,

Recalling further the relevant recommendations contained in the report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", 4/

Aware that the Eighth Congress coincided with International Literacy Year, proclaimed by the General Assembly in its resolution 42/104 of 7 December 1987,

Desiring to reflect the perspective noted by the Seventh Congress, namely, that the function of the criminal justice system is to contribute to safeguarding the basic values and norms of society,

Recognizing the usefulness of drafting a declaration on the human rights of prisoners,

Affirms the Basic Principles for the Treatment of Prisoners, contained in the annex to the present resolution, and requests the Secretary-General to bring it to the attention of Member States.

68th plenary meeting
14 December 1990

ANNEX

Basic Principles for the Treatment of Prisoners

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

2/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

3/ See E/AC.57/1988/NGO/3.

4/ A/CONF.144/IPM.4.

2. There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

4. The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society.

5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, 5/ and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, 6/ and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, 6/ as well as such other rights as are set out in other United Nations covenants.

6. All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

8. Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

10. With the participation and help of the community and social institution, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

11. The above Principles shall be applied impartially.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex.

[16] 45/110. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights 1/ and the International Covenant on Civil and Political Rights, 2/ as well as other international human rights instruments pertaining to the rights of persons in conflict with the law,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners, 3/ adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the important contribution of those Rules to national policies and practices,

Recalling resolution 8 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 4/ on alternatives to imprisonment,

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1/ Resolution 217 A (III).

2/ See resolution 2200 A (XXI), annex.

3/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

4/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

Recalling also resolution 16 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders 5/ on the reduction of the prison population, alternatives to imprisonment, and social integration of offenders,

Recalling further section XI of Economic and Social Council resolution 1986/10 of 21 May 1986, on alternatives to imprisonment, in which the Secretary-General was requested to prepare a report on alternatives to imprisonment for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and to study that question with a view to the formulation of basic principles in that area, with the assistance of the United Nations institutes for the prevention of crime and the treatment of offenders,

Recognizing the need to develop local, national, regional and international approaches and strategies in the field of non-institutional treatment of offenders and the need to formulate standard minimum rules, as emphasized in the section of the report of the Committee on Crime Prevention and Control on its fourth session, concerning the methods and measures likely to be most effective in preventing crime and improving the treatment of offenders, 6/

Convinced that alternatives to imprisonment can be an effective means of treating offenders within the community to the best advantage of both the offenders and society,

Aware that the restriction of liberty is justifiable only from the viewpoints of public safety, crime prevention, just retribution and deterrence and that the ultimate goal of the criminal justice system is the reintegration of the offender into society,

Emphasizing that the increasing prison population and prison overcrowding in many countries constitute factors that create difficulties for the proper implementation of the Standard Minimum Rules for the Treatment of Prisoners,

Noting with appreciation the work accomplished by the Committee on Crime Prevention and Control, as well as by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", and by the regional preparatory meetings for the Eighth Congress,

Expressing its gratitude to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders for the work accomplished in

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5/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

6/ E/CN.5/536, annex IV.

the development of standard minimum rules for non-custodial measures, as well as to the various intergovernmental and non-governmental organizations involved, in particular, the International Penal and Penitentiary Foundation for its contribution to the preparatory work,

1. Adopts the United Nations Standard Minimum Rules for Non-custodial Measures, contained in the annex to the present resolution, and approves the recommendation of the Committee on Crime Prevention and Control that the Rules should be known as "the Tokyo Rules";

2. Recommends the Tokyo Rules for implementation at the national, regional and interregional levels, taking into account the political, economic, social and cultural circumstances and traditions of countries;

3. Calls upon Member States to apply the Tokyo Rules in their policies and practice;

4. Invites Member States to bring the Tokyo Rules to the attention of, in particular, law enforcement officials, prosecutors, judges, probation officers, lawyers, victims, offenders, social services and non-governmental organizations involved in the application of non-custodial measures, as well as members of the executive, the legislature and the general public;

5. Requests Member States to report on the implementation of the Tokyo Rules every five years, beginning in 1994;

6. Urges the regional commissions, the United Nations institutes for the prevention of crime and the treatment of offenders, specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to be actively involved in the implementation of the Tokyo Rules;

7. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the implementation of the present resolution;

8. Requests the Secretary-General to take the necessary steps to prepare a commentary to the Tokyo Rules, which is to be submitted to the Committee on Crime Prevention and Control at its twelfth session for approval and further dissemination, paying special attention to the legal safeguards, the implementation of the Rules and the development of similar guidelines at the regional level;

9. Invites the United Nations institutes for the prevention of crime and the treatment of offenders to assist the Secretary-General in that task;

10. Urges intergovernmental and non-governmental organizations and other entities concerned to remain actively involved in this initiative;

11. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Tokyo Rules, including their transmission

to Governments, interested intergovernmental and non-governmental organizations and other parties concerned;

12. Also requests the Secretary-General to prepare every five years, beginning in 1994, a report on the implementation of the Tokyo Rules for submission to the Committee on Crime Prevention and Control;

13. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Tokyo Rules and to report regularly thereon to the Committee on Crime Prevention and Control;

14. Requests that the present resolution and the text of the annex be brought to the attention of all United Nations bodies concerned and be included in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments.

68th plenary meeting
14 December 1990

ANNEX

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

I. GENERAL PRINCIPLES

1. Fundamental aims

1.1 The present Standard Minimum Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

1.2 The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.

1.3 The Rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

1.4 When implementing the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and crime prevention.

1.5 Member States shall develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

2. The scope of non-custodial measures

2.1 The relevant provisions of the present Rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the Rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

2.2 The Rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

2.3 In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

2.4 The development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated.

2.5 Consideration shall be given to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law.

2.6 Non-custodial measures should be used in accordance with the principle of minimum intervention.

2.7 The use of non-custodial measures should be part of the movement towards depenalization and decriminalization instead of interfering with or delaying efforts in that direction.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be prescribed by law.

3.2 The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims.

3.3 Discretion by the judicial or other competent independent authority shall be exercised at all stages of the proceedings by ensuring full accountability and only in accordance with the rule of law.

3.4 Non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent.

3.5 Decisions on the imposition of non-custodial measures shall be subject to review by a judicial or other competent independent authority, upon application by the offender.

3.6 The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of non-custodial measures.

3.7 Appropriate machinery shall be provided for the recourse and, if possible, redress of any grievance related to non-compliance with internationally recognized human rights.

3.8 Non-custodial measures shall not involve medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender.

3.9 The dignity of the offender subject to non-custodial measures shall be protected at all times.

3.10 In the implementation of non-custodial measures, the offender's rights shall not be restricted further than was authorized by the competent authority that rendered the original decision.

3.11 In the application of non-custodial measures, the offender's right to privacy shall be respected, as shall be the right to privacy of the offender's family.

3.12 The offender's personal records shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the offender's case or to other duly authorized persons.

4. Saving clause

4.1 Nothing in the present Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, 3/ the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 7/ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 8/ or any other human rights instruments and standards recognized by the international community and relating to the treatment of offenders and the protection of their basic human rights.

7/ Resolution 40/33, annex.

8/ Resolution 43/173, annex.

II. PRE-TRIAL STAGE

5. Pre-trial dispositions

5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

6. Avoidance of pre-trial detention

6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.

6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings.

6.3 The offender shall have the right to appeal to a judicial or other competent independent authority in cases where pre-trial detention is employed.

III. TRIAL AND SENTENCING STAGE

7. Social inquiry reports

7.1 If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified.

8. Sentencing dispositions

8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate.

8.2 Sentencing authorities may dispose of cases in the following ways:

(a) Verbal sanctions, such as admonition, reprimand and warning;

(b) Conditional discharge;

(c) Status penalties;

(d) Economic sanctions and monetary penalties, such as fines and day-fines;

(e) Confiscation or an expropriation order;

(f) Restitution to the victim or a compensation order;

(g) Suspended or deferred sentence;

(h) Probation and judicial supervision;

(i) A community service order;

(j) Referral to an attendance centre;

(k) House arrest;

(l) Any other mode of non-institutional treatment;

(m) Some combination of the measures listed above.

IV. POST-SENTENCING STAGE

9. Post-sentencing dispositions

9.1 The competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society.

9.2 Post-sentencing dispositions may include:

(a) Furlough and half-way houses;

(b) Work or education release;

(c) Various forms of parole;

(d) Remission;

(e) Pardon.

9.3 The decision on post-sentencing dispositions, except in the case of pardon, shall be subject to review by a judicial or other competent independent authority, upon application of the offender.

9.4 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

10. Supervision

10.1 The purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.

10.2 If a non-custodial measure entails supervision, the latter shall be carried out by a competent authority under the specific conditions prescribed by law.

10.3 Within the framework of a given non-custodial measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending. Supervision and treatment should be periodically reviewed and adjusted as necessary.

10.4 Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

11. Duration

11.1 The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it.

12. Conditions

12.1 If the competent authority shall determine the conditions to be observed by the offender, it should take into account both the needs of society and the needs and rights of the offender and the victim.

12.2 The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender's obligations and rights.

12.4 The conditions may be modified by the competent authority under the established statutory provisions, in accordance with the progress made by the offender.

13. Treatment process

13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.

13.2 Treatment should be conducted by professionals who have suitable training and practical experience.

13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence.

13.4 The competent authority may involve the community and social support systems in the application of non-custodial measures.

13.5 Case-load assignments shall be maintained as far as practicable at a manageable level to ensure the effective implementation of treatment programmes.

13.6 For each offender, a case record shall be established and maintained by the competent authority.

14. Discipline and breach of conditions

14.1 A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure.

14.2 The modification or revocation of the non-custodial measure shall be made by the competent authority; this shall be done only after a careful examination of the facts adduced by both the supervising officer and the offender.

14.3 The failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.

14.4 In the event of a modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment may be imposed only in the absence of other suitable alternatives.

14.5 The power to arrest and detain the offender under supervision in cases where there is a breach of the conditions shall be prescribed by law.

14.6 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a judicial or other competent independent authority.

VI. STAFF

15. Recruitment

15.1 There shall be no discrimination in the recruitment of staff on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status. The policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the offenders to be supervised.

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

15.3 To secure and retain qualified professional staff, appropriate service status, adequate salary and benefits commensurate with the nature of the work should be ensured and ample opportunities should be provided for professional growth and career development.

16. Staff training

16.1 The objective of training shall be to make clear to staff their responsibilities with regard to rehabilitating the offender, ensuring the offender's rights and protecting society. Training should also give staff an understanding of the need to co-operate in and co-ordinate activities with the agencies concerned.

16.2 Before entering duty, staff shall be given training that includes instruction on the nature of non-custodial measures, the purposes of supervision and the various modalities of the application of non-custodial measures.

16.3 After entering on duty, staff shall maintain and improve their knowledge and professional capacity by attending in-service training and refresher courses. Adequate facilities shall be made available for that purpose.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

17. Public participation

17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18. Public understanding and co-operation

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures.

19. Volunteers

19.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved. They shall be properly trained for the specific responsibilities to be discharged by them and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

19.2 Volunteers should encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance according to their capacity and the offenders' needs.

19.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for authorized expenditures incurred in the course of their work. Public recognition should be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

20. Research and planning

20.1 As an essential aspect of the planning process, efforts should be made to involve both public and private bodies in the organization and promotion of research on the non-custodial treatment of offenders.

20.2 Research on the problems that confront clients, practitioners, the community and policy makers should be carried out on a regular basis.

20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.

21. Policy formulation and programme development

21.1 Programmes for non-custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.

21.2 Regular evaluations should be carried out with a view to implementing non-custodial measures more effectively.

21.3 Periodic reviews should be conducted to assess the objectives, functioning and effectiveness of non-custodial measures.

22. Linkages with relevant agencies and activities

22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.

23. International co-operation

23.1 Efforts shall be made to promote scientific co-operation between countries in the field of non-institutional treatment. Research, training, technical assistance and the exchange of information among Member States on non-custodial measures should be strengthened, through the United Nations institutes for the prevention of crime and the treatment of offenders, in close collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Secretariat.

23.2 Comparative studies and the harmonization of legislative provisions should be furthered to expand the range of non-institutional options and facilitate their application across national frontiers, in accordance with the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released. 9/

[17] 45/119. Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

The General Assembly,

Bearing in mind the Milan Plan of Action, 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 13 of the Seventh Congress, 3/ on the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of formulating a model treaty in this area,

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of a model treaty on the transfer of supervision of offenders conditionally sentenced or conditionally released, in particular the International Expert Meeting on the United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic V, "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting" 4/ and the regional preparatory meetings for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of offenders conditionally sentenced or conditionally released will greatly contribute to the development of more effective international co-operation in penal matters,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

1. Adopts the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, contained in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of the transfer of supervision of offenders conditionally sentenced or conditionally released, or if they wish to revise existing treaty relations, to take into account the Model Treaty whenever doing so;

3. Urges all Member States to strengthen international co-operation in criminal justice;

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements on the transfer of supervision of offenders conditionally sentenced or conditionally released;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

4/ A/CONF.144/IPM.5 and Corr.1.

5/ Resolution 217 A (III).

6/ See resolution 2200 A (XXI), annex.

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on the transfer of supervision of offenders conditionally sentenced or conditionally released and to report regularly thereon to the Committee.

68th plenary meeting
14 December 1990

ANNEX

Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

The _____ and the _____

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of sentenced persons and the interests of the victims of crime,

Bearing in mind that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

Have agreed as follows:

ARTICLE 1

Scope of application

1. The present Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

(a) Placed on probation without sentence having been pronounced;

(b) Given a suspended sentence involving deprivation of liberty;

(c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision (transfer of supervision).

ARTICLE 2

Channels of communications

A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

ARTICLE 3

Required documents

1. A request for the transfer of supervision shall contain all necessary information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in article 1 of the present Treaty and a certificate that this decision is final.

2. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the documents in support thereof, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication. 7/

7/ The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

ARTICLE 5

Decision on the request

The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

ARTICLE 6

Dual criminality 8/

A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

ARTICLE 7

Grounds for refusal 9/

If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

(a) The sentenced person is not an ordinary resident in the administering State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

(d) The offence is regarded by the administering State as being of a political nature;

(e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

8/ When negotiating on the basis of the present Model Treaty, States may wish to waive the requirement of dual criminality.

9/ When negotiating on the basis of the present Model Treaty, States may wish to add other grounds for refusal or conditions to this list, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

ARTICLE 8

The position of the sentenced person

Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under the present Treaty.

ARTICLE 9

The rights of the victim

The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

ARTICLE 10

The effects of the transfer of supervision on the sentencing State

The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

ARTICLE 11

The effects of the transfer of supervision on the administering State

1. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

2. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

ARTICLE 12

Review, pardon and amnesty

1. The sentencing State alone shall have the right to decide on any application to reopen the case.

2. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

ARTICLE 13

Information

1. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

2. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

ARTICLE 14

Costs

Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

ARTICLE 15

Final provisions

1. The present Treaty is subject to [ratification, acceptance or approval]. The instruments of [ratification, acceptance or approval] shall be exchanged as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day after the day on which the instruments of [ratification, acceptance or approval] are exchanged.

3. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

4. Either Contracting Party may denounce the present Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

_____ _____

DONE at _____ on _____ in the _____
and _____ languages, [both/all] texts being equally authentic.

D. THE JUDICIARY AND LAW ENFORCEMENT

Introduction

The proper functioning of the judiciary and of law enforcement services is essential not only for an effective criminal justice policy but also for the protection of the fundamental human rights of individuals. The first United Nations instrument in this field was the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979. The development of this instrument was initiated by the General Assembly in its resolution 3218 (XXIX) of 6 November 1974, which requested the Fifth Congress to give urgent attention to the elaboration of an international code of ethics for police and related law enforcement agencies. The Congress, after reviewing a draft international code of police ethics prepared by a working group of police experts, 1/ recommended it for review to the General Assembly, which, by resolution 3453 (XXX) of 9 December 1975, requested the Committee on Crime Prevention and Control to finalize it. The Committee considered this matter in depth and recommended a revised draft code, 2/ which was subsequently adopted by the Assembly, after two years of review by an open-ended working group of the Third Committee.

The resolution adopting the Code states that the nature of the functions of law enforcement in the defence of public order, and the manner in which those functions were exercised, had a direct impact on the quality of life of individuals as well as of society as a whole. While the Assembly stressed the important task that law enforcement officials were performing, it also noted the potential for abuse that the discharge of their duties entailed. The Code's underlying premise is that those who exercise police power are to respect and to protect human dignity and to uphold the human rights of all persons. In particular, the Code prohibits torture or any act of corruption, states that force may be used only when strictly necessary, sets forth the responsibility to keep personal information confidential, and calls for the full protection of the health of persons in custody.

Upon consideration by the Sixth and Seventh Congresses of measures to promote the implementation and dissemination of the Code, the Committee on Crime Prevention and Control elaborated draft Guidelines for the Effective Implementation of the Code, 3/ drawing also on proposals made by the Interregional Preparatory Meeting on topic V for the Seventh Congress. 4/ The Guidelines were adopted by the Economic and Social Council in its resolution 1989/61 of 24 May 1989.

So far, the Secretariat has prepared two reports on progress made with respect to the implementation of the Code, which have been submitted for consideration to the Seventh Congress and to the Committee on Crime Prevention and Control. 5/

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth Congress and welcomed by the General Assembly in its resolution 45/166 of 18 December 1990, were developed at an Interregional Preparatory Meeting for the Eighth Congress 6/ and the Committee on Crime Prevention and Control 7/ as well as the International Expert Meeting on United Nations and Law Enforcement, held at Baden, Austria. 8/

The Basic Principles were formulated in order to provide more detailed rules on the use of force and firearms by law enforcement officials, in accordance with article 3 of the Code of Conduct for Law Enforcement Officials. They establish special guidelines focused on the use of firearms and then lay out standards for policing unlawful assemblies and persons in custody or detention. Special consideration is further given to the use of force and firearms as a last resort; ethical issues; new technologies for developing non-lethal incapacitating weapons and ammunition for appropiate use; responses by law enforcement officials in proportion to the seriousness of the offence and the legitimate objective to be achieved, qualification and training in the use of force and firearms by law enforcement officials; stressing counselling for law enforcement officials required to use force or firearms in the course of their duties; and effective reporting and review procedures.

The Eighth Congress recommended the Principles for national, regional and international action and implementation and called upon the Committee on Crime Prevention and Control to consider their effective implementation as a matter of priority. The Congress requested the Secretary-General to take appropriate steps to ensure the widest possible dissemination of the Principles and invited Member States to inform the Secretary-General every five years, beginning in 1992, on the progress achieved in the implementation of the Principles.

The Basic Principles on the Independence of the Judiciary were adopted by the Seventh Congress 9/ and welcomed by the General Assembly in its resolution 40/146 of 13 December 1985. The Sixth Congress, in its resolution 16, had called upon the Committee on Crime Prevention and Control to elaborate guidelines on the independence of judges. Such guidelines were elaborated by the Committee at its eighth session 10/ and reviewed by the Interregional Preparatory Meeting for the Seventh Congress held at Varenna, Italy, 11/ with support of various intergovernmental and non-governmental organizations, especially the International Association of Judges and the International Commission of Jurists. The Seventh Congress, after extensive discussion, decided to adopt the instrument as the Basic Principles on the Independence of the Judiciary.

The Principles emphasize that the independence of the judiciary should be guaranteed by the State and enshrined in the constitution or law of the country. They point out, inter alia, that justice requires that everyone be entitled to a fair and public hearing by a competent, independent and impartial tribunal, in accordance with the principles proclaimed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other United Nations instruments. In order to secure the independence of the judiciary, the Basic Principles set forth criteria concerning the status of judges, such as their qualifications, selection, training, conditions of service and tenure, and professional secrecy and immunity. The Principles also state that judges shall enjoy freedom of expression and association, and shall be free from any undue disciplinary procedures.

On the recommendation of the Committee on Crime Prevention and Control, the Economic and Social Council adopted the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary by its resolution 1989/60 of 24 May 1989. In pursuance of Economic and Social Council resolution 1986/10 (V) of 21 May 1986, the Committee, at its tenth session, considered such procedures, which had been formulated by the International Expert Meeting on the United Nations and Law Enforcement, held at Baden,

Austria, in 1987, on the basis of previous work accomplished by the United Nations Interregional Crime and Justice Research Institute (UNICRI), in cooperation with various non-governmental organizations. 12/

The Procedures call upon States to adopt and implement the Basic Principles in accordance with their constitutional process and domestic practice. They also ask States to widely publicize the Basic Principles, in at least the main or official language(s) of the country and to make the text available to all members of the judiciary. The Procedures invite Governments to hold national and regional seminars and courses on the judiciary and its independence. Member States are invited to inform the Secretary-General every five years, beginning in 1988, on the progress achieved in the implementation of the Basic Principles.

The Commission on Human Rights, welcoming the close cooperation that had been established between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, 13/ invited Governments to take into account, in implementing the Basic Principles, the principles set forth in the draft Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers, elaborated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 14/ On the basis of information provided by Member States, the Secretariat prepared the first report on the implementation which was submitted to the Eighth Congress. 15/

The Basic Principles on the Role of Lawyers were also adopted by the Eighth Congress and welcomed by the General Assembly in its resolution 45/166 of 18 December 1990. They are based on the preparatory work of the Committee on Crime Prevention and Control, in pursuance of Seventh Congress resolution No. 18. 16/ In accordance with resolution 1989/32 of 6 March 1989 of the Commission on Human Rights, due account had been taken in the elaboration of the Principles of the draft Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers and studies undertaken by its Sub-Commission on Prevention of Discrimination and Protection of Minorities. 17/ The International Commission of Jurists and the International Bar Association had also played an important role in the elaboration of the Principles.

The Congress recommended the Principles for national, regional and international action and implementation, and invited Member States to take them into account and to respect them within the framework of their national legislation and practice. Member States were also invited to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Principles, including their dissemination, their incorporation into domestic legislation, practice, procedures and policies, the problems faced in their implementation at the national level and assistance that might be needed from the international community.

The Basic Principles have a limited but well-focused approach; they contain pragmatic suggestions for the day-to-day operation of the legal profession, with emphasis on criminal justice. Special attention is given to the following issues: effective access to legal assistance for all groups of society; the right of the accused to counsel and to seek legal assistance of their own choice; education of the public on the role of lawyers in protecting fundamental rights and liberties, training and qualifications of lawyers, and the prevention of discrimination with respect to entry into the legal profession; the role of Governments, bar associations and other

professional associations of lawyers; the right of lawyers to untertake the representation of clients or cases without fear of repression or persecution; and the respect by Governments for the confidentiality of communications between lawyers and their clients, including the right to refuse to give testimony on such matters. Furthermore the Principles provide that lawyers, like other citizens, are entitled to freedom of expression, belief, association and assembly.

It may be recalled in this context that a report was submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by one of its members, Mr. Louis Joinet, France, which recommended means by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers. 18/ The General Assembly, in its resolution 45/166 of 18 December 1990, welcomed the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of a report on strengthening the independence of the judiciary and the protection of practising lawyers as described in Sub-Commission resolution 1990/23 of 30 August 1990.

The Guidelines on the Role of Prosecutors also adopted by the Eighth Congress and welcomed by the General Assembly in its resolution 45/166 of 18 December 1990, were based on the preparatory work of the Committee on Crime Prevention and Control, the regional preparatory meetings for the Eighth Congress, regional and interregional institutes for the prevention of crime and the treatment of offenders as well as various intergovernmental and non-governmental organizations, in pursuance of Seventh Congress resolution 7. 19/

Recognizing that prosecutors are essential agents of the administration of criminal justice, the Guidelines are designed to secure and promote the effectiveness, impartiality and fairness of prosecutors in criminal proceedings. Prosecutors shall be made aware of the ideals and ethical duties of their office, the constitutional and statutory protection of the rights of the suspect, and the human rights and fundamental freedoms recognized by national and international law.

The Guidelines pay special attention to the requirements of fairness, openness, accountability and efficiency in matters relating to prosecutions; the qualifications, selection and training of prosecutors; their status and conditions of service; their role in criminal proceedings; their relations with other government agencies or institutions; and disciplinary proceedings. Attention is also paid to the discretionary function, which is vested in prosecutors in certain jurisdictions. Member States are invited to take into account and respect the Guidelines within the framework of their national legislation and practice. The Secretary-General is requested to prepare every five years, beginning in 1993, a report on the implementation of the Guidelines.

Notes

1/ A/CONF.56/5.

2/ Committee on Crime Prevention and Control, Report on the fourth session (E/CN.5/536).

3/ Committee on Crime Prevention and Control, Report on the tenth session (E/AC.57/1988/17).

4/ A/CONF.121/IPM.3.

5/ The first report was submitted to the Seventh Congress in 1985 (A/CONF.121/12) and the second to the Committee on Crime Prevention and Control at its tenth session in 1988 (E/AC.57/1988/8 and Add.1/Rev.1).

6/ A/CONF.144/IPM.5.

7/ E/AC.57/1988/8 and Corr.1, annex I.

8/ Report of the International Expert Meeting on United Nations and Law Enforcement: the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987.

9/ Report of the Seventh Congress (A/CONF.121/22/Rev.1).

10/ Committee on Crime Prevention and Control, Report on the eighth session (E/AC.57/1984/18).

11/ A/CONF.121/IPM.3.

12/ E/AC.57/1988/4, annex. (See also footnotes 3 and 8.)

13/ For the coordination of the activities of the Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs, see Brody, "The Independence of Judges and Lawyers: A Compilation of International Standards", 25-26 CIJL Bulletin 7.

14/ E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1. This draft declaration was formulated with the assistance of various meetings organized by relevant non-governmental organizations, especially two seminars in 1981 and 1982 hosted by the International Institute of Higher Studies in Criminal Sciences in Siracusa and Noto, Italy, organized by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists and the International Association of Penal Law.

15/ A/CONF.144/19.

16/ For the preparation of the draft, see footnotes 6 and 8 and E/AC.57/1988/15.

17/ For the report of the Special Rapporteur, see E/CN.4/Sub.2/L.731, E/CN.4/Sub.2/481 and Add.1, E/CN.4/Sub.2/1982/23 and E/CN.4/Sub.2/1985/18 and Add.1-6. (See also footnotes 14, 15 and 16.)

18/ E/CN.4/Sub.2/1990/35.

[18] **34/169. Code of Conduct for Law Enforcement Officials**

The General Assembly,

Considering that the purposes proclaimed in the Charter of the United Nations include the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling, in particular, the Universal Declaration of Human Rights[108] and the International Covenants on Human Rights,[109]

Recalling also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Mindful that the nature of the functions of law enforcement in the defence of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as of society as a whole,

Conscious of the important task which law enforcement officials are performing diligently and with dignity, in compliance with the principles of human rights,

Aware, nevertheless, of the potential for abuse which the exercise of such duties entails,

Recognizing that the establishment of a code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests,

Aware that there are additional important principles and prerequisites for the humane performance of law enforcement functions, namely:

(*a*) That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole,

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[108] Resolution 217 A (III).
[109] Resolution 2200 A (XXI), annex.

(*b*) That the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws,

(*c*) That every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system,

(*d*) That every law enforcement agency, in fulfilment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency,

(*e*) That standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement official,

Adopts the Code of Conduct for Law Enforcement Officials set forth in the annex to the present resolution and decides to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

106th plenary meeting
17 December 1979

ANNEX

Code of Conduct for Law Enforcement Officials

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:[110]

(*a*) The term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(*b*) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(*c*) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(*d*) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(*a*) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(*b*) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(*a*) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(*b*) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(*c*) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(*a*) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture

[110] The commentaries provide information to facilitate the use of the Code within the framework of national legislation or practice. In addition, national or regional commentaries could identify specific features of the legal systems and practices of different States or regional intergovernmental organizations which would promote the application of the Code.

and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

> "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(*b*) The Declaration defines torture as follows:

> "... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."[111]

(*c*) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(*a*) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(*b*) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(*c*) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(*a*) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

(*b*) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connexion with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(*c*) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(*a*) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(*b*) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(*c*) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(*d*) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (*c*) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(*e*) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

[111] *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

19] **1989/61. Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials**

The Economic and Social Council,

Recalling General Assembly resolution 34/169 of 17 December 1979, by which the Assembly adopted the Code of Conduct for Law Enforcement Officials set forth in the annex to the resolution,

Recalling also resolution 14 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[90] in which the Congress, *inter alia*, called attention to the guidelines for the more effective implementation of the Code formulated at the Interregional Preparatory Meeting for the Seventh Congress on the topic "Formulation and application of United Nations standards and norms in criminal justice", held at Varenna, Italy, in 1984,

Bearing in mind its resolution 1986/10, section IX, of 21 May 1986, in which it requested the Committee on Crime Prevention and Control, at its tenth session, to consider measures for the more effective implementation of the Code, in the light of the guidance provided by the Seventh Congress,

Having considered the report of the Committee on Crime Prevention and Control on its tenth session,[96]

Guided by the desire to promote the implementation of the Code,

1. *Adopts* the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution;

2. *Invites* the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings to explore ways and means of stimulating adherence to the Guidelines.

15th plenary meeting
24 May 1989

ANNEX

Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials

I. APPLICATION OF THE CODE

A. *General principles*

1. The principles embodied in the Code shall be reflected in national legislation and practice.

2. In order to achieve the aims and objectives set out in article 1 of the Code and its Commentary, the definition of "law enforcement officials" shall be given the widest possible interpretation.

3. The Code shall be made applicable to all law enforcement officials, regardless of their jurisdiction.

4. Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code as well as other basic texts on the issue of human rights.

B. *Specific issues*

1. *Selection, education and training.* The selection, education and training of law enforcement officials shall be given prime importance. Governments shall also promote education and training through a fruitful exchange of ideas at the regional and interregional levels.

2. *Salary and working conditions.* All law enforcement officials shall be adequately remunerated and shall be provided with appropriate working conditions.

3. *Discipline and supervision.* Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

4. *Complaints by members of the public.* Particular provisions shall be made, within the mechanisms mentioned under paragraph 3 above, for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public.

II. IMPLEMENTATION OF THE CODE

A. *At the national level*

1. The Code shall be made available to all law enforcement officials and competent authorities in their own language.

2. Governments shall disseminate the Code and all domestic laws giving effect to it so as to ensure that the principles and rights contained therein become known to the public in general.

3. In considering measures to promote the application of the Code, Governments shall organize symposia on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.

B. *At the international level*

1. Governments shall inform the Secretary-General at appropriate intervals of at least five years on the extent of the implementation of the Code.

2. The Secretary-General shall prepare periodic reports on progress made with respect to the implementation of the Code, drawing also on observations and on the co-operation of specialized agencies and relevant intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council.

3. As part of the reports mentioned above, Governments shall provide to the Secretary-General copies of abstracts of laws, regulations and administrative measures concerning the application of the Code, any other relevant information on its implementation, as well as information on possible difficulties in its application.

4. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

5. The Secretary-General shall make available the Code and the present guidelines to all States and intergovernmental and non-governmental organizations concerned, in all official languages of the United Nations.

6. The United Nations, as part of its advisory services and technical co-operation and development programmes, shall:

(*a*) Make available to Governments requesting them the services of experts and regional and interregional advisers to assist in implementing the provisions of the Code;

(*b*) Promote national and regional training seminars and other meetings on the Code and on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.

7. The United Nations regional institutes shall be encouraged to organize seminars and training courses on the Code and to carry out research on the extent to which the Code is implemented in the countries of the region as well as the difficulties encountered.

[20] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 130/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 14 of the Seventh Congress, 131/ in which the Committee on Crime Prevention and Control was called upon to consider measures for the more effective implementation of the Code of Conduct for Law Enforcement Officials,

Taking note with appreciation of the work accomplished, in pursuance of resolution 14 of the Seventh Congress, 131/ by the Committee, by the interregional preparatory meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on United Nations norms and guidelines in crime prevention and criminal justice and implementation and priorities for further standard setting, 132/ and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials contained in the annex to the present resolution;

2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;

4. Also invites Member States to bring the Basic Principles to the attention of law enforcement officials and other members of the executive branch of government, judges, lawyers, the legislature and the public in general;

5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into domestic legislation, practice, procedures and policies, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

130/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

131/ Ibid., sect. E.

132/ A/CONF.144/IPM.5.

6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of law enforcement and the need for restraints on the use of force and firearms by law enforcement officials;

7. Urges the regional commissions, the regional and interregional institutes on crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;

8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of the present resolution;

9. Requests the Secretary-General:

(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all United Nations bodies concerned, and to provide for the widest possible dissemination of the Basic Principles;

(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments;

(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

(d) To report to the Committee, at its twelfth session, on the steps taken to implement the Basic Principles;

10. Requests the Ninth Congress and its preparatory meetings to consider the progress achieved in the implementation of the Basic Principles.

ANNEX

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Whereas the work of law enforcement officials 133/ is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights 134/ and reaffirmed in the International Covenant on Civil and Political Rights, 135/

Whereas the Standard Minimum Rules for the Treatment of Prisoners 136/ provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials 136/ provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials, 137/

Whereas the Seventh Congress, in its resolution 14, 138/ inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

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133/ In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

134/ General Assembly resolution 217 A (III).

135/ General Assembly resolution 2200 A (XXI), annex.

136/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

137/ A/CONF.121/IPM.3, para. 34.

138/ See Seventh United Nations Congress ..., chap. I, sect. E.

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

[21] Basic Principles on the Independence of the Judiciary

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Caracas Declaration, 37/ unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 35/171 of 15 December 1980,

Recalling also resolution 16 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 38/ in which the Congress called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges,

Recalling further Economic and Social Council decision 1984/153 of 25 May 1984, in which the Council invited the interregional preparatory meeting on the formulation and application of United Nations standards and norms in criminal justice to finalize the draft guidelines on the independence of the judiciary, formulated by the Committee on Crime Prevention and control at its eighth session and invited the Secretary-General to submit the final text to the Seventh Congress for adoption,

Taking note with appreciation of the work accomplished in pursuance of the mandate cited above by the Committee on Crime Prevention and Control and by the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, from 24 to 28 September 1984,

Further taking note with appreciation of the extensive discussions during the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders with respect to the draft guidelines on the independence of the judiciary, 39/ which led to the formulation of the Basic Principles on the Independence of the Judiciary,

1. Adopts the Basic Principles on the Independence of the Judiciary contained in the annex to the present resolution;

2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Governments to take into account within the framework of their national legislation and practice and to respect the Basic Principles;

4. Also invites Member States to bring the Basic Principles to the attention of judges, lawyers, members of the executive and the legislature and the public in general;

37/ Ibid., sect. A.

38/ Ibid., sect. B.

39/ A/CONF.121/9 and Corr.1.

5. Urges the regional commissions, the regional and interregional institutes in the field of the prevention of crime and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles;

6. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the effective implementation of the present resolution;

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Basic Principles;

8. Also requests the Secretary-General to prepare a report on the implementation of the Basic Principles;

9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Basic Principles and to report thereon regularly to the Committee on Crime Prevention and Control;

10. Requests that the present resolution be brought to the attention of all United Nations bodies concerned.

ANNEX

Basic Principles on the Independence of the Judiciary

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

[22] **1989/60. Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary**

The Economic and Social Council,

Recalling the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders[95] and endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Recalling also that the Congress, in its resolution on the Basic Principles, recommended them for national, regional and interregional action and called upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the effective implementation of that resolution,

Bearing in mind its resolution 1986/10, section V, of 21 May 1986, by which Member States were invited to inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community,

Also bearing in mind General Assembly resolution 41/149 of 4 December 1986, in which the recommendations made by the Council were welcomed,

Having considered the report of the Committee on Crime Prevention and Control on its tenth session,[96]

Guided by the desire to promote the independence and impartiality of the judiciary,

1. *Adopts* the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution;

2. *Invites* the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory body to accord priority to ways and means of stimulating adherence to the Procedures.

15th plenary meeting
24 May 1989

ANNEX

Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary

Procedure 1

All States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice.

Procedure 2

No judge shall be appointed or elected for purposes, or be required to perform services, that are inconsistent with the Basic Principles. No judge shall accept judicial office on the basis of an appointment or election, or perform services, that are inconsistent with the Basic Principles.

Procedure 3

The Basic Principles shall apply to all judges, including, as appropriate, lay judges, where they exist.

[95] See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2.

[96] *Official Records of the Economic and Social Council, 1988, Supplement No. 10* (E/1988/20).

Procedure 4

States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of the respective State. Judges, lawyers, members of the executive, the legislature, and the public in general, shall be informed in the most appropriate manner of the content and the importance of the Basic Principles so that they may promote their application within the framework of the justice system. In particular, States shall make the text of the Basic Principles available to all members of the judiciary.

Procedure 5

In implementing principles 7 and 11 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to case-loads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments.

Procedure 6

States shall promote or encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its independence.

Procedure 7

In accordance with Economic and Social Council resolution 1986/10, section V, Member States shall inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced and difficulties or obstacles encountered in their implementation at the national level and the assistance that might be needed from the international community.

Procedure 8

The Secretary-General shall prepare independent quinquennial reports to the Committee on Crime Prevention and Control on progress made with respect to the implementation of the Basic Principles, on the basis of the information received from Governments under procedure 7, as well as other information available within the United Nations system, including information on the technical co-operation and training provided by institutes, experts and regional and interregional advisers. In the preparation of those reports the Secretary-General shall also enlist the co-operation of specialized agencies and the relevant intergovernmental organizations and non-governmental organizations, in particular professional associations of judges and lawyers, in consultative status with the Economic and Social Council, and take into account the information provided by such agencies and organizations.

Procedure 9

The Secretary-General shall disseminate the Basic Principles, the present implementing procedures and the periodic reports on their implementation referred to in procedures 7 and 8, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of those documents.

Procedure 10

The Secretary-General shall ensure the widest possible reference to and use of the text of the Basic Principles and the present implementing procedures by the United Nations in all its relevant programmes and the inclusion of the Basic Principles as soon as possible in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*, in accordance with Economic and Social Council resolution 1986/10, section V.

Procedure 11

As part of its technical co-operation programme, the United Nations, in particular the Department of Technical Co-operation for Development of the Secretariat and the United Nations Development Programme, shall:

(*a*) Assist Governments, at their request, in setting up and strengthening independent and effective judicial systems;

(*b*) Make available to Governments requesting them, the services of experts and regional and interregional advisers on judicial matters to assist in implementing the Basic Principles;

(*c*) Enhance research concerning effective measures for implementing the Basic Principles, with emphasis on new developments in that area;

(*d*) Promote national and regional seminars, as well as other meetings at the professional and non-professional levels, on the role of the judiciary in society, the necessity for its independence, and the importance of implementing the Basic Principles to further those goals;

(*e*) Strengthen substantive support for the United Nations regional and interregional research and training institutes for crime prevention and criminal justice, as well as other entities within the United Nations system concerned with implementing the Basic Principles.

Procedure 12

The United Nations regional and interregional research and training institutes for crime prevention and criminal justice as well as other concerned entities within the United Nations system shall assist in the implementation process. They shall pay special attention to ways and means of enhancing the application of the Basic Principles in their research and training programmes, and to providing technical assistance upon the request of Member States. For this purpose, the United Nations institutes, in co-operation with national institutions and intergovernmental and non-governmental organizations concerned, shall develop curricula and training materials based on the Basic Principles and the present implementing procedures, which are suitable for use in legal education programmes at all levels as well as in specialized courses on human rights and related subjects.

Procedure 13

The regional commissions, the specialized agencies and other entities within the United Nations system as well as other concerned intergovernmental organizations shall become actively involved in the implementation process. They shall inform the Secretary-General of the efforts made to disseminate the Basic Principles, the measures taken to give effect to them and any obstacles and shortcomings encountered. The Secretary-General shall also take steps to ensure that non-governmental organizations in consultative status with the Economic and Social Council become actively involved in the implementation process and the related reporting procedures.

Procedure 14

The Committee on Crime Prevention and Control shall assist the General Assembly and the Economic and Social Council in following up the present implementing procedures, including periodic reporting under procedures 7 and 8 above. To this end, the Committee shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for them. The Committee shall make specific recommendations, as appropriate, to the Assembly and the Council and any other relevant United Nations human rights bodies on further action required for the effective implementation of the Basic Principles.

Procedure 15

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other relevant United Nations human rights bodies, as appropriate, with recommendations relating to reports of *ad hoc* inquiry commissions or bodies, with respect to matters pertaining to the application and implementation of the Basic Principles.

[23] Basic Principles on the Role of Lawyers

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 139/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 18 of the Seventh Congress, 140/ in which the Congress recommended that Member States provide for the protection of practising lawyers against undue restrictions and pressures in the exercise of their functions,

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 18, by the Committee on Crime Prevention and Control, by the interregional preparatory meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on United Nations norms and guidelines in crime prevention and criminal justice and implementation and priorities for further standard setting, 141/ and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Role of Lawyers contained in the annex to the present resolution;

2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;

4. Also invites Member States to bring the Basic Principles to the attention of lawyers, judges, members of the executive branch of government and the legislature, and the public in general;

5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into domestic legislation, practice, procedures and policies, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

139/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

140/ Ibid., sect. E.

141/ A/CONF.144/IPM.5.

6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of lawyers and on respect for equality of conditions of access to the legal profession;

7. Urges the regional commissions, the regional and interregional institutes on crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;

8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of this resolution;

9. Requests the Secretary-General:

(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all the United Nations bodies concerned and to provide for the widest possible dissemination of the Basic Principles;

(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments;

(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

(d) To report to the Committee on Crime Prevention and Control, at its twelfth session, on the steps taken to implement the Basic Principles.

ANNEX

Basic Principles on the Role of Lawyers

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion,

Whereas the Universal Declaration of Human Rights 142/ enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

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142/ General Assembly resolution 217 A (III).

Whereas the International Covenant on Civil and Political Rights 143/ proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Convenant on Economic, Social and Cultural Rights 143/ recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 144/ provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners 145/ recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards guaranteeing protection of those facing the death penalty 145/ reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 146/ recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and co-operating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments

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143/ General Assembly resolution 2200 A (XXI), annex.

144/ General Assembly resolution 43/173, annex.

145/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

146/ General Assembly resolution 40/34, annex.

within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.

4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall co-operate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

[24] Guidelines on the Role of Prosecutors

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling the Milan Plan of Action, 218/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 7 of the Seventh Congress, 219/ in which the Committee on Crime Prevention and Control was called upon to consider the need for guidelines relating to prosecutors,

Taking note with appreciation of the work accomplished, in pursuance of that resolution, by the Committee and the regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

1. Adopts the Guidelines on the Role of Prosecutors contained in the annex to the present resolution;

2. Recommends the Guidelines for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Guidelines within the framework of their national legislation and practice;

4. Also invites Member States to bring the Guidelines to the attention of prosecutors as well as others, including judges, lawyers, members of the executive branch of government and the legislature, and the public in general;

5. Urges the regional commissions, the regional and interregional institutes on crime prevention and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to become actively involved in the implementation of the Guidelines;

218/ Seventh United Nations Congress ..., chap. I, sect. A.

219/ Ibid., sect. E.

6. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the implementation of the present resolution;

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Guidelines, including their transmission to Governments, intergovernmental and non-governmental organizations and other parties concerned;

8. Also requests the Secretary-General to prepare every five years, beginning in 1993, a report on the implementation of the Guidelines;

9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Guidelines and to report regularly thereon to the Committee;

10. Requests that the present resolution be brought to the attention of all the United Nations bodies concerned.

ANNEX

Guidelines on the role of prosecutors

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights 220/ enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the

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220/ General Assembly resolution 217 A (III).

provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 221/ the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, 222/ subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 223/ recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress, 224/ the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their co-operation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

221/ Sixth United Nations Congress ..., chap. I, sect. B.

222/ Seventh United Nations Congress ..., chap. I, sect. D.

223/ General Assembly resolution 40/34, annex.

224/ Seventh United Nations Congress ..., sect. E.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:

(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;

(b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence

against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of the suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to co-operate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

E. JUVENILE JUSTICE

Introduction

Both the rising incidence and increasing seriousness of juvenile delinquency have been major concerns in many countries. It is of vital importance not only to prevent delinquency through judicial measures but also to ensure the protection of the well-being and rights of all juveniles who come into conflict with the law. The approach to the prevention of juvenile delinquency, administration of juvenile justice and protection of the young have undergone a progressive evolution of thought and action under the aegis of the United Nations.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) were adopted by the General Assembly in its resolution 40/33 of 29 November 1985, upon the recommendation of the Seventh Congress. 1/ Prior to it, upon recommendation by resolution 4 of the Sixth Congress, 2/ the Committee on Crime Prevention and Control had contributed to the development of these Rules, in cooperation with the United Nations regional and interregional institutes. These Rules had been further elaborated by the interregional preparatory meeting for the Seventh Congress on "Youth, Crime and Justice", held at Beijing, China, in 1984. 3/

The Rules take into account diverse national settings and legal structures, reflect the aims and spirit of juvenile justice and set out desirable principles and practice for the administration of justice for juveniles. They represent the minimum conditions internationally accepted for the treatment of juveniles who come into conflict with the law. The Beijing Rules state that the aims of juvenile justice are to enhance the well-being of the juvenile and to ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence. The Rules contain specific provisions covering various stages of juvenile justice. They stress that placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period, and call for the promotion of research, planning, policy formulation and evaluation. Upon request by the Economic and Social Council, the Secretariat has prepared two reports on implementation of the Rules, which have been submitted to the Committee on Crime Prevention and Control and the Eighth Congress. 4/

The issue of juvenile delinquency continued to attract international attention after the Seventh Congress. The Eighth Congress, following various preparatory activities, recommended to the General Assembly the adoption of the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, both of which were adopted by the General Assembly in its resolutions 45/112 and 45/113 of 14 December 1990, respectively.

The United Nations Guidelines for the Prevention of Juvenile Delinquency were first elaborated at a meeting held by the Arab Security Studies and Training Center (ASSTC) in Riyadh and thus designated as The Riyadh Guidelines. They set forth standards for the prevention of juvenile delinquency, including measures for the protection of young persons who are abandoned, neglected, abused or in marginal circumstances - in other words, at "social risk". The Guidelines cover the pre-conflict stage, i.e. before juveniles come into conflict with the law. They have a "child-centred" orientation and are based

on the premise that it is necessary to offset those conditions that adversely influence and impinge on the healthy development of the child. To this end, comprehensive, multi-disciplinary measures are suggested in order to ensure to the young a life free from crime, victimization and conflict with law. The Guidelines focus on early preventive and protective intervention modalities and aim at promoting in a concerted effort a positive role on the part of various social agencies, including the family, the educational system, the mass media and the community, as well as the young persons themselves.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty were elaborated by the Committee on Crime Prevention and Control in close cooperation with several intergovernmental and non-governmental organizations, such as Defence for Children International. They advocate the least possible use of deprivation of liberty, especially in prison and other closed institutions. The Rules provide specific principles that apply to all juveniles held in any form of detention, and in any type of facility. They call for the separation of juveniles from adults in detention and the classification of juveniles according to their sex, age, personality and offence type, with a view to ensuring their protection from harmful influences and risk situations. They set forth special provisions covering various aspects of institutional life, such as physical environment and accommodation, education, recreation, religion, medical care, contacts with the outside world, inspection, complaints and return to the community.

Notes

1/ Report of the Seventh Congress (A/CONF.121/22/Rev.1).

2/ Report of the Sixth Congress (A/CONF.87/14/Rev.1).

3/ A/CONF.121/IPM/1.

4/ The first report was submitted to the Committee on Crime Prevention and Control at its tenth session in 1988 (E/AC.57/1988/11) and the second to the Eighth Congress in 1990 (A/CONF.144/4).

[25] **40/33. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)**

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights,[6] the International Covenant on Civil and Political Rights[7] and the International Covenant on Economic, Social and Cultural Rights,[7] as well as other international human rights instruments pertaining to the rights of young persons,

Also bearing in mind that 1985 was designated the International Youth Year: Participation, Development, Peace and that the international community has placed importance on the protection and promotion of the rights of the young, as witnessed by the significance attached to the Declaration of the Rights of the Child,[62]

Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[63] which called for the development of standard minimum rules for the administration of juvenile justice and the care of juveniles which could serve as a model for Member States,

Recalling also Economic and Social Council decision 1984/153 of 25 May 1984, by which the draft rules were forwarded to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, through the Interregional Preparatory Meeting held at Beijing from 14 to 18 May 1984,[64]

Recognizing that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in conditions of peace, freedom, dignity and security,

Considering that existing national legislation, policies and practices may well require review and amendment in view of the standards contained in the rules,

Considering further that, although such standards may seem difficult to achieve at present, in view of existing social, economic, cultural, political and legal conditions, they are nevertheless intended to be attainable as a policy minimum,

1. *Notes with appreciation* the work carried out by the Committee on Crime Prevention and Control, the Secretary-General, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and other United Nations institutes in the development of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice;

2. *Takes note with appreciation* of the report of the Secretary-General on the draft United Nations Standard Minimum Rules for the Administration of Juvenile Justice;[65]

3. *Commends* the Interregional Preparatory Meeting held at Beijing for having finalized the text of the rules submitted to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders for consideration and final action;

4. *Adopts* the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh Congress, contained in the annex to the present resolution, and approves the recommendation of the Seventh Congress that the Rules should be known as "the Beijing Rules";

5. *Invites* Member States to adapt, wherever this is necessary, their national legislation, policies and practices, particularly in training juvenile justice personnel, to the Beijing Rules and to bring the Rules to the attention of relevant authorities and the public in general;

6. *Calls upon* the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Beijing Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

7. *Invites* Member States to inform the Secretary-General on the implementation of the Beijing Rules and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

8. *Requests* Member States and the Secretary-General to undertake research and to develop a data base with respect to effective policies and practices in the administration of juvenile justice;

9. *Requests* the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Beijing Rules in all of the official languages of the United Nations, including the intensification of information activities in the field of juvenile justice;

10. *Requests* the Secretary-General to develop pilot projects on the implementation of the Beijing Rules;

11. *Requests* the Secretary-General and Member States to provide the necessary resources to ensure the successful implementation of the Beijing Rules, in particular in the areas of recruitment, training and exchange of personnel, research and evaluation, and the development of new alternatives to institutionalization;

12. *Requests* the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to review the progress made in the implementation of the Beijing Rules and of the recommendations contained in the present resolution, under a separate agenda item on juvenile justice;

13. *Urges* all relevant bodies of the United Nations system, in particular the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders, other intergovernmental organizations and non-governmental organizations to collaborate with the Secretariat and to take the necessary measures to ensure a concerted and sustained effort, within their respective fields of technical competence, to implement the principles contained in the Beijing Rules.

96th plenary meeting
29 November 1985

[62] Resolution 1386 (XIV).

[63] See *Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat* (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

[64] See "Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic IV: youth, crime and justice" (A/CONF.121/IPM/1).

[65] A/CONF.121/14 and Corr.1.

ANNEX

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

Part one. ***General principles***

1. *Fundamental perspectives*

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

2. *Scope of the Rules and definitions used*

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(*a*) A *juvenile* is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(*b*) An *offence* is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(*c*) A *juvenile offender* is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(*a*) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(*b*) To meet the needs of society;

(*c*) To implement the following rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.[66]

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. *Extension of the Rules*

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(*a*) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

(*b*) Juvenile welfare and care proceedings (rule 3.2);

(*c*) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. *Age of criminal responsibility*

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low

[66] Resolution 1386 (XIV). See also the Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180, annex); the Declaration of the World Conference to Combat Racism and Racial Discrimination (*Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978* (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners (see *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.83.XIV.1)); the Caracas Declaration (resolution 35/171, annex); and rule 9.

or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just desert in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

[67] See *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.83.XIV.1).

[68] See Economic and Social Council resolution 1985/42.

7. Rights of juveniles

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights[6] and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.[7]

Rules 14 *seq.* of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

9. Saving clause

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners[67] adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards – such as the Universal Declaration of Human Rights;[6] the International Covenant on Economic, Social and Cultural Rights[7] and the International Covenant on Civil and Political Rights;[7] and the Declaration of the Rights of the Child[66] and the draft convention on the rights of the child.[68] It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application.[67] (See also rule 27.)

Part two. *Investigation and prosecution*

10. Initial contact

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.[69]

[69] The Standard Minimum Rules for the Treatment of Prisoners and related recommendations were adopted in 1955 (see *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva,*

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.[7])

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further interventions is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. *Diversion*

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making — by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.[70]) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority" may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

12. *Specialization within the police*

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. *Detention pending trial*

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners[67] adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance — social, educational, vocational, psychological, medical and physical — that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights,[7] especially article 9 and article 10, paragraphs 2 (*b*) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while

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22 August - *3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4). In its resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, *inter alia*, the recommendations on the selection and training of personnel for penal and correctional institutions and on open penal and correctional institutions. The Council recommended that Governments should give favourable consideration to the adoption and application of the Standard Minimum Rules and should take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in its resolution 2076 (LXII) of 13 May 1977. The complete text of the Standard Minimum Rules for the Treatment of Prisoners is contained in *Human Rights: A Compilation of International Instruments*.

[70] Convention No. 105, adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its fortieth session. With regard to the text of the Convention, see footnote 67.

in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4[63] on juvenile justice standards, specified that the Rules, *inter alia*, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three. *Adjudication and disposition*

14. *Competent authority to adjudicate*

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)

15. *Legal counsel, parents and guardians*

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners.[67] Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile — a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile; hence, the possibility of their exclusion must be provided for.

16. *Social inquiry reports*

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. *Guiding principles in adjudication and disposition*

17.1 The disposition of the competent authority shall be guided by the following principles:

(*a*) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(*b*) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(*c*) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(*d*) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(*a*) Rehabilitation versus just desert;

(*b*) Assistance versus repression and punishment;

(*c*) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

(*d*) General deterrence versus individual incapacitation.

The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (*a*) and (*c*), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (*b*) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress,[63] rule 17.1 (*b*) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (*c*) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress[63] which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.[7]

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights[7] and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[71] as well

[71] Resolution 3452 (XXX), annex.

as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[72] and the draft convention on the rights of the child.[68]

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. *Various disposition measures*

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

(*a*) Care, guidance and supervision orders;

(*b*) Probation;

(*c*) Community service orders;

(*d*) Financial penalties, compensation and restitution;

(*e*) Intermediate treatment and other treatment orders;

(*f*) Orders to participate in group counselling and similar activities;

(*g*) Orders concerning foster care, living communities or other educational settings;

(*h*) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society".[7] Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. *Least possible use of institutionalization*

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress:[63] a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

[72] Resolution 39/46, annex.

20. *Avoidance of unnecessary delay*

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. *Records*

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. *Need for professionalism and training*

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.[63]

Part four. *Non-institutional treatment*

23. *Effective implementation of disposition*

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. *Provision of needed assistance*

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. *Mobilization of volunteers and other community services*

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.[7]

Part five. *Institutional treatment*

26. *Objectives of institutional treatment*

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance — social, educational, vocational, psychological, medical and physical — that they may require because of their age, sex and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4.[63] The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress[63] calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, *inter alia*, calls for equal treatment in criminal justice administration,[73] and against the background of the Declaration on the Elimination of Discrimination against Women[74] and the Convention on the Elimination of All Forms of Discrimination against Women.[75]

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. *Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations*

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. *Frequent and early recourse to conditional release*

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabil-

[73] See resolution 35/171, annex, para. 1.5.
[74] Resolution 2263 (XXII).
[75] Resolution 34/180, annex.

itation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. *Semi-institutional arrangements*

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

Part six. ***Research, planning, policy formulation and evaluation***

30. *Research as a basis for planning, policy formulation and evaluation*

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

[26] 1989/66. **United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)**

The Economic and Social Council,

Recalling General Assembly resolution 40/33 of 29 November 1985, to which is annexed the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),

Recalling also Section II of its resolution 1986/10 of 21 May 1986, entitled "Juvenile justice and the prevention of juvenile delinquency",

Aware of the exemplary role of the The Beijing Rules in promoting the development, improvement and reform of juvenile justice systems world wide,

Emphasizing the need to promote continued progress and reform in the administration of juvenile justice and to ensure universal and effective recognition of, and respect for, the legitimate rights and interests of juveniles in conflict with the law,

1. *Expresses its satisfaction* with the report of the Secretary-General concerning the implementation of General Assembly resolution 40/33 and other resolutions on juvenile justice;[114]

2. *Expresses its appreciation* of the efforts of Member States, specialized agencies, United Nations regional commissions and institutes, intergovernmental and non-governmental organizations, experts, policy makers and practitioners, as well as the Secretariat, to promote the principles of the Beijing Rules;

3. *Calls upon* Member States that have not yet done so to apply the Beijing Rules and to submit information thereon to the Secretary-General;

4. *Invites* Member States to exchange views and information on their experiences and progress in implementing the Beijing Rules and to undertake multifaceted co-operation;

5. *Urges* Member States to provide funds for model projects which promote the principles of the Beijing Rules at the national, regional and interregional levels;

6. *Requests* the Secretary-General:

(*a*) To continue to promote concerted regional and international action and co-operation in connection with the Beijing Rules;

(*b*) To continue to disseminate the Beijing Rules widely in all official languages of the United Nations and to assist those countries that have not yet done so in translating the text of the Rules into their national languages and in disseminating them for the benefit of those working in the field of juvenile justice;

(*c*) To promote the letter and spirit of the Beijing Rules wherever possible, especially in all United Nations programmes relating to young persons;

(*d*) To ensure effective programme interlinkages within the United Nations system between juvenile justice, within the framework of the Beijing Rules, and situations of "social risk", especially youthful drug abuse, child abuse, child sale and trafficking, child prostitution and street children;

(*e*) To conduct collaborative research on various aspects of the administration of juvenile justice, with emphasis on innovative and effective programming, and to develop training programmes, material and curricula for juvenile justice personnel;

(*f*) To provide the necessary technical assistance to Member States, particularly the developing countries, in implementing the Beijing Rules, developing projects and evaluating achievements;

(*g*) To allocate the necessary funds for activities relating to the Beijing Rules, especially pilot projects;

7. *Invites* the International Labour Organisation, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees to promote and apply the principles of the Beijing Rules in all activities and programmes of relevance to young persons;

8. *Calls upon* the Department of Technical Co-operation for Development of the Secretariat and the United Nations Development Programme to support projects of technical assistance, to co-operate in promoting activities in the field of juvenile justice, and to invite other funding agencies within and outside the United Nations system to provide financial support for programmes relating to the administration of juvenile justice;

9. *Requests* the United Nations regional commissions and institutes for the prevention of crime and the treatment of offenders to intensify efforts to promote the Beijing Rules, both in their work programmes and their project and advisory activities;

10. *Decides* that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders should consider the progress achieved in the implementation of the Beijing Rules, and that the Secretary-General should submit an updated report thereon for consideration under item 6 of the provisional agenda for the Congress.[98]

15th plenary meeting
24 May 1989

[114] E/AC.57/1988/11.

[27] 45/112. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights, 1/ the International Covenant on Economic, Social and Cultural Rights 2/ and the International Covenant on Civil and Political Rights, 2/ as well as other international instruments pertaining to the rights and well-being of young persons, including relevant standards established by the International Labour Organisation,

Bearing in mind also the Declaration of the Rights of the Child, 3/ the Convention on the Rights of the Child, 4/ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 5/

Recalling General Assembly resolution 40/33 of 29 November 1985, by which the Assembly adopted the Beijing Rules recommended by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

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1/ Resolution 217 A (III).

2/ See resolution 2200 A (XXI), annex.

3/ Resolution 1386 (XIV).

4/ Resolution 44/25, annex.

5/ Resolution 40/33, annex.

Recalling that the General Assembly, in its resolution 40/35 of 29 November 1985, called for the development of standards for the prevention of juvenile delinquency which would assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance, care and community involvement, and called upon the Economic and Social Council to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved with respect to these standards, for review and action,

Recalling also that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Eighth Congress to consider the draft standards for the prevention of juvenile delinquency, with a view to their adoption,

Recognizing the need to develop national, regional and international approaches and strategies for the prevention of juvenile delinquency,

Affirming that every child has basic human rights, including, in particular, access to free education,

Mindful of the large number of young persons who may or may not be in conflict with the law but who are abandoned, neglected, abused, exposed to drug abuse, and are in marginal circumstances and in general at social risk,

Taking into account the benefits of progressive policies for the prevention of delinquency and for the welfare of the community,

1. Notes with satisfaction the substantive work accomplished by the Committee on Crime Prevention and Control and the Secretary-General in the formulation of the guidelines for the prevention of juvenile delinquency;

2. Expresses appreciation for the valuable collaboration of the Arab Security Studies and Training Centre at Riyadh, in hosting the International Meeting of Experts on the Development of the United Nations Draft Guidelines for the Prevention of Juvenile Delinquency, held at Riyadh from 28 February to 1 March 1988, in co-operation with the United Nations Office at Vienna;

3. Adopts the United Nations Guidelines for the Prevention of Juvenile Delinquency contained in the annex to the present resolution, to be designated "the Riyadh Guidelines";

4. Calls upon Member States, in their comprehensive crime prevention plans, to apply the Riyadh Guidelines in national law, policy and practice and to bring them to the attention of relevant authorities, including policy makers, juvenile justice personnel, educators, the mass media, practitioners and scholars;

5. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Riyadh Guidelines in all of the official languages of the United Nations;

6. Requests the Secretary-General and invites all relevant United Nations offices and interested institutions, in particular, the United Nations Children's Fund, as well as individual experts, to make a concerted effort to promote the application of the Riyadh Guidelines;

7. Also requests the Secretary-General to intensify research on particular situations of social risk and on the exploitation of children, including the use of children as instruments of criminality, with a view to developing comprehensive countermeasures and to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

8. Further requests the Secretary-General to issue a composite manual on juvenile justice standards, containing the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines on the Prevention of Juvenile Delinquency (The Riyadh Guidelines), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 6/ and a set of full commentaries on their provisions;

9. Urges all relevant bodies within the United Nations system to collaborate with the Secretary-General in taking appropriate measures to ensure the implementation of the present resolution;

10. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument with a view to promoting the application of its provisions;

11. Invites Member States to support strongly the organization of technical and scientific workshops, and pilot and demonstration projects on practical issues and policy matters relating to the application of the provisions of the Riyadh Guidelines and to the establishment of concrete measures for community-based services designed to respond to the special needs, problems and concerns of young persons, and requests the Secretary-General to co-ordinate efforts in this respect;

12. Also invites Member States to inform the Secretary-General on the implementation of the Riyadh Guidelines and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

13. Recommends that the Committee on Crime Prevention and Control request the Ninth Congress to review the progress made in the promotion and application of the Riyadh Guidelines and the recommendations contained in the present resolution, under a separate agenda item on juvenile justice and keep the matter under constant review.

68th plenary meeting
14 December 1990

6/ See resolution 45/113, annex.

ANNEX

United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)

I. FUNDAMENTAL PRINCIPLES

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

II. SCOPE OF THE GUIDELINES

7. The present Guidelines should be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, 1/ the International Covenant on Economic, Social and Cultural Rights, 2/ the International Covenant on Civil and Political Rights, 2/ the Declaration of the Rights of the Child 3/ and the Convention on the Rights of the Child, 4/ and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 5/ as well as other instruments and norms relating to the rights, interests and well-being of all children and young persons.

8. The present Guidelines should also be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. GENERAL PREVENTION

9. Comprehensive prevention plans should be instituted at every level of government and include the following:

(a) In-depth analyses of the problem and inventories of programmes, services, facilities and resources available;

(b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;

(c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;

(d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;

(e) Methods for effectively reducing the opportunity to commit delinquent acts;

(f) Community involvement through a wide range of services and programmes;

(g) Close interdisciplinary co-operation between national, state, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;

(h) Youth participation in delinquency prevention policies and processes, including recourse to community resources, youth self-help, and victim compensation and assistance programmes;

(i) Specialized personnel at all levels.

IV. SOCIALIZATION PROCESSES

10. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes.

A. Family

11. Every society should place a high priority on the needs and well-being of the family and of all its members.

12. Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family, including the extended family, should be pursued. The society has a responsibility to assist the family in providing care and protection and in ensuring the physical and mental well-being of children. Adequate arrangements including day-care should be provided.

13. Governments should establish policies that are conducive to the bringing up of children in stable and settled family environments. Families in need of assistance in the resolution of conditions of instability or conflict should be provided with requisite services.

14. Where a stable and settled family environment is lacking and when community efforts to assist parents in this regard have failed and the extended family cannot fulfil this role, alternative placements, including foster care and adoption, should be considered. Such placements should replicate, to the extent possible, a stable and settled family environment, while, at the same time, establishing a sense of permanency for children, thus avoiding problems associated with "foster drift".

15. Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families. As such changes may disrupt the social capacity of the family to secure the traditional rearing and nurturing of children, often as a result of role and culture conflict, innovative and socially constructive modalities for the socialization of children have to be designed.

16. Measures should be taken and programmes developed to provide families with the opportunity to learn about parental roles and obligations as regards child development and child care, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community-based activities.

17. Governments should take measures to promote family cohesion and harmony and to discourage the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.

18. It is important to emphasize the socialization function of the family and extended family; it is also equally important to recognize the future role, responsibilities, participation and partnership of young persons in society.

19. In ensuring the right of the child to proper socialization, Governments and other agencies should rely on existing social and legal agencies, but, whenever traditional institutions and customs are no longer effective, they should also provide and allow for innovative measures.

B. Education

20. Governments are under an obligation to make public education accessible to all young persons.

21. Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:

(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process;

(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community;

(e) Encouragement of young persons to understand and respect diverse views and opinions, as well as cultural and other differences;

(f) Provision of information and guidance regarding vocational training, employment opportunities and career development;

(g) Provision of positive emotional support to young persons and the avoidance of psychological maltreatment;

(h) Avoidance of harsh disciplinary measures, particularly corporal punishment.

22. Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons.

23. Young persons and their families should be informed about the law and their rights and responsibilities under the law, as well as the universal value system, including United Nations instruments.

24. Educational systems should extend particular care and attention to young persons who are at social risk. Specialized prevention programmes and educational materials, curricula, approaches and tools should be developed and fully utilized.

25. Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body.

26. Schools should serve as resource and referral centres for the provision of medical, counselling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

27. Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups.

28. School systems should attempt to meet and promote the highest professional and educational standards with respect to curricula, teaching and learning methods and approaches, and the recruitment and training of qualified teachers. Regular monitoring and assessment of performance by the appropriate professional organizations and authorities should be ensured.

29. School systems should plan, develop and implement extra-curricular activities of interest to young persons, in co-operation with community groups.

30. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs".

31. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

C. Community

32. Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counselling and guidance to young persons and their families should be developed, or strengthened where they exist.

33. Communities should provide, or strengthen where they exist, a wide range of community-based support measures for young persons, including community development centres, recreational facilities and services to respond to the special problems of children who are at social risk. In providing these helping measures, respect for individual rights should be ensured.

34. Special facilities should be set up to provide adequate shelter for young persons who are no longer able to live at home or who do not have homes to live in.

35. A range of services and helping measures should be provided to deal with the difficulties experienced by young persons in the transition to adulthood. Such services should include special programmes for young drug abusers which emphasize care, counselling, assistance and therapy-oriented interventions.

36. Voluntary organizations providing services for young persons should be given financial and other support by Governments and other institutions.

37. Youth organizations should be created or strengthened at the local level and given full participatory status in the management of community affairs. These organizations should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance.

38. Government agencies should take special responsibility and provide necessary services for homeless or street children; information about local facilities, accommodation, employment and other forms and sources of help should be made readily available to young persons.

39. A wide range of recreational facilities and services of particular interest to young persons should be established and made easily accessible to them.

D. Mass media

40. The mass media should be encouraged to ensure that young persons have access to information and material from a diversity of national and international sources.

41. The mass media should be encouraged to portray the positive contribution of young persons to society.

42. The mass media should be encouraged to disseminate information on the existence of services, facilities and opportunities for young persons in society.

43. The mass media generally, and the television and film media in particular, should be encouraged to minimize the level of pornography, drugs and violence portrayed and to display violence and exploitation disfavourably, as well as to avoid demeaning and degrading presentations, especially of children, women and interpersonal relations, and to promote egalitarian principles and roles.

44. The mass media should be aware of its extensive social role and responsibility, as well as its influence, in communications relating to youthful drug and alcohol abuse. It should use its power for drug abuse prevention by relaying consistent messages through a balanced approach. Effective drug awareness campaigns at all levels should be promoted.

V. SOCIAL POLICY

45. Government agencies should give high priority to plans and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons.

46. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Criteria authorizing formal intervention of this type should be strictly defined and limited to the following situations: (a) where the child or young person has suffered harm that has been inflicted by the parents or guardians; (b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians; (c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians; (d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians; and (e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.

47. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

48. Programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly.

49. Scientific information should be disseminated to the professional community and to the public at large about the sort of behaviour or situation which indicates or may result in physical and psychological victimization, harm and abuse, as well as exploitation, of young persons.

50. Generally, participation in plans and programmes should be voluntary. Young persons themselves should be involved in their formulation, development and implementation.

51. Governments should begin or continue to explore, develop and implement policies, measures and strategies within and outside the criminal justice system to prevent domestic violence against and affecting young persons and to ensure fair treatment to these victims of domestic violence.

VI. LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

52. Governments should enact and enforce specific laws and procedures to promote and protect the rights and well-being of all young persons.

53. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young persons should be enacted and enforced.

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

55. Legislation and enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young persons should be pursued.

56. In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

57. Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interests of young persons are upheld and that proper referral to available services is made. The ombudsman or other organ designated would also supervise the implementation of the Riyadh Guidelines, the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty. The ombudsman or other organ would, at regular intervals, publish a report on the progress made and on the difficulties encountered in the implementation of the instrument. Child advocacy services should also be established.

58. Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system.

59. Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

VII. RESEARCH, POLICY DEVELOPMENT AND CO-ORDINATION

60. Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an intradisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.

61. The exchange of information, experience and expertise gained through projects, programmes, practices and initiatives relating to youth crime, delinquency prevention and juvenile justice should be intensified at the national, regional and international levels.

62. Regional and international co-operation on matters of youth crime, delinquency prevention and juvenile justice involving practitioners, experts and decision makers should be further developed and strengthened.

63. Technical and scientific co-operation on practical and policy-related matters, particularly in training, pilot and demonstration projects, and on specific issues concerning the prevention of youth crime and juvenile delinquency should be strongly supported by all Governments, the United Nations system and other concerned organizations.

64. Collaboration should be encouraged in undertaking scientific research with respect to effective modalities for youth crime and juvenile delinquency prevention and the findings of such research should be widely disseminated and evaluated.

65. Appropriate United Nations bodies, institutes, agencies and offices should pursue close collaboration and co-ordination on various questions related to children, juvenile justice and youth crime and juvenile delinquency prevention.

66. On the basis of the present Guidelines, the United Nations Secretariat, in co-operation with interested institutions, should play an active role in the conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.

[28] 45/113. United Nations Rules for the Protection of Juveniles Deprived of their Liberty

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights, 1/ the International Covenant on Civil and Political Rights, 2/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 3/ and the Convention on the Rights of the Child, 4/ as well as other international instruments relating to the protection of the rights and well-being of young persons,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners 5/ adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

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1/ Resolution 217 A (III).

2/ Resolution 2200 A (XXI), annex.

3/ Resolution 39/46, annex.

4/ Resolution 44/25, annex.

5/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

Bearing in mind further the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly by its resolution 43/173 of 9 December 1988 and contained in the annex thereto,

Recalling the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 6/

Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 7/ in which the Congress called for the development of rules for the protection of juveniles deprived of their liberty,

Recalling further that the Economic and Social Council, in section II of its resolution 1986/10 of 21 May 1986, requested the Secretary-General to report on progress achieved in the development of the rules to the Committee on Crime Prevention and Control at its tenth session and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed rules with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty world wide,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

Concerned that many systems do not differentiate between adults and juveniles at various stages of the administration of justice and that juveniles are therefore being held in gaols and facilities with adults,

1. Affirms that the placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period;

2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

3. Notes with appreciation the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Amnesty International, Defence for Children International and

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6/ Resolution 40/33, annex.

7/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

Rädda Barnen International (Swedish Save the Children Federation), and scientific institutions concerned with the rights of children and juvenile justice in the development of the United Nations draft Rules for the Protection of Juveniles Deprived of their Liberty;

4. Adopts the United Nations Rules for the Protection of Juveniles Deprived of their Liberty contained in the annex to the present resolution;

5. Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

6. Invites Member States to adapt, wherever necessary, their national legislation, policies and practices, particularly in the training of all categories of juvenile justice personnel, to the spirit of the Rules, and to bring them to the attention of relevant authorities and the public in general;

7. Also invites Member States to inform the Secretary-General of their efforts to apply the Rules in law, policy and practice and to report regularly to the Committee on Crime Prevention and Control on the results achieved in their implementation;

8. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Rules in all of the official languages of the United Nations;

9. Requests the Secretary-General to conduct comparative research, pursue the requisite collaboration and devise strategies to deal with the different categories of serious and persistent young offenders, and to prepare a policy-oriented report thereon for submission to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

10. Also requests the Secretary-General and urges Member States to allocate the necessary resources to ensure the successful application and implementation of the Rules, in particular in the areas of recruitment, training and exchange of all categories of juvenile justice personnel;

11. Urges all relevant bodies of the United Nations system, in particular the United Nations Children's Fund, the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders and all concerned intergovernmental and non-governmental organizations, to collaborate with the Secretary-General and to take the necessary measures to ensure a concerted and sustained effort within their respective fields of technical competence to promote the application of the Rules;

12. Invites the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new international instrument, with a view to promoting the application of its provisions;

13. Requests the Ninth Congress to review the progress made on the promotion and application of the Rules and on the recommendations contained in the present resolution, under a separate agenda item on juvenile justice.

68th plenary meeting
14 December 1990

ANNEX

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

I. FUNDAMENTAL PERSPECTIVES

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). 6/ Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

II. SCOPE AND APPLICATION OF THE RULES

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured

by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

III. JUVENILES UNDER ARREST OR AWAITING TRIAL

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;

(b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;

(c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

IV. THE MANAGEMENT OF JUVENILE FACILITIES

A. Records

19. All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood. Where possible, every juvenile should have the right to contest any fact or opinion contained in his or her file so as to permit rectification of inaccurate, unfounded or unfair statements. In order to exercise this right, there should be procedures that allow an appropriate third party to have access to and to consult the file on request. Upon release, the records of juveniles shall be sealed, and, at an appropriate time, expunged.

20. No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority. The details of this order should be immediately entered in the register. No juvenile should be detained in any facility where there is no such register.

B. Admission, registration, movement and transfer

21. In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

(a) Information on the identity of the juvenile;

(b) The fact of and reasons for commitment and the authority therefor;

(c) The day and hour of admission, transfer and release;

(d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;

(e) Details of known physical and mental health problems, including drug and alcohol abuse.

22. The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

23. As soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be drawn up and submitted to the administration.

24. On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private

agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.

25. All juveniles should be helped to understand the regulations governing the internal organization of the facility, the goals and methodology of the care provided, the disciplinary requirements and procedures, other authorized methods of seeking information and of making complaints, and all such other matters as are necessary to enable them to understand fully their rights and obligations during detention.

26. The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.

C. Classification and placement

27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time-frame and the means, stages and delays with which the objectives should be approached.

28. The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

29. In all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned.

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized

treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

D. Physical environment and accommodation

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises. There should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks.

33. Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, account being taken of local standards. During sleeping hours there should be regular, unobtrusive supervision of all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each juvenile. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness.

34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.

35. The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. An inventory thereof should be signed by the juvenile. Steps should be taken to keep them in good condition. All such articles and money should be returned to the juvenile on release, except in so far as he or she has been authorized to spend money or send such property out of the facility. If a juvenile receives or is found in possession of any medicine, the medical officer should decide what use should be made of it.

36. To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.

37. Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.

E. Education, vocational training and work

38. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.

39. Juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so, and every effort should be made to provide them with access to appropriate educational programmes.

40. Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized.

41. Every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

42. Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

43. With due regard to proper vocational selection and to the requirements of institutional administration, juveniles should be able to choose the type of work they wish to perform.

44. All protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

45. Wherever possible, juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training provided in order to enhance the possibility of finding suitable employment when they return to their communities. The type of work should be such as to provide appropriate training that will be of benefit to the juveniles following release. The organization and methods of work offered in detention facilities should resemble as closely as possible those of similar work in the community, so as to prepare juveniles for the conditions of normal occupational life.

46. Every juvenile who performs work should have the right to an equitable remuneration. The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release. The juvenile should have the right to use the remainder of those earnings to purchase articles for his or her own use or to indemnify the victim injured by his or her offence or to send it to his or her family or other persons outside the detention facility.

F. Recreation

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development. The detention facility should ensure that each juvenile is physically able to participate in the available programmes of physical education. Remedial physical education and therapy should be offered, under medical supervision, to juveniles needing it.

G. Religion

48. Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination. If a detention facility contains a sufficient number of juveniles of a given religion, one or more qualified representatives of that religion should be appointed or approved and allowed to hold regular services and to pay pastoral visits in private to juveniles at their request. Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination.

H. Medical care

49. Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. All such medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatization of the juvenile and promote self-respect and integration into the community.

50. Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

51. The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer.

52. Any medical officer who has reason to believe that the physical or mental health of a juvenile has been or will be injuriously affected by continued detention, a hunger strike or any condition of detention should report this fact immediately to the director of the detention facility in question and to the independent authority responsible for safeguarding the well-being of the juvenile.

53. A juvenile who is suffering from mental illness should be treated in a specialized institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.

54. Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.

55. Medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned. In particular, they must not be administered with a view to eliciting information or a confession, as a punishment or as a means of restraint. Juveniles shall never be testees in the experimental use of drugs and treatment. The administration of any drug should always be authorized and carried out by qualified medical personnel.

I. Notification of illness, injury and death

56. The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen.

57. Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention.

58. A juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member and should be provided with the opportunity to attend the funeral of the deceased or go to the bedside of a critically ill relative.

J. Contacts with the wider community

59. Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a sentence, the time spent outside a detention facility should be counted as part of the period of sentence.

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

61. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

62. Juveniles should have the opportunity to keep themselves informed regularly of the news by reading newspapers, periodicals and other publications, through access to radio and television programmes and motion pictures, and through the visits of the representatives of any lawful club or organization in which the juvenile is interested.

K. Limitations of physical restraint and the use of force

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

L. Disciplinary procedures

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:

(a) Conduct constituting a disciplinary offence;

(b) Type and duration of disciplinary sanctions that may be inflicted;

(c) The authority competent to impose such sanctions;

(d) The authority competent to consider appeals.

69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.

70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.

71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

M. Inspection and complaints

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.

74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

N. Return to the community

79. All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.

80. Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration. The representatives of agencies providing such services should be consulted and should have access to juveniles while detained, with a view to assisting them in their return to the community.

V. PERSONNEL

81. Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. These and other specialist staff should normally be employed on a permanent basis. This should not preclude part-time or volunteer workers when the level of support and training they can provide is appropriate and beneficial. Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles.

82. The administration should provide for the careful selection and recruitment of every grade and type of personnel, since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

83. To secure the foregoing ends, personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men. The personnel of juvenile detention facilities should be continually encouraged to fulfil their duties and obligations in a humane, committed, professional, fair and efficient manner, to conduct themselves at all times in such a way as to deserve and gain the respect of the juveniles, and to provide juveniles with a positive role model and perspective.

84. The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance co-operation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

86. The director of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

(a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

(b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;

(c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;

(d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;

(e) All personnel should respect the right of the juvenile to privacy, and in particular should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;

(f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

F. PROTECTION OF VICTIMS

Introduction

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly in its resolution 40/34 of 29 November 1985, on the recommendation of the Seventh Congress. 1/ The Declaration takes into account the previous work of the Interregional Preparatory Meeting for the Congress 2/ and the Committee on Crime Prevention and Control. 3/ Non-governmental organizations, such as the World Society of Victimology and the World Federation for Mental Health, played an important role in the formulation and adoption of the Declaration.

The Declaration recommends measures to be taken at the national, regional and international levels to improve access to justice and fair treatment, restitution, compensation and social assistance for victims of crime. It outlines the main steps to be taken to prevent victimization linked to abuses of power and to provide remedies for the victims of such offences.

In accordance with Economic and Social Council resolution 1986/10 (III) of 21 May 1986, the Secretary-General prepared two reports on measures taken to implement the Declaration, which were submitted to the Committee on Crime Prevention and Control at its tenth and eleventh sessions. 4/ In pursuance of Council resolution 1989/57 of 24 May 1989, a Guide for Practitioners Regarding the Implementation of the Declaration was prepared, with the assistance of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations. 5/

The Economic and Social Council, in its resolution 1990/22 of 24 May 1990, called for the establishment of a United Nations mechanism to monitor and curtail serious victimization and comprehensive action with the cooperation of all entities and organizations concerned, and the development of international means of recourse and redress for victims where national channels may be insufficient.

The Eighth Congress, in a resolution entitled "Protection of the human rights of victims of crime and abuse of power", requested the Secretary-General to widely distribute the above-mentioned Guide and the Measures for the implementation of this Declaration developed at the ad hoc committee of experts at the International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy, in May 1986. 6/

The victim issue is also under consideration by the United Nations human rights programme. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1989/13, entrusted one of its members, Mr. van Boven, with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights. Taking note of his preliminary report, 7/ the Sub-Commission, by its resolution 1990/6 of 30 August 1990, requested Mr. van Boven to prepare a progress report on the subject matter.

Notes

1/ Report of the Seventh Congress (A/CONF.121/22/Rev.1).

2/ A/CONF.121/IPM/4.

3/ E/AC.57/1984/14.

4/ E/AC.57/1988/3 for the tenth session and E/AC.57/1990/3 for the eleventh session.

5/ A/CONF.144/20, annex.

6/ E/AC.57/1988/NGO/1.

7/ E/CN.4/Sub.2/1990/10.

[29] **40/34. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

The General Assembly,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power,[56]

Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

1. *Affirms* the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;

2. *Stresses* the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;

3. *Adopts* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;

4. *Calls upon* Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavour:

(*a*) To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;

(*b*) To promote community efforts and public participation in crime prevention;

(*c*) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct and other abuses of power;

(*d*) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;

(*e*) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;

(*f*) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;

(*g*) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;

(*h*) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;

5. *Recommends* that, at the international and regional levels, all appropriate measures should be taken:

(*a*) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;

(*b*) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;

(*c*) To render direct aid to requesting Governments designed to help them curtail victimization and alleviate the plight of victims;

(*d*) To develop ways and means of providing recourse for victims where national channels may be insufficient;

6. *Requests* the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;

7. *Also requests* the Secretary-General to make use of the opportunities, which all relevant bodies and organizations within the United Nations system offer, to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;

8. *Further requests* the Secretary-General to promote the objectives of the Declaration, in particular by ensuring its widest possible dissemination;

9. *Urges* the specialized agencies and other entities and bodies of the United Nations system, other relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration.

96th plenary meeting
29 November 1985

ANNEX

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

A. *Victims of crime*

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(*a*) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where

serious crimes are involved and where they have requested such information;

(*b*) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(*c*) Providing proper assistance to victims throughout the legal process;

(*d*) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(*e*) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(*a*) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(*b*) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. ***Victims of abuse of power***

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

[30] 1989/57. Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The Economic and Social Council,

Bearing in mind that the General Assembly, in its resolution 40/34 of 29 November 1985, adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, set forth in the annex to the resolution, which had been approved by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[92]

Recalling the request made to Member States to take the necessary steps to give effect to the provisions of the Declaration so as to secure for victims of crime and abuse of power the rights due to them,

Taking into account section III of its resolution 1986/10 of 21 May 1986, in which it recommended that continued attention be given to the implementation of the Declaration with a view to developing the co-operation of Governments, intergovernmental and non-governmental organizations and the public in securing justice for victims and in promoting integrated action on behalf of victims at the national, regional and international levels,

Noting that the first report of the Secretary-General concerning measures taken to implement the Declaration indicates a number of areas which require further attention,[93]

Noting with satisfaction the adoption of the European Convention on the Compensation of Victims of Violent Crimes by the Council of Europe on 24 November 1983 and of the recommendation on assistance to victims and the prevention of victimization by the Council of Europe on 17 September 1987, as well as the creation by some Member States of national funds for the compensation of victims of intentional and non-intentional offences,

Recognizing that effective implementation of the provisions of the Declaration in respect of victims of abuse of power is sometimes hampered by problems of jurisdiction and by difficulties in identifying and halting such abuses, owing, *inter alia*, to the transnational nature of the victimization,

Noting with appreciation the significant efforts made since the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to follow up and give effect to the Declaration, including the report prepared by an *ad hoc* committee of experts at the International Institute of Higher Studies in Criminal Sciences at Syracuse, Italy in May 1986, as revised at a colloquium of leading non-governmental organizations active in

[92] *Ibid.*, chap. I, Sect. C.
[93] E/AC.57/1988/3.

crime prevention, criminal justice and the treatment of offenders and victims, held at Milan, Italy, in November and December 1987,

1. *Recommends* that the Secretary-General consider, subject to the provision of extrabudgetary funds and consideration by the Committee on Crime Prevention and Control, the preparation, publication and dissemination of a guide for criminal justice practitioners and others engaged in similar activities, taking into account the work already done on the subject;

2. *Also recommends* that Member States take the necessary steps to give effect to the provisions contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, through:

(*a*) The adoption and implementation of the provisions contained in the Declaration in their national justice systems in accordance with their constitutional process and domestic practice;

(*b*) The introduction of legislation to simplify access by victims to the justice system in order to obtain compensation and restitution;

(*c*) The examination of methods of assisting victims, including adequate redress for the actual harm or damage inflicted, identifying limitations and exploring ways by which these may be overcome, to ensure that they meet effectively the needs of victims;

(*d*) The establishment of measures to protect victims from abuse, calumny or intimidation in the course or as a result of any criminal or other proceedings related to the crime, including effective remedies, should such abuses occur;

3. *Further recommends* that Member States, in collaboration with relevant services, agencies and organizations, endeavour:

(*a*) To encourage the provision of assistance and support services to victims of crime, with due regard to different social, cultural and legal systems, taking into account the experience of different models and methods of service delivery and the current state of knowledge concerning victimization, including its emotional impact, and the consequent need for service organizations to extend offers of assistance to victims;

(*b*) To develop suitable training for all who provide services to victims to enable them to develop the skills and understanding needed to help victims cope with the emotional impact of crime and overcome bias, where it may exist, and to provide factual information;

(*c*) To establish effective channels of communication between all those who are involved with victims, organize courses and meetings and disseminate information to enable them to prevent further victimization as a result of the workings of the system;

(*d*) To ensure that victims are kept informed of their rights and opportunities with respect to redress from the offender, from third parties or from the State, as well as of the progress of the relevant criminal proceedings and of any opportunities that may be involved;

(*e*) Where informal mechanisms for the resolution of disputes exist, or have been newly introduced, to ensure, if possible and with due consideration to established legal principles, that the wishes and sensibilities of victims are fully taken into consideration and that the outcome is at least as beneficial for the victims as would have been the case if the formal system had been used;

(*f*) To establish a monitoring and research programme to keep the needs of victims and the effectiveness of services provided to them under constant review; such a programme might include the organization of regular meetings and conferences of representatives of relevant sectors of the criminal justice system and other bodies concerned with the needs of victims, in order to examine the extent to which existing law, practice and victim services are responsive to the needs of victims;

(*g*) To undertake studies to identify the needs of victims in cases of unreported crime and make the appropriate services available to them;

4. *Recommends* that, at the national, regional and international levels, all appropriate steps be taken to develop international co-operation in criminal matters, *inter alia*, to ensure that those who suffer victimization in another State receive effective help, both immediately following the crime and on their return to their own country of residence or nationality, in protecting their interests and obtaining adequate restitution or compensation and support services, as necessary;

5. *Recognizes* the need to work out in greater detail part B of the Declaration and to develop international means for preventing the abuse of power and for providing redress for victims of such abuse where national channels may be insufficient, and recommends that appropriate steps be taken to this effect;

6. *Requests* the Secretary-General to organize, subject to the availability of extrabudgetary funds, a meeting of experts to formulate specific proposals for the implementation of General Assembly resolution 40/34 and the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power, in so far as those documents apply to the abuse of power, in time for the proposals to be submitted to the Committee on Crime Prevention and Control at its eleventh session and for consideration by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

15th plenary meeting
24 May 1989

[31] **1990/22. Victims of crime and abuse of power**

The Economic and Social Council,

Bearing in mind General Assembly resolution 40/34 of 29 November 1985, by which the Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which is contained in the annex to the resolution and which had been approved by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling that in the same resolution the General Assembly called upon Member States and other entities to take the necessary steps to give effect to the provisions contained in the Declaration and to curtail victimization,

Taking into account Economic and Social Council resolution 1989/57 of 24 May 1989 on the implementation of the Declaration,

Bearing in mind the recommendations of the preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[50]

Having considered the Guide for Practitioners on the Basic Principles of Justice for Victims of Crime and Abuse of Power,[51]

Recognizing the need for continuing efforts to give effect to the Declaration, and to adapt it to meet the full range of needs and the circumstances of different countries,

Recognizing, in particular, the need to look beyond national measures in some instances, especially where victims of transnational crimes and abuse of power are concerned,

1. *Takes note* of the report of the Secretary-General on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;[52]

2. *Requests* the Secretary-General, together with all the entities of the United Nations system and other appropriate organizations, to undertake and co-ordinate the necessary action, with a humanitarian objective, to prevent and curtail severe victimization where national means of recourse are insufficient, and:

(*a*) To monitor the situation;

(*b*) To develop and institute means of conflict resolution and mediation;

(*c*) To promote access to justice and redress for victims;

(*d*) To assist in providing material, medical and psycho-social assistance to victims and their families;

3. *Invites* the United Nations regional and interregional institutes to provide mechanisms for the development and international co-ordination of services for victims, and to promote the collection, collation and exchange of information and ideas in order to improve standards for the treatment of victims;

4. *Requests* the Secretary-General to continue to devote attention to policy and research on the situation of victims of crime and abuse of power and to the effective implementation of General Assembly resolution 40/34;

5. *Recommends* that Member States and the United Nations regional and interregional institutes take the necessary steps to provide professional and other persons dealing with victims with suitable training in issues concerning victims, taking into account the model training curriculum developed for this purpose;[53]

6. *Invites* the United Nations funding agencies, especially the United Nations Development Programme and the Department of Technical Co-operation for Development of the Secretariat, to support technical co-operation programmes for the establishment of services for victims;

7. *Requests* the Secretary-General to further develop international means of recourse and redress for victims where national channels may be insufficient and to report to the Committee on Crime Prevention and Control, at its twelfth session, on the development of such means;

8. *Requests* the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to take into account, in his study of compensation to victims of gross violations of human rights, the relevant work and recommendations of the Committee on Crime Prevention and Control;

9. *Invites* the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to recommend wide distribution of the Guide for Practitioners on the Basic Principles of Justice for Victims of Crime and Abuse of Power[51] and the measures for implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, submitted by a committee of experts that met at the International Institute of Higher Studies in Criminal Sciences, Syracuse, Italy, in May 1986.[54]

13th plenary meeting
24 May 1990

[50] See A/CONF.144/IPM.1-4 and 5 and Corr.1 and A/CONF.144/RPM.1 and Corr.1, 2 and Corr.1, 3 and Corr.1 and 2, 4 and Corr.1 and 5 and Corr.1.

[51] See E/AC.57/1990/CRP.1.

[52] E/AC.57/1990/3.

[53] See E/AC.57/1990/NGO/3.

[54] See E/AC.57/1988/NGO/1.

[32] Protection of the human rights of victims of crime and abuse of power

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Concerned that crime and victimization continue to pose serious problems, affecting both individuals and entire groups and often transcending national frontiers,

Emphasizing the need for preventive action and measures for the fair and humane treatment of victims, whose needs have often been ignored,

Recognizing the importance of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 225/ which provides standards and guidelines for redress and assistance to such victims and which needs to be widely disseminated and applied in practice,

Welcoming the efforts made to date to develop appropriate means for the implementation of the Declaration, and to further its application at the national, regional and international levels,

Stressing the need for social solidarity, which requires the establishment of close links between members of society to guarantee social peace and respect for the rights of victims, as well as the need to provide adequate mechanisms and measures through which redress and assistance for victims can be provided nationally, regionally and internationally,

Considering the key role of law enforcement agencies, prosecutors, lawyers and the judiciary in the implementation of the Declaration,

Bearing in mind the relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in resolution 39/46 of 10 December 1984,

Bearing in mind also the work being carried out by the Committee on Crime Prevention and Control,

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225/ General Assembly resolution 40/34, annex.

Recalling the Cairo Declaration on Law Enforcement and the Human Rights of Victims, adopted by the International Symposium held at Cairo from 22 to 25 January 1989,

Recalling also the report prepared by the ad hoc committee of experts at the International Institute of Higher Studies in Criminal Sciences, held at Syracuse, Italy in May 1986, as revised by a colloquium of leading non-governmental organizations active in crime prevention, criminal justice and the treatment of offenders and victims, held at Milan, Italy, in November-December 1987,

Recalling further the recommendation of the Economic and Social Council in its resolution 1990/22 of 24 May 1990 that Member States and the United Nations regional and interregional institutes should take the necessary steps to provide professional and other persons dealing with victims with suitable training in issues concerning victims, taking into account the model training curricula developed for this purpose, 226/

1. Takes note with appreciation of Economic and Social Council resolutions 1989/57 of 24 May 1989 and 1990/22;

2. Recommends that, in the implementation of the said resolution, the Committee on Crime Prevention and Control should take into account the important proposals already made by the community of concerned non-governmental organizations;

3. Calls upon States to take into account the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in framing their national legislation;

4. Recommends that Governments should consider the availability of public and social support services for victims of crime and abuse of power and foster culturally appropriate programmes for victim assistance, information and compensation;

5. Requests the Secretary-General to make appropriate provisions to study the feasibility of establishing an international fund, within the framework of the United Nations crime prevention and criminal justice programme, for the compensation of, and assistance to, victims of transnational crimes and for the promotion of international research, data collection and dissemination and the establishment of policy guidelines in this respect;

6. Recommends that States should prepare training programmes based on the principles of the Declaration, aimed at defining and disseminating the rights of victims of crime and abuse of power, which should be part of the curricula of faculties of law, criminological institutes, law enforcement training centres and judicial colleges;

7. Calls upon States to exchange, both at the international and regional levels, information and experiences related to the means used to implement their legal and social provisions concerned with the protection of victims of crime and abuse of power;

226/ See E/AC.57/1990/NGO/3.

8. Recommends that the United Nations and other organizations concerned strengthen their technical co-operation activities in order to help Governments to implement the Declaration and other relevant guidelines and to strengthen international co-operation in this respect;

9. Requests the Secretary-General to distribute widely the Guide for Practitioners on the Basic Principles of Justice for Victims of Crime and Abuse of Power 227/ and the Measures for Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. 228/

227/ See A/CONF.144/20, annex.

228/ E/AC.57/1988/NGO/1.

G. CAPITAL PUNISHMENT

Introduction

Since its foundation, the United Nations has continuously expressed its concern over the question of capital punishment. 1/ The General Assembly, in its resolution 1396 (XIV) of 20 November 1959, invited the Economic and Social Council to initiate a study on capital punishment. Upon requests by the Council, the Secretariat prepared reports on capital punishment in 1962, 1967 and 1973. 2/

The General Assembly, in its resolution 2857 (XXVI) of 20 December 1971, affirmed that the main objective to be pursued in this area was that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.

Capital punishment was also placed on the agenda of the Sixth Congress, during which some interesting debate took place. 3/

The Council, in its resolution 1745 (LIV) of 16 May 1973, requested the Secretary-General to submit periodic and analytical reports at five year intervals, starting from 1975. So far, five reports have been prepared. 4/

The Council, in its resolution 1983/24 of 26 May 1983, also requested the Committee on Crime Prevention and Control to further study the question of the death penalty that did not meet the acknowledged minimum legal guarantees and safeguards.

On the recommendation of the Committee at its eighth session, the Council, in its resolution 1984/50 of 25 May 1984, adopted the Safeguards guaranteeing protection of the rights of those facing the death penalty, on the understanding that they should not be invoked to delay or prevent the abolition of capital punishment.

The Safeguards cover the basic guarantees to be respected in criminal justice proceedings to ensure the rights of the offenders charged with a capital offence. They also state that capital punishment can be imposed only for the most serious crimes. They cover, inter alia, the right to benefit from lighter penalties under certain conditions and to appeal and to seek pardon; exemptions from capital punishment for persons below 18 years of age, pregnant women, new mothers and persons who have become insane; necessary evidentiary requirements and suspension of executions.

The Seventh Congress, in its resolution 15, invited those States retaining the death penalty to adopt the Safeguards and to take the necessary steps to implement them. The Congress also requested the United Nations Secretary-General to widely publicize them as well as the mechanisms for their implementation.

Progress on the implementation of the Safeguards is kept under review by the Economic and Social Council, through its Committee on Crime Prevention and Control. The Secretary-General prepared a report for the Committee on the implementation of the Safeguards. 5/ A study on capital punishment was also prepared for the Committee by Professor Roger Hood. 6/

Recommendations regarding implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in its resolution 1989/64 of 24 May 1989, proposed to Member States practical means by which to implement these safeguards and requested the Secretary-General, inter alia, to cover the question of the implementation of these safeguards in preparing its reports on capital punishment.

Further, the Council, in its resolution 1990/29 of 24 May 1990, requested the Committee on Crime Prevention and Control to keep the question of capital punishment under review and asked the Secretary-General to draw on all available data, including current criminological research, in preparing the future report. At the request of the Council, in its resolution 1990/51 of 24 July 1990, the Eighth Congress examined the question of capital punishment and considered the latest quinquennial report on this issue. 7/

Notes

1/ See, for example, Capital punishment, working paper prepared by the Secretariat (A/CONF.87/9).

2/ Capital Punishment (United Nations publication, Sales No. 62.IV.2; Capital Punishment Developments, 1961 to 1965 (United Nations publication, Sales No. 67.IV.15) and E/5242.

3/ Report of the Sixth Congress (A/CONF.87/14/Rev.1).

4/ E/5616 and Corr.1 and 2 and Add.1; E/1980/9, Corr.1, Add.1 and Add.1/Corr.1 and Add.2; E/1985/43, Corr.1; and E/1990/38/Rev.1 and Corr.1.

5/ E/AC.57/1988/9 and Corr.12.

6/ Roger Hood, "The Death Penalty", a world-wide perspective, special issue of the International Review of Criminal Policy (later published by Oxford Clarendon Press, 1989).

7/ E/1990/38/Rev.1 and Corr.1.

[33] **2857 (XXVI). Capital punishment**

The General Assembly,

Recalling its resolution 2393 (XXIII) of 26 November 1968 concerning the application of the most careful legal procedures and the greatest possible safeguards for the accused in capital cases as well as the attitude of Member States to possible further restriction of the use of capital punishment or to its total abolition,

Taking note of the section of the report of the Economic and Social Council[51] concerning the consideration by the Council of the report on capital punishment[52] submitted by the Secretary-General in implementation of the aforementioned resolution,

Taking note of Economic and Social Council resolution 1574 (L) of 20 May 1971,

Expressing the desirability of continuing and extending the consideration of the question of capital punishment by the United Nations,

1. *Notes with satisfaction* the measures already taken by a number of States in order to ensure careful legal procedures and safeguards for the accused in capital cases in countries where the death penalty still exists;

2. *Considers* that further efforts should be made to ensure such procedures and safeguards in capital cases everywhere;

3. *Affirms* that, in order fully to guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries;

4. *Invites* Member States which have not yet done so to inform the Secretary-General of their legal procedures and safeguards as well as of their attitude to possible further restriction of the use of the death penalty or its total abolition, by providing the information requested in paragraphs 1 (*c*) and 2 of General Assembly resolution 2393 (XXIII);

5. *Requests* the Secretary-General to circulate as soon as possible to Member States all the replies already received from Member States to the queries contained in paragraphs 1 (*c*) and 2 of resolution 2393 (XXIII) and those to be received after the adoption of the present resolution, and to submit a supplementary report to the Economic and Social Council at its fifty-second session;

6. *Further requests* the Secretary-General, on the basis of material furnished in accordance with paragraph 4 above by Governments of Member States where capital punishment still exists, to prepare a separate report regarding practices and statutory rules which may govern the right of a person sentenced to capital punishment to petition for pardon, commutation or reprieve, and to submit that report to the General Assembly.

2027th plenary meeting,
20 December 1971.

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[51] *Ibid.*, chap. XVIII, sect. C.

[52] E/4947 and Corr.1.

[34] **1984/50. Safeguards guaranteeing protection of the rights of those facing the death penalty**

The Economic and Social Council,

Having regard to the provisions bearing on capital punishment in the International Covenant on Civil and Political Rights,[120] in particular article 2, paragraph 1, and articles 6, 14 and 15 thereof,

Recalling General Assembly resolution 38/96 of 16 December 1983, in which, *inter alia*, the Assembly expressed its deep alarm at the occurrence on a large scale of summary or arbitrary executions,

Recalling also General Assembly resolution 36/22 of 9 November 1981, in which the Committee on Crime Prevention and Control was requested to examine the problem with a view to making recommendations,

Recalling further Council resolution 1983/24 of 26 May 1983, in which it decided that the Committee on Crime Prevention and Control should further study the question of death penalties that did not meet the acknowledged minimum legal guarantees and safeguards, as contained in the International Covenant on Civil and Political Rights and other international instruments, and welcomed the intention of the Committee that the issue should be discussed at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Acknowledging the work done by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the areas of summary or arbitrary executions, including the reports of the Special Rapporteur,[121]

Considering the relevant views and comments of the Human Rights Committee established under the International Covenant on Civil and Political Rights,

Expressing its concern at the tragic incidence of arbitrary or summary executions in the world,

Having considered the note by the Secretary-General on arbitrary and summary executions,[122]

Guided by the desire to continue to contribute to the strengthening of the international instruments relating to the prevention of arbitrary or summary executions,

1. *Takes note* of the note by the Secretary-General on arbitrary and summary executions;

2. *Again strongly condemns and deplores* the brutal practice of arbitrary or summary executions in various parts of the world;

3. *Approves* the safeguards guaranteeing protection of the rights of those facing the death penalty, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution, on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment;

4. *Invites* the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the safeguards with a view to establishing an implementation mechanism, within the framework of the item of its provisional agenda[123] entitled "Formulation and application of United Nations standards and norms in criminal justice".

21st plenary meeting
25 May 1984

ANNEX

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights,[124] including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

[120] General Assembly resolution 2200 A (XXI), annex.
[121] E/CN.4/1983/16 and Add.1 and Corr.1; E/CN.4/1984/29.
[122] E/AC.57/1984/16.
[123] See Council resolution 1982/29, para. 1.
[124] General Assembly resolution 2200 A (XXI), annex.

[35] **1989/64. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty**

The Economic and Social Council,

Recalling its resolution 1984/50 of 25 May 1984, in which it approved the safeguards guaranteeing protection of the rights of those facing the death penalty,

Recalling also resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,[90]

Recalling further section X of its resolution 1986/10 of 21 May 1986, in which it requested a study on the question of the death penalty and new contributions of the criminal sciences to the matter,

Taking note of the report of the Secretary-General on the implementation of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty,[110]

Noting with satisfaction that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

Noting with appreciation the study on the question of the death penalty and the new contributions of the criminal sciences to the matter,[111]

Alarmed at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

Aware that effective implementation of those safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

Convinced that further progress should be achieved towards more effective implementation of the safeguards at the national level on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment,

Acknowledging the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. *Recommends* that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(*a*) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(*b*) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(*c*) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(*d*) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. *Invites* Member States to co-operate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. *Also invites* Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. *Further invites* Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Council resolution 1984/50;

5. *Urges* Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. *Recommends* that the report of the Secretary-General on the question of capital punishment, to be submitted to the Council in 1990, in pursuance of its resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. *Requests* the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter, prepared pursuant to Council resolution 1986/10, section X, and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

15th plenary meeting
24 May 1989

[110] E/AC.57/1988/9 and Corr. 1 and 2.
[111] E/AC.57/1988/CRP.7.

[36] **1990/29. Capital punishment**

The Economic and Social Council,

Recalling its resolutions 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1984/50 of 25 May 1984 and 1985/33 of 29 May 1985,

Recalling General Assembly resolutions 2857 (XXVI) of 20 December 1971, 32/61 of 8 December 1977 and 39/118 of 14 December 1984,

Having examined the fourth quinquennial report of the Secretary-General on capital punishment,[75] and having found certain imprecisions and errors in it, as recognized by the representative of the Secretary-General,

Aware that only forty-three Governments responded to the questionnaire sent by the Secretary-General requesting information for the preparation of the fourth quinquennial report,

1. *Invites* Member States to provide the Secretary-General with the information required for the preparation of the fifth quinquennial report on capital punishment, in 1995;

2. *Takes note* of the fact that during the period covered by the report of the Secretary-General some countries have abolished capital punishment, others have adopted a policy of reducing the number of capital offences or have reported not imposing death sentences on offenders, while others have retained capital punishment;

3. *Requests* the Committee on Crime Prevention and Control to keep the question of capital punishment under review;

4. *Requests* the Secretary-General to submit to the Council for consideration at its second regular session of 1990, a revised version of the fourth quinquennial report;

5. *Also requests* the Secretary-General, in preparing the fifth quinquennial report, to draw on all available data, including current criminological research, and to invite the comments of specialized agencies and intergovernmental and non-governmental organizations on this question.

13th plenary meeting
24 May 1990

[75] E/1990/38 and Corr.1.

H. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT; EXTRA-LEGAL EXECUTIONS

Introduction

On the recommendation of the Fifth Congress, 1/ the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975. The Congress had acted in pursuance of Assembly resolution 3059 (XXVIII) of 2 November 1973 and resolution 3218 (XXIX) of 6 November 1974, as well as initiatives of various non-governmental organizations.

The Declaration deals, inter alia, with the obligation of each State to take effective measures to prevent torture and other similar treatment or punishment from being practised within its jurisdiction; the criminalization of all acts of torture or those which constitute participation, complicity, incitement or an attempt to commit torture; the rights of persons who allege that they have been subjected to torture or similar treatment to complain to, and to have their cases impartially examined by, the competent authorities of the State concerned; redress and compensation to be afforded to victims of torture; and prohibition of using as evidence any statement made as a result of torture or of other cruel, inhuman or degrading treatment or punishment.

Based upon the Declaration, continued international concern for the topic resulted in the formulation of three United Nations instruments: first, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in its resolution 37/194 of 18 December 1982; second, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the Assembly in its resolution 39/46 of 10 December 1984; and third, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988. 2/

The Assembly, in its resolution 36/151 of 16 December 1981, established the United Nations Voluntary Fund for Victims of Torture, which receives voluntary contributions for distribution of humanitarian, legal and financial aid to individuals whose human rights had been severely violated as a result of torture and to relatives of such victims. 3/

On the recommendation of the Committee on Crime Prevention and Control, the Economic and Social Council, in its resolution 1989/65 of 24 May 1989, adopted the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Various United Nations and other international bodies have sought to bring a halt to the practice of extra-legal, arbitrary and summary executions, especially the Commission on Human Rights, its Special Rapporteur on this question, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on Crime Prevention and Control and the United Nations congresses on the prevention of crime and the treatment of offenders. 4/ Cooperative efforts of United Nations bodies, intergovernmental and non-governmental organizations, especially the Minnesota Lawyers International Human Rights Committee, resulted in the formulation of these Principles.

In adopting the Principles, the Council recommended that they should be taken into account and respected by Governments within the framework of their national legislation and practices. They should also be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of Governments and the public in general.

The Principles stipulate that Governments prohibit by law all extra-legal, arbitrary and summary executions. No one should be extradited to a country where he or she may become a victim of such executions. The Principles further call for prompt, thorough and impartial investigation of all suspected cases, to be undertaken by offices or independent commissions set up to carry out such inquiries. Specific procedures and guidelines are set out for the conduct of these investigations. Those who participate in such executions should be brought to justice, and the families of victims should be entitled to fair compensation.

The United Nations Secretariat prepared a Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which developed the application of the above Principles in a technical manner. 5/ The Manual was elaborated in close cooperation with experts in this field and interested non-governmental organizations.

Notes

1/ For the consideration at the Fifth Congress see the report of the Congress (A/CONF.56/10) and "Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment", analytical summary by the Secretary-General (A/10158 and Corr.1 and Add.1).

2/ For these instruments, see Part II of this Compendium.

3/ The Fund was developed from the United Nations Trust Fund for Chile, which was established by the General Assembly in its resolution 33/134 of 20 December 1978.

4/ For the activities of the congresses and the Committee on Crime Prevention and Control, see E/AC.57/1984/16, A/CONF.121/21 and E/AC.57/1988/5. For the activities of the Centre for Human Rights, especially its Special Rapporteur, see E/CN.4/1983/16 Add.1 and Add.1/Corr.1, E/CN.4/1984/29, E/CN.4/1985/17, E/CN.4/1986/21, E/CN.4/1987/20 and E/CN.4/1988/22 Add.1 and 2.

5/ ST/CSDHA/12.

[37] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted by the General Assembly of the United Nations on 9 December 1975 (resolution 3452 (XXX))

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Considering that these rights derive from the inherent dignity of the human person,

Considering also the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Adopts the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the text of which is annexed to the present resolution, as a guideline for all States and other entities exercising effective power.

ANNEX

DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the

instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No state may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

[38] **1989/65. Effective prevention and investigation of extra-legal, arbitrary and summary executions**

The Economic and Social Council,

Recalling that article 3 of the Universal Declaration of Human Rights[106] proclaims that everyone has the right to life, liberty and security of person,

Bearing in mind that paragraph 1 of article 6 of the International Covenant on Civil and Political Rights[107] states that every human being has the inherent right to life, that that right shall be protected by law and that no one shall be arbitrarily deprived of his or her life,

Also bearing in mind the general comments of the Human Rights Committee on the right to life as enunciated in article 6 of the International Covenant on Civil and Political Rights,

Stressing that the extra-legal, arbitrary and summary executions contravene the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights,

Mindful that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 11 on extra-legal, arbitrary and summary executions,[90] called upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty and to take all other measures necessary to prevent those practices,

Mindful also that in its resolution 1986/10, section VI, of 21 May 1986, it requested the Committee on Crime Prevention and Control to consider at its tenth session the question of extra-legal, arbitrary and summary executions with a view to elaborating principles on the effective prevention and investigation of such practices,

Recalling that the General Assembly in its resolution 33/173 of 20 December 1978 expressed its deep concern about reports from various parts of the world relating to enforced or involuntary disappearances and called upon Governments, in the event of such reports, to take appropriate measures to search for such persons and to undertake speedy and impartial investigations,

Noting with appreciation the efforts of non-governmental organizations to develop standards for investigations,[112]

Emphasizing that the General Assembly, in its resolution 42/141 of 7 December 1987, strongly condemned once again the large number of summary or arbitrary executions, including extra-legal executions, that continued to take place in various parts of the world,

Noting that in the same resolution the General Assembly recognized the need for closer co-operation between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat and the Committee on Crime Prevention and Control in efforts to bring to an end summary or arbitrary executions,

Aware that effective prevention and investigation of extra-legal, arbitrary and summary executions requires the provision of adequate financial and technical resources,

1. *Recommends* that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions annexed to the present resolution should be taken into account and respected by Governments within the framework of their national legislation and practices, and should be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Governments and the public in general;

2. *Requests* the Committee on Crime Prevention and Control to keep the above recommendations under constant review, taking into account the various socio-economic, political and cultural circumstances in which extra-legal, arbitrary and summary executions occur;

3. *Invites* Member States that have not yet ratified or acceded to international instruments that prohibit extra-legal, arbitrary and summary executions, including the International Covenant on Civil and Political Rights,[107] the Optional Protocol to the International Covenant on Civil and Political Rights[107] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[113] to become parties to these instruments;

4. *Requests* the Secretary-General to include the Principles in the United Nations publication entitled *Human Rights: A Compilation of International Instruments;*

5. *Requests* the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to give special attention in their research and training programmes to the Principles, and to the International Covenant on Civil and Political Rights, the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials,[102] the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[100] and other international instruments relevant to the question of extra-legal, arbitrary and summary executions.

15th plenary meeting
24 May 1989

ANNEX

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

PREVENTION

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehen-

[112] See E/AC.57/1988/NGO/4.

[113] General Assembly resolution 39/46, annex.

sion, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

I. CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS

Introduction

This Convention was approved by the General Assembly in its resolution 317 (IV) of 2 December 1949 and entered into force on 25 July 1951. Under the auspices of the League of Nations, several attempts had been made to suppress the activities connected with prostitution, including development of four international instruments in this area. 1/ While these instruments laid down certain repressive measures against traffickers of persons and some protective measures for women and girls, they did not focus on the question of prostitution in itself, which is in the background of the traffic in persons.

In view of this, the League of Nations, in 1937, prepared a draft convention for the purpose of securing concerted action at the international level for the abolition of "licenced houses" and punishment of any person managing a brothel or exploiting the prostitution of others. This draft was not finalized, owing to the outbreak of the Second World War.

The Economic and Social Council, in its resolution 43 (IV) of 29 March 1947, requested the Secretary-General, inter alia, to resume the study of the draft convention of 1937 and to make any necessary amendments in order to bring it up to date. This led to the adoption of the Convention by the General Assembly.

The Convention consolidates earlier instruments and embodies abolitionist policy as a basis for any programme of action against the traffic in persons and the exploitation of the prostitution of others. This policy comprises the abolition of any form of the regulation of prostitution, the repression of the third party profiteers, the prevention of prostitution and the rehabilitation of its victims.

As one of the first steps, the Secretariat prepared a report on traffic in persons and prostitution in 1959, which was considered by the Social Commission. 2/

Following a number of initiatives in this area in the meantime, the Commission on Human Rights most recently, after studying the report of the Working Group on Contemporary Forms of Slavery of its Sub-Commission on Prevention of Discrimination and Protection of Minorities, 3/ decided to refer to its Sub-Commission the draft programme of action for prevention of the sale of children, child prostitution and child pornography 4/ so that it might make the necessary amendments in the light of opinions received from Governments, the specialized agencies and intergovernmental and non-governmental organizations. Further, the working group on slavery of the 1991 Sub-Commission focused on the traffic in persons and the exploitation of prostitution of others.

Notes

1/ International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948; International Convention of

4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol; International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947; and International Convention of 11 October 1933 for the Suppression of Women of Full Age, as amended by the aforesaid Protocol.

2/ Study on Traffic in Persons and Prostitution (United Nations publication ST/SOA/SD/8, Sales No. 59.IV.5).

3/ E/CN.4/Sub.2/1990/44.

4/ E/CN.4/1991/50, annex.

[39] Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Approved by General Assembly resolution 317 (IV) of 2 December 1949

ENTRY INTO FORCE: 25 July 1951, in accordance with article 24

PREAMBLE

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,

Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:

(1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948,

(2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol,

(3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947,

(4) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol,

Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and

Whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations therein:

Now therefore

The Contracting parties

Hereby agree as hereinafter provided:

Article 1

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person.

Article 2

The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Article 3

To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished.

Article 4

To the extent permitted by domestic law, intentional participation in the acts referred to in articles 1 and 2 above shall also be punishable.

To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

Article 5

In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals.

Article 6

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

Article 7

Previous convictions pronounced in foreign States for offences referred to in the present Convention shall, to the extent permitted by domestic law, be taken into account for the purpose of:

(1) Establishing recidivism;

(2) Disqualifying the offender from the exercise of civil rights.

Article 8

The offences referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention.

The Parties to the present Convention which do not make extradition conditional on the existence of a treaty shall henceforward recognize the offences referred to in articles 1 and 2 of the present Convention as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made.

Article 9

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State.

This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

Article 10

The provisions of article 9 shall not apply when the person charged with the offence has been tried in a foreign State and, if convicted, has served his sentence or had it remitted or reduced in conformity with the laws of that foreign State.

Article 11

Nothing in the present Convention shall be interpreted as determining the attitude of a Party towards the general question of the limits of criminal jurisdiction under international law.

Article 12

The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.

Article 13

The Parties to the present Convention shall be bound to execute letters of request relating to offences referred to in the Convention in accordance with their domestic law and practice.

The transmission of letters of request shall be effected:

(1) By direct communication between the judicial authorities; or

(2) By direct communication between the Ministers of Justice of the two States, or by direct communication from another competent authority of the State making the request to the Minister of Justice of the State to which the request is made; or

(3) Through the diplomatic or consular representative of the State making the request in the State to which the request is made; this representative shall send the letters of request direct to the competent judicial authority or to the authority indicated by the Government of the State to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

In cases 1 and 3 a copy of the letters of request shall always be sent to the superior authority of the State to which application is made.

Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the State to which the request is made may require a translation in its own language, certified correct by the authority making the request.

Each Party to the present Convention shall notify to each of the other Parties to the Convention the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter State.

Until such notification is made by a State, its existing procedure in regard to letters of request shall remain in force.

Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

Nothing in the present article shall be construed as an undertaking on the part of the Parties to the present Convention to adopt in criminal matters any form or methods of proof contrary to their own domestic laws.

Article 14

Each Party to the present Convention shall establish or maintain a service charged with the co-ordination and centralization of the results of the investigation of offences referred to in the present Convention.

Such services should compile all information calculated to facilitate the prevention and punishment of the offences referred to in the present Convention and should be in close contact with the corresponding services in other States.

Article 15

To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information:

(1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence;

(2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them.

The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

Article 16

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

(1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while *en route*;

(2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;

(3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and *en route*, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;

(4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, *prima facie*, to be the principals and accomplices in or victims of such traffic.

Article 18

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

Article 19

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations therunder and so far as possible:

(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;

(2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

Article 20

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

Article 21

The Parties to the present Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the present Convention, as well as all measures taken by them concerning the application of the Convention. The information received shall be published periodically by the Secretary-General and sent to all Members of the United Nations and to non-member States to which the present Convention is officially communicated in accordance with article 23.

Article 22

If any dispute shall arise between the Parties to the present Convention relating to its interpretation or application and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.

Article 23

The present Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The States mentioned in the first paragraph which have not signed the Convention may accede to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

For the purposes of the present Convention the word "State" shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all territories for which such State is internationally responsible.

Article 24

The present Convention shall come into force on the ninetieth day following the date of deposit of the second instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force ninety days after the deposit by such State of its instrument of ratification or accession.

Article 25

After the expiration of five years from the entry into force of the present Convention, any Party to the Convention may denounce it by a written notification addressed to the Secretary-General of the United Nations.

Such denunciation shall take effect for the Party making it one year from the date upon which it is received by the Secretary-General of the United Nations.

Article 26

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 23:

(*a*) Of signatures, ratifications and accessions received in accordance with article 23;

(*b*) Of the date on which the present Convention will come into force in accordance with article 24;

(*c*) Of denunciations received in accordance with article 25.

Article 27

Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

Article 28

The provisions of the present Convention shall supersede in the relations between the Parties thereto the provisions of the international instruments referred to in subparagraphs 1, 2, 3 and 4 of the second paragraph of the Preamble, each of which shall be deemed to be terminated when all the Parties thereto shall have become Parties to the present Convention.

FINAL PROTOCOL

Nothing in the present Convention shall be deemed to prejudice any legislation which ensures, for the enforcement of the provisions for securing the suppression of the traffic in persons and of the exploitation of others for purposes of prostitution, stricter conditions than those provided by the present Convention.

The provisions of articles 23 to 26 inclusive of the Convention shall apply to the present Protocol.

Part Two

HUMAN RIGHTS

Introduction

One of the purposes of the United Nations is to promote and encourage respect for human rights and fundamental freedoms, as expressed in the Charter of the United Nations, in which the people of the United Nations stated their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small", and for this purpose "to practise tolerance and live together in peace with one another as good neighbours" and "to employ international machinery for the promotion of the economic and social advancement of all peoples". Following the adoption of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948, the United Nations has developed a number of international instruments on human rights, in particular the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its Optional Protocols. 1/

The responsibility of developing international human rights instruments and monitoring their implementation is borne by various United Nations bodies such as the General Assembly, the Economic and Social Council, and, at the operational level, by the Commission on Human Rights and other ad hoc bodies. 2/ Clearly, issues of the administration of criminal justice are closely related to human rights questions, as the relevant provisions of the International Bill of Human Rights demonstrate. For these reasons, the General Assembly, in its resolutions entitled "Human rights in the administration of justice", 3/ has, inter alia, repeatedly reaffirmed the importance of the full and effective implementation of United Nations norms and standards on human rights in the administration of justice.

The Universal Declaration and the International Covenants on Civil and Political Rights provide basic principles which are to be respected in developing and implementing various international instruments in crime prevention and criminal justice. On the other hand, some of the other international human rights instruments, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, set forth provisions that are closely related to criminal justice policy.

Accordingly, a number of human rights instruments are reproduced in this compendium, following the outline of its preliminary version (A/CONF.144/INF.2) in order to provide a complete picture and facilitate cross-reference.

Notes

1/ For the instruments in the field of human rights, see Human rights, a Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1).

2/ For the United Nations activities in the area of human rights, see United Nations Action in the Field of Human Rights (United Nations publication, Sales No. E.88.XIV.2).

3/ General Assembly resolutions 45/166 of 18 December 1990, 44/162 of 15 December 1989, 43/153 of 8 December 1988, 42/143 of 7 December 1987, 41/149 of 4 December 1986, 40/146 of 13 December 1985 and 39/118 of 14 December 1984.

[1] Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

[2] International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 3 January 1976, in accordance with article 27.

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(*a*) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(*b*) Safe and healthy working conditions;

(*c*) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(*d*) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(*a*) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*b*) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(*c*) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(*d*) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed.

(*a*) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(*b*) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(*a*) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(*b*) The improvement of all aspects of environmental and industrial hygiene;

(*c*) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(*d*) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(*a*) Primary education shall be compulsory and available free to all;

(*b*) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(*c*) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(*d*) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(*e*) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

(*a*) To take part in cultural life;

(*b*) To enjoy the benefits of scientific progress and its applications;

(*c*) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (*a*) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(*b*) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(*a*) Signatures, ratifications and accessions under article 26;

(*b*) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

[3] International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 49.

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(*a*) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(*c*) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same inter-

mediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (*a*) No one shall be required to perform forced or compulsory labour;

(*b*) Paragraph 3 (*a*) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(*c*) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (*b*), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (*a*) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(*b*) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independant and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(*a*) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(*b*) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(*c*) To be tried without undue delay;

(*d*) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(*e*) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*f*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(*g*) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or corres-

pondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(*a*) For respect of the rights or reputations of others;

(*b*) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*order public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(*a*) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(*b*) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(*c*) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the

law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(*a*) Twelve members shall constitute a quorum;

(*b*) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(*a*) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(*b*) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fill within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(*b*) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(*c*) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(*d*) The Committee shall hold closed meetings when examining communications under this article.

(*e*) Subject to the provisions of sub-paragraph (*c*), the Committee shall make available its goods offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(*f*) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (*b*), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (*b*), shall have the right to be represented

when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(*h*) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (*b*), submit a report:

(i) If a solution within the terms of sub-paragraph (*e*) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (*e*) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (*a*) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(*b*) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(*a*) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(*b*) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(*c*) If a solution within the terms of sub-paragraph (*b*) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(*d*) If the Commission's report is submitted under sub-paragraph (*c*), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowerd to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entiled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures

prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(*a*) Signatures, ratifications and accessions under article 48;

(*b*) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

[4] Optional Protocol to the International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 9.

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(*a*) The same matter is not being examined under another procedure of international investigation or settlement;

(*b*) The individual has exhausted all available domestic remedies.
This shall not be the rule where the application of the remedies is unreasonably prolonged..

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(*a*) Signatures, ratifications and accessions under article 8;

(*b*) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(*c*) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

[5] 44/128. **Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**

The General Assembly,

Recalling article 3 of the Universal Declaration of Human Rights adopted in its resolution 217 A (III) of 10 December 1948,

Recalling also article 6 of the International Covenant on Civil and Political Rights contained in the annex to its resolution 2200 A (XXI) of 16 December 1966,

Mindful of its decision 35/437 of 15 December 1980, reaffirmed in its resolution 36/59 of 25 November 1981, to consider the idea of elaborating a draft of a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Mindful also of its resolution 37/192 of 18 December 1982, in which it requested the Commission on Human Rights to consider the idea of elaborating a draft of a second optional protocol, and its resolution 39/137 of 14 December 1984, in which it requested the Commission and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider the idea further,

Taking note of the comparative analysis prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,[112]

Taking note also of the views expressed by Governments in favour of and against the death penalty and of their comments and observations regarding such a second optional protocol, as reproduced in the relevant reports of the Secretary-Gen[illegible],[113]

Referring to its decision 42/421 of 7 December 1987, and to Commission on Human Rights resolution 1989/25 of 6 March 1989 and Economic and Social Council decision 1989/139 of 24 May 1989, pursuant to which the comparative analysis and the draft second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, prepared by the Special Rapporteur, were transmitted to the General Assembly for suitable action,

Wishing to give States parties to the International Covenant on Civil and Political Rights that choose to do so the opportunity to become parties to a second optional protocol to that convention,

Having considered the draft second optional protocol,

1. *Expresses its appreciation* for the work achieved by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

2. *Adopts* and opens for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, contained in the annex to the present resolution;

3. *Calls upon* all Governments in a position to do so to consider signing and ratifying or acceding to the Second Optional Protocol.

82nd plenary meeting
15 December 1989

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[112] E/CN.4/Sub.2/1987/20.

[113] A/36/441 and Add.1 and 2, A/37/407 and Add.1 and A/44/592 and Add.1.

ANNEX

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights,[4] adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights,[5] adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.

2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 10

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(*a*) Reservations, communications and notifications under article 2 of the present Protocol;

(*b*) Statements made under articles 4 or 5 of the present Protocol;

(*c*) Signatures, ratifications and accessions under article 7 of the present Protocol;

(*d*) The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

[6] **39/46. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The General Assembly,

Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Recalling also its resolution 32/62 of 8 December 1977, in which it requested the Commission on Human Rights to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Declaration,

Recalling further that, in its resolution 38/119 of 16 December 1983, it requested the Commission on Human Rights to complete, at its fortieth session, as a matter of highest priority, the drafting of such a convention, with a view to submitting a draft, including provisions for the effective implementation of the future convention, to the General Assembly at its thirty-ninth session,

Taking note with satisfaction of Commission on Human Rights resolution 1984/21 of 6 March 1984,[54] by which the Commission decided to transmit the text of a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, contained in the annex to the report of the Working Group,[57] to the General Assembly for its consideration,

Desirous of achieving a more effective implementation of the existing prohibition under international and national law of the practice of torture and other cruel, inhuman or degrading treatment or punishment,

1. *Expresses its appreciation* for the work achieved by the Commission on Human Rights in preparing the text of a draft convention against torture and other cruel, inhuman or degrading treatment or punishment;

2. *Adopts* and opens for signature, ratification and accession the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained in the annex to the present resolution;

3. *Calls upon* all Governments to consider signing and ratifying the Convention as a matter of priority.

93rd plenary meeting
10 December 1984

ANNEX

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights[58] and article 7 of the International Covenant on Civil and Political Rights,[59] both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,[60]

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

[57] E/CN.4/1984/72.
[58] Resolution 217 A (III).
[59] See resolution 2200 A (XXI), annex.
[60] Resolution 3452 (XXX), annex.

Article 3

1. No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(*a*) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(*b*) When the alleged offender is a national of that State;

(*c*) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(*a*) Six members shall constitute a quorum;

(*b*) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(*b*) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(*c*) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(*d*) The Committee shall hold closed meetings when examining communications under this article;

(*e*) Subject to the provisions of subparagraph (*c*), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obliga-

tions provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an *ad hoc* conciliation commission;

(*f*) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (*b*), to supply any relevant information;

(*g*) The States Parties concerned, referred to in subparagraph (*b*), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(*h*) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (*b*), submit a report:

(i) If a solution within the terms of subparagraph (*e*) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (*e*) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(*a*) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(*b*) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 21, paragraph 1 (*e*), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.[61]

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound

[61] Resolution 22 A (I).

by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(*a*) Signatures, ratifications and accessions under articles 25 and 26;

(*b*) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(*c*) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

[7] **Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Adopted by the General Assembly of the United Nations on 18 December 1982 (resolution 37/194)

The General Assembly,

Recalling its resolution 31/85 of 13 December 1976, in which it invited the World Health Organization to prepare a draft code of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment,

Expressing once again its appreciation to the Executive Board of the World Health Organization which, at its sixty-third session in January 1979, decided to endorse the principles set forth in a report entitled "Development of codes of medical ethics" containing, in an annex, a draft body of principles prepared by the Council for International Organizations of Medical Sciences and entitled "Principles of medical ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment",

Bearing in mind Economic and Social Council resolution 1981/27 of 6 May 1981, in which the Council recommended that the General Assembly should take measures to finalize the draft Principles of Medical Ethics at its thirty-sixth session,

Recalling its resolution 36/61 of 25 November 1981, in which it decided to consider the draft Principles of Medical Ethics at its thirty-seventh session with a view to adopting them,

Alarmed that not infrequently members of the medical profession or other health personnel are engaged in activities which are difficult to reconcile with medical ethics,

Recognizing that throughout the world significant medical activities are being performed increasingly by health personnel not licensed or trained as physicians, such as physician-assistants, paramedics, physical therapists and nurse practitioners,

Recalling with appreciation the Declaration of Tokyo of the World Medical Association, containing the Guidelines for Medical Doctors concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment, adopted by the twenty-ninth World Medical Assembly, held at Tokyo in October 1975,

Noting that in accordance with the Declaration of Tokyo measures should be taken by States and by professional associations and other bodies, as appropriate, against any attempt to subject health personnel or members of their families to threats or reprisals resulting from a refusal by such personnel to condone the use of torture or other forms of cruel, inhuman or degrading treatment,

Reaffirming the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, unanimously adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975, in which it declared any act of torture or other cruel, inhuman or degrading treatment or punishment an offence to human dignity, a denial of the purposes of the Charter of the United Nations and a violation of the Universal Declaration of Human Rights,

Recalling that, in accordance with article 7 of the Declaration adopted in resolution 3452 (XXX), each State shall ensure that the commission of all acts of torture, as defined in article 1 of that Declaration, or participation in, complicity in, incitement to or attempt to commit torture, are offences under its criminal law,

Convinced that under no circumstances should a person be punished for carrying out medical activities compatible with medical ethics regardless of the person benefiting therefrom, or be compelled to perform acts or to carry out work in contravention of medical ethics, but that, at the same time, contravention of medical ethics for which health personnel, particularly physicians, can be held responsible should entail accountability,

Desirous of setting further standards in this field which ought to be implemented by health personnel, particularly physicians, and by Government officials,

1. *Adopts* the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment set forth in the annex to the present resolution;

2. *Calls upon* all Governments to give the Principles of Medical Ethics, together with the present resolution, the widest possible distribution, in particular among medical and paramedical associations and institutions of detention or imprisonment in an official language of the State;

3. *Invites* all relevant intergovernmental organizations, in particular the World Health Organization, and non-governmental organizations concerned to bring the Principles of Medical Ethics to the attention of the widest possible group of individuals, especially those active in the medical and paramedical field.

ANNEX

PRINCIPLES OF MEDICAL ETHICS RELEVANT TO THE ROLE OF HEALTH PERSONNEL, PARTICULARLY PHYSICIANS, IN THE PROTECTION OF PRISONERS AND DETAINEES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2

It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4

It is a contravention of medical ethics for health personnel, particularly physicians:

(*a*) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;

(*b*) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Principle 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

Principle 6

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

[8] **43/173. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**

The General Assembly,

Recalling its resolution 35/177 of 15 December 1980, in which it referred the task of elaborating the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment to the Sixth Committee and decided to establish an open-ended working group for that purpose,

Taking note of the report of the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[56] which met during the forty-third session of the General Assembly and completed the elaboration of the draft Body of Principles,

Considering that the Working Group decided to submit the text of the draft Body of Principles to the Sixth Committee for its consideration and adoption,[57]

Convinced that the adoption of the draft Body of Principles would make an important contribution to the protection of human rights,

Considering the need to ensure the wide dissemination of the text of the Body of Principles,

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[56] A/C.6/43/L.9.
[57] *Ibid.*, para. 4.

1. *Approves* the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the text of which is annexed to the present resolution;

2. *Expresses its appreciation* to the Working Group on the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment for its important contribution to the elaboration of the Body of Principles;

3. *Requests* the Secretary-General to inform the States Members of the United Nations or members of specialized agencies of the adoption of the Body of Principles;

4. *Urges* that every effort be made so that the Body of Principles becomes generally known and respected.

76th plenary meeting
9 December 1988

ANNEX

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

SCOPE OF THE BODY OF PRINCIPLES

These principles apply for the protection of all persons under any form of detention or imprisonment.

USE OF TERMS

For the purposes of the Body of Principles:

(*a*) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;

(*b*) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;

(*c*) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;

(*d*) "Detention" means the condition of detained persons as defined above;

(*e*) "Imprisonment" means the condition of imprisoned persons as defined above;

(*f*) The words "a judicial or other authority" mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:

(*a*) The reasons for the arrest;

(*b*) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(*c*) The identity of the law enforcement officials concerned;

(*d*) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

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* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places

of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.

2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.

3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules on liability provided by domestic law.

2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.[58]

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[58] See resolution 2200 A (XXI), annex.

[9] **44/25. Convention on the Rights of the Child**

The General Assembly,

Recalling its previous resolutions, especially resolutions 33/166 of 20 December 1978 and 43/112 of 8 December 1988, and those of the Commission on Human Rights and the Economic and Social Council related to the question of a convention on the rights of the child,

Taking note, in particular, of Commission on Human Rights resolution 1989/57 of 8 March 1989,[2] by which the Commission decided to transmit the draft convention on the rights of the child, through the Economic and Social Council, to the General Assembly, and Economic and Social Council resolution 1989/79 of 24 May 1989,

Reaffirming that children's rights require special protection and call for continuous improvement of the situation of children all over the world, as well as for their development and education in conditions of peace and security,

Profoundly concerned that the situation of children in many parts of the world remains critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability, and convinced that urgent and effective national and international action is called for,

Mindful of the important role of the United Nations Children's Fund and of that of the United Nations in promoting the well-being of children and their development,

Convinced that an international convention on the rights of the child, as a standard-setting accomplishment of the United Nations in the field of human rights, would make a positive contribution to protecting children's rights and ensuring their well-being,

Bearing in mind that 1989 marks the thirtieth anniversary of the Declaration of the Rights of the Child[3] and the tenth anniversary of the International Year of the Child,

[2] See *Official Records of the Economic and Social Council, 1989, Supplement No. 2* (E/1989/20), chap. II, sect. A.

[3] Resolution 1386 (XIV).

1. *Expresses its appreciation* to the Commission on Human Rights for having concluded the elaboration of the draft convention on the rights of the child;

2. *Adopts* and opens for signature, ratification and accession the Convention on the Rights of the Child contained in the annex to the present resolution;

3. *Calls upon* all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expresses the hope that it will come into force at an early date;

4. *Requests* the Secretary-General to provide all the facilities and assistance necessary for dissemination of information on the Convention;

5. *Invites* United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to intensify their efforts with a view to disseminating information on the Convention and to promoting its understanding;

6. *Requests* the Secretary-General to submit to the General Assembly at its forty-fifth session a report on the status of the Convention on the Rights of the Child;

7. *Decides* to consider the report of the Secretary-General at its forty-fifth session under an item entitled "Implementation of the Convention on the Rights of the Child".

61st plenary meeting
20 November 1989

ANNEX

Convention on the Rights of the Child

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights[4] and in the International Covenants on Human Rights,[5] proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924[6] and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959[3] and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24),[5] in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10)[5] and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",[7]

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally;[8] the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);[9] and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,[10]

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

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[4] Resolution 217 A (III).
[5] See resolution 2200 A (XXI), annex.
[6] See League of Nations, *Official Journal, Special Supplement No. 21*, October 1924, p. 43.
[7] Resolution 1386 (XIV), third preambular paragraph.
[8] Resolution 41/85, annex.
[9] Resolution 40/33, annex.
[10] Resolution 3318 (XXIX).

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(*a*) For respect of the rights or reputations of others; or

(*b*) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and

material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(*a*) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(*b*) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(*c*) Encourage the production and dissemination of children's books;

(*d*) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(*e*) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or, if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(*a*) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(*b*) Recognize that inter-country adoption may be considered as an alternative means of the child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(*c*) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(*d*) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(*e*) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(*a*) To diminish infant and child mortality;

(*b*) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(*c*) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(*d*) To ensure appropriate pre-natal and post-natal health care for mothers;

(*e*) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(*f*) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(*a*) Make primary education compulsory and available free to all;

(*b*) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(*c*) Make higher education accessible to all on the basis of capacity by every appropriate means;

(*d*) Make educational and vocational information and guidance available and accessible to all children;

(*e*) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(*a*) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(*b*) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(*c*) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(*d*) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(*e*) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(*a*) Provide for a minimum age or minimum ages for admission to employment;

(*b*) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(*a*) Within two years of the entry into force of the Convention for the State Party concerned;

(*b*) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (*b*) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(*a*) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(*b*) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(*c*) The Committee may recommend to the General Assembly that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(*d*) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In

the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

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Printed in Austria
V.91-31862—February 1992—3,400

United Nations publication
Sales No.: E.92.IV.1
ISBN 92-1-130148-3

ST/CSDHA/16