

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



145506
A barcode consisting of horizontal lines of varying lengths.

Distr.
GENERAL

E/AC.57/1988/8
22 April 1988

ORIGINAL: ENGLISH

COMMITTEE ON CRIME PREVENTION AND CONTROL
Tenth session
Vienna, 22-31 August 1988
Item 4 of the provisional agenda*

IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF
THE SEVENTH UNITED NATIONS CONGRESS ON THE
PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Progress made with
respect to the implementation of the Code of Conduct
for Law Enforcement Officials

Report of the Secretary-General

U.S. Department of Justice
National Institute of Justice

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V. 88-24201
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INTRODUCTION

1. The General Assembly, by its resolution 34/169, annex, of 17 December 1979 adopted the Code of Conduct for Law Enforcement Officials, which had been formulated by the Committee on Crime Prevention and Control in pursuance of a recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.* The Assembly decided to transmit the Code 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.
2. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in resolution 14, calling attention to the guidelines for the more effective implementation of the Code of Conduct formulated at the Interregional Preparatory Meeting for the seventh United Nations Congress on the Treatment of Offenders on Topic V: "Formulation and Application of United Nations Standards and Norms in Criminal Justice", held at Varese, Italy, 24-28 September 1984 (A/CONF.121/IPM/3, para. 36), invited Member States to inform the Secretary-General every five years, beginning in 1987, on the progress achieved in the implementation of the Code of Conduct and to promote seminars and training courses on the role of law enforcement officials at the national and regional levels. The Congress also requested the Secretary-General to provide to Governments, at their request, the services of experts and regional and interregional advisers to assist in implementing the Code and to report to the Committee on its implementation. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings were requested to consider further these issues.
3. The Economic and Social Council, in resolution 1986/10, section IX, inter alia, reiterated the above-mentioned request to the Secretary-General for preparations of independent quinquennial reports on the implementation of the Code of Conduct by Member States, to be presented to the Committee at its tenth and subsequent sessions for consideration and further action, as required. The Council also invited Member States to pay particular attention, in informing the Secretary-General of the extent of the implementation and the progress made with regard to the application of the Code, to the use of force and firearms by law enforcement officials, and to provide the Secretary-General with copies of abstracts of laws, regulations and administrative measures concerning the application of the Code, as well as information on possible difficulties in its application. The Secretary-General was requested to take into account, in preparing his report, information received from specialized agencies and competent intergovernmental and non-governmental organizations. Furthermore, the Committee was requested to consider at its tenth session measures for the more effective implementation of the Code, in the light of the guidance provided by the Seventh Congress.
4. The present survey was prepared in pursuance of the above-named mandates.** As the last report (A/CONF.121/12) on the subject was presented to the Seventh Congress only in 1985, it was considered appropriate to up-date this report on the basis of new information received, taking into account recent developments.

*See Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975 (United Nations publication, Sales No. E.76.IV.2), paras. 254-259.

**Recent information on implementation of the Code is also contained in "Report of the Secretary-General on extra-legal, arbitrary and summary executions, and measures for their prevention and investigation" (E/AC.57/1988/5).

Thus, in accordance with specific requests of the Seventh Congress and the Council, the present report places special emphasis on international standards for the use of force and firearms by law enforcement officials and on measures for the more effective implementation of the Code.

5. The following 62 countries responded to the previous survey: Algeria, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Belgium, Belize, Botswana, Bulgaria, Canada, Chad, Chile, Colombia, Cuba, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Guatemala, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Israel, Japan, Kenya, Kiribati, Kuwait, Mauritius, Madagascar, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea,* Rwanda, Seychelles, Somalia, Spain, Sri Lanka, Suriname, Sweden, Switzerland,* Thailand, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yugoslavia and Zimbabwe.

6. As of 20 April 1988, replies to the present inquiry have been received from the following 51 States: Austria, Belgium, Belize, Bolivia, Botswana, Brunei Darussalam, Byelorussian Soviet Socialist Republic, Bulgaria, Colombia, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Hungary, India, Ireland, Israel, Italy, Iraq, Japan, Jordan, Kuwait, Madagascar, Morocco, Nepal, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Qatar, Spain, Sri Lanka, Sudan, Sweden, Switzerland,* Syrian Arab Republic, Ukrainian Soviet Socialist Republic, United Kingdom, Venezuela, Yugoslavia and Zimbabwe. Of the above-mentioned countries, 34 had also replied to the previous inquiry; therefore, taking into account the States responding to both surveys, the total number of respondents amounts to 79 countries.

7. Information was also received from the International Criminal Police Organization (INTERPOL) and relevant non-governmental organizations, including Amnesty International, Friends World Committee for Consultations, International Association of Chiefs of Police, International Association of Penal Law, International Commission of Jurists, International Federation of Human Rights, International Federation of Senior Police Officers, International Penal and Penitentiary Foundation, International Prisoners' Aid Association, International Society for Research on Aggression and International Union of Police Federations.

I. SUMMARY AND ANALYSIS OF THE REPLIES

A. Relevance of the Code

Overview

8. The information received from all Governments shows that the provisions of the Code of Conduct for Law Enforcement Officials are considered to be of great importance and that, in general, they are incorporated into or covered by national legislation or practice. Very few countries mentioned that the Code had not been fully implemented.

Legislation consistent with the Code

9. The majority of Governments reported that changes in their legislation were not deemed necessary because existing constitutional provisions in some

*Non-member State.

cases, as well as laws and regulations, already met the standards of the Code and often went beyond them. New codified statutes on law enforcement officials, therefore, were not deemed necessary. By way of illustration, it was stated that the guarantees, as established by the Code, were usually embodied either in national constitutions (especially with regard to fundamental safeguards for human rights), or in specific regulations, such as police and correctional acts.

Changes in legislation

10. A number of Governments reported the explicit influence of the Code of Conduct in changes of their legislation embodying some or all of its provisions. One country expressly mentioned that it had incorporated the complete text of the Code in national legislation in 1982. Most replies, however, did not indicate the extent to which the Code had been adopted or which substantive parts of the Code had been incorporated in national legislation. One Government observed that recently an independent national Commission on Human Rights had been established under the constitution to investigate, inter alia, human rights violations connected with the Code.

B. Application of the Code

Measures for implementation and difficulties encountered

11. The replies indicated that, in principle, the Code was available to all law enforcement officials, but not always in their mother tongue. Many Governments reported, however, that it was not necessary to make the Code available to their law enforcement officials, since similar provisions were incorporated in their laws and regulations, and those provisions were adequately disseminated. A few other countries stated that they planned or had taken steps to translate the Code into national language(s) and to disseminate it widely.

Training

12. The importance of the Code as part of every training programme for law enforcement officials was stressed by most Governments. It was indicated that training programmes included special courses on the main principles regarding individual rights and guarantees in order to prevent abuses of authority. Furthermore, it was noted, every police agency should take steps to ensure that all officers had an understanding of their roles, and an awareness of the culture of the community in which they worked. Several Governments stated that police officers and their assistants took continuous and consecutive training courses, which covered material directly connected with the Universal Declaration of Human Rights (General Assembly resolution 217 (III) of 10 December 1948), and other relevant United Nations instruments. Other Governments mentioned that although they did not use the Code in their training programmes, they did use similar provisions found in other legal texts.

Seminars

13. Several Governments reported having held national and international seminars on the role of the police in the protection of human rights, some of them in close collaboration with the United Nations. With respect to national seminars in particular, one Government reported that it invited foreign jurists who were specialized in the field of human rights to give lectures to national law enforcement officials. Many of the replies that mentioned such seminars, however, did not provide specific information on the topics covered.

Difficulties

14. The difficulties reported by some Governments in implementing the Code were numerous, covering budgetary, cultural, economic, geographical, legal, social and technical matters. Only a few Governments gave specific examples, however. One Government reported that violators of the Code sometimes could not be held accountable because of legal technicalities. In addition, the financial and economic crisis had resulted in budgetary restraints that gave the implementation of the Code a lower priority than other, seemingly more urgent, items. Such obstacles might not easily be overcome totally, but continuing studies and reviews of the various difficulties affecting the implementation of the Code might help to minimize them. Another Government reported some problems in implementing article 4 of the Code containing the principle of confidentiality, in so far as there was currently a tendency to make the criminal justice system more visible and accountable.

Proposals

15. About half of the Governments were of the opinion that additional measures should be undertaken to promote the application of the Code, and cited several, such as presidential decrees, departmental directives or periodical circulars. It was also suggested that citizens and police should endeavour to acquaint themselves with their rights and duties, since this would contribute to a better relationship between law enforcement officials and the public, which was considered to be an effective measure to promote the application of the Code. One Government reported that all law enforcement officials, during their service, were required to carry a copy of the Code, as a reminder.

C. Status of law enforcement officials*

Overview

16. Most Governments reported that the status of law enforcement officials was that of a civil servant; in very few countries, law enforcement officials belonged to the armed forces or military personnel. Two governments named their law enforcement agents "Peace Officers", whose function was to implement, inter alia, the Code and all other relevant legislation. Nearly all the Governments agreed upon the need for an ultimate civilian authority for law enforcement officials, to ensure political control over their activities.

17. It was considered that the main tasks for law enforcement officials were to preserve security and order, to supervise the enforcement of laws and regulations and to prevent, investigate and assist in prosecuting crime. A number of Governments observed that law enforcement officials were supposed to be on duty at all times.

*For a definition of "law enforcement officials" see the Code, Commentary to article 1. See, also, the report of the Interregional Preparatory Meeting, held at Varenna, which states that: "In order to achieve the aims and objectives set out in article 1 of the Code and its relevant commentaries, the definition of "law enforcement officials" shall be given the widest possible interpretation".

18. The provisions for adequate remuneration for law enforcement officials were deemed to be an important issue, and appropriate social status and social insurance were considered important by the majority of the Governments. Scales of remuneration were often indicated as being in line with those for other government officials. Many countries mentioned that the range of remuneration depended on such factors as rank, education, specialization, age and seniority. Some Governments observed that law enforcement officials were given higher remuneration than the average government officials, or they had special rights, to counterbalance the risks deriving from the nature of their duties.

Selection and recruitment

19. Several Governments mentioned that their law enforcement officials were recruited on the basis of competitive examinations and appointed on a probationary basis. Criteria for selection and recruitment seemed to differ only in detail; requirements regarding citizenship, age, physical and mental fitness, education and a clean record were among the most commonly specified. Conditions such as good social and moral conduct were also mentioned by a few Governments. A number of Governments reported the use of psychological tests in the recruitment process; the importance of using psychological tests was to examine the suitability of the candidates in terms of their reactions to the behaviour of third parties.

Training

20. The length of the basic training courses after recruitment varied from two weeks to 30 months. They were usually followed by refresher courses or other programmes of further specialization. Many Governments mentioned that the level of training depended on the rank and specialization of the candidate's future job. Officers recruited for higher responsibilities would have to attend extensive courses in law, criminology, criminal procedures, police strategies, tactics, national defence and sometimes foreign languages. Officers of lower ranks received basic training in crime investigation and detection, human rights, criminalistics, traffic regulations and other related requirements.

D. Safeguards against violations of the Code

Overview

21. All countries mentioned that certain violations of the Code were punishable under their penal legislation, mainly in the case of gross misconduct. One Government mentioned that the liability of law enforcement officials before the law was more strict in most cases, due to their special status. Another Government differentiated between the commission of offences involving excessive use of force and firearms during the course of duty or on the occasion of duty on the one hand, and infractions committed off duty on the other. Owing to the fact that, in that particular country, law enforcement officials belonged to the Armed Forces, in the first case the Code of Military Criminal Justice applied, and in the second case the Penal Code.

22. The most commonly indicated criminal offences concerning the violation of the Code were the following: abuse or misuse of authority; violation of the provisions for the protection of life and physical integrity, including arbitrary or excessive use of force or firearms; violence; neglect of duties; and torture and ill-treatment of persons.

23. Apart from penal measures, almost all the respondents reported the existence of disciplinary and administrative norms serving as internal regulation. Depending on the nature of the violation, sanctions ranged from reminders to dismissals from service.

Preventive measures

24. To prevent or reduce violations of the Code, most Governments stressed the importance of a thorough police training. The obligation to submit written reports on extraordinary circumstances, especially the use of force or firearms, was also considered to be a valuable means of controlling and redressing violations of the Code. Many Governments also emphasized the importance of a clear distribution of competence and responsibility in the administration of criminal justice. One Government reported that its Public Prosecutor's Office, in safeguarding human rights and the administration of justice, watched over the work of investigation officers and members of the judicial police and supervised the execution of decisions.

25. The importance of the involvement of various mass communication media in the application of the law in the protection of human rights was underlined as a means of improving the relationship between law enforcement officials and the public. It was also stressed that law enforcement agencies should engage actively in public information, rather than merely responding to occasional public inquiries.

Complaint procedures

26. Most Governments mentioned the existence of a Police Complaints Board, or a similar body, accessible to the public. These bodies were most commonly composed of senior police officers and sometimes of prominent citizens as well. In some countries, complaints were presented directly to the superior officers and they were eventually examined by specially appointed police committees or disciplinary commissions. Thus, investigations of suspected violations of the Code were most often carried out by the police itself. Only when a criminal offence was concerned were such investigations usually transmitted to the public prosecutor. One Government reported that in some municipalities complaints bureaux had been set up to assist the public in formulating complaints and following correct procedures.

27. Some Governments agreed that one of the duties of the police was to inform the citizens of their rights and, in particular, of their right to file complaints, even against the police itself. The services that might be rendered to the community by law enforcement officials in that regard were considered to be of great importance, as they would enhance co-operation and confidence between the citizenry and the law enforcement officials. It was also observed that establishing and institutionalizing effective measures to handle complaints against law enforcement officials by the public could improve relations between them. In that context, some Governments expressly reported that they accorded no exemptions or privileges to their law enforcement officials; a policy that, it was believed, would in turn lead to a more effective criminal justice administration.

28. Most Governments reported the existence of ad hoc courts of discipline or panels within the national police composed of members of the police only. A few Governments, however, reported the existence of independent bodies to prevent or redress violations of the Code. Some countries mentioned the existence of a parliamentary ombudsperson, and one Government reported that the legislative assembly appointed such an ombudsperson who was a parliamentary commissioner and who, on his or her own initiative, or at the request of

the public, could demand to be fully informed of all cases dealt with by the administration or the police, and who could thereafter express his or her views. Another Government mentioned the establishment of an independent national Commission on Human Rights that received and investigated, on its own initiative or on receipt of complaints, all forms of alleged human rights violations.

II. USE OF FORCE AND FIREARMS

29. In their replies to the last United Nations survey on the implementation of the Code, Governments expressed the view that there was a need for greater specification of the provisions on the use of force and firearms by law enforcement officials, contained in article 3 of the Code (A/CONF.121/12, paras. 20-25). The International Preparatory Meeting of Experts, held at Varenna, also expressed concern about that issue and identified a range of elements on the use of force and firearms for further work in that area (A/CONF.121/IPM/3, para. 34). Accordingly, the Seventh Congress, in resolution 14, called for measures for the effective implementation of the Code, emphasizing that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights. In implementing that Congress resolution, the Economic and Social Council, in resolution 1986/10, section IX, invited Member States to pay particular attention, inter alia, to the use of force and firearms by law enforcement officials.*

A. Existing norms

30. The amount of information provided to the present survey varied from one country to another: some States included in their replies detailed laws and regulations regarding the use of force and firearms, whereas others selected a few of their regulations to give examples of their directives.

31. All Governments mentioned the existence of laws and regulations governing the control, storage and issuance of firearms and ammunition. The competent supervisory authority was normally the police and, at a higher level, the Ministry of the Interior. One country reported that dealers in firearms needed a special licence and were subjected to a number of limitations regarding quantity, storage and sale. Another country indicated that possession, import and sale of firearms and ammunition were supervised by the Public Security Authorities.

32. Governments reported the existence of limitations to the use of force and firearms, and some countries mentioned the requirement of a licence for carrying firearms. In that case, failure of possessing a licence constituted a criminal offence. Even when a licence was granted, however, the use of firearms was admissible only in case of self-defence, within the strict limits of the principle of proportionality. It was observed that stringent legislation and strict practice contributed to limiting accidents caused by the use of firearms. One Government, however, pointed out that citizens liable to military service were authorized to keep rifles and ammunition in their homes.

*Ongoing international concern with the use of force and firearms, as stressed by several regional and international bodies, such as the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as by the Council of Europe, confirms the gravity of this matter.

33. Laws and regulations controlling the use of force and firearms by law enforcement officials, as reported by Governments, can generally be categorized into the following two main groups:

(a) Legislative penal measures against the misuse of force and firearms;

(b) Administrative regulations providing clear instructions for law enforcement officials, including more specific and detailed rules on the use of force and, especially, of firearms.

34. These regulations were usually reflected in the basic texts for the training of law enforcement officials. Almost all Governments stressed the importance of theoretical and practical training in the use of firearms and the necessity for every law enforcement official to reach a satisfactory level of proficiency. In view of the increasing technological complexity of instruments of force, the need to elaborate a detailed syllabus for the training of law enforcement officials was stressed.

35. One country, on the contrary, emphasized that in general its police force was unarmed; therefore, it was not necessary and it would be inappropriate for recruits to be trained in the use of firearms. In special cases, those officers who were trained in the use of firearms were selected carefully from volunteers on the basis of their psychological and physical suitability. They were informed that the decision to fire a gun rested with the individual officer alone, who might be called upon to justify that decision before a court.

B. Specific situations

36. On the basis of the information supplied by Governments, the regulations concerning the use of force and firearms by law enforcement officials may be divided into three different categories:

(a) The use of force or firearms by an individual law enforcement official. Detailed information was provided and there was a consensus regarding the following principles: law enforcement officials are authorized to use force or firearms when they are unable to achieve their purpose in any other way and when the seriousness of the case requires such a reaction. This principle might be applied in the course of an arrest, if the person to be arrested is armed, tries to avoid arrest, and the escape cannot be prevented by reasonable means in a less violent manner. Law enforcement officials may also use weapons to defend themselves, or any person under their protection, from bodily harm or possible death, and also to prevent the commission of a serious offence, especially when the offender uses force;

(b) The use of force or firearms in formation or in larger units. Some Governments have issued thorough directives on this subject in order to preclude the possible misuse of force by law enforcement officials when in formation or in larger units to combat mass violence. It was observed that in such cases there should be an order to use force or firearms given by a competent superior officer or, as one country reported, by the civilian authority in charge of the community in which such action was to take place. All the respondents agreed upon the necessity to try all other means of persuasion, including clear warnings to disperse unlawful assemblies, before using force or firearms. A few Governments reported that before resorting to firearms they would use, whenever possible, special equipment such as high-pressure hoses or tear-gas;

(c) The use of force or firearms by prison officers.* Although it is well known that many Governments provide their prison officers with relevant information on the use of force and firearms and train them accordingly, reference to this subject was made only by some Governments. They reported that force or firearms against prisoners could be used in cases of exceptional gravity such as escapes, outbreaks and riots. It was emphasized that the staff in direct contact with inmates should not be armed, notwithstanding periodic training in handling weapons.

C. Special issues

37. In addition to the afore-mentioned categories, the following issues were pointed out:

(a) The use of force or firearms should be within reasonable boundaries. The problem of defining the term "reasonable boundaries", however, gave rise to various practical difficulties and required further study;

(b) The principle of proportionality should be observed;** therefore, a proper balance between the need to use force or firearms emerging from such action should be sought. Serious damage and bodily harm to persons directly involved, or to innocent bystanders, should be averted by a more moderate approach in specific situations. Moreover, force and firearms should, as far as possible, be used only to restrain, and to cause the least possible harm;

(c) Deadly force should never be used on mere suspicion;

(d) Whenever possible, a clear warning, preferably a vocal one, should be given before firearms are used;

(e) If force or firearms are used, assistance and medical aid should be rendered to any injured person at the earliest possible moment;

(f) After each incident involving the use of firearms, a written report should be submitted to the superior officer, which should justify such action. Furthermore, in cases of injury or death resulting from the use of force or firearms, such a report should also be made available to the public prosecutor;

(g) Arbitrary or abusive use of force or firearms should be punished as a criminal offence under national law.

D. Elaboration of Basic Principles

38. In pursuance of the mandates mentioned in paragraph 29 above, and with a view to assisting the Committee in its task, the Secretariat has formulated a set of Draft Basic Principles on the Use of Force and Firearms (see annex I), taking into account the replies of Governments to the present survey as well as work previously accomplished in this area. Thus, the Draft Basic Principles are based on the recommendation of the Interregional Preparatory Meeting at Varenna (A/CONF.121/IPM/3) and the information provided in the present inquiry, as well as the results of the International Expert Meeting on United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987.

*See the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54 (Economic and Social Council resolution 663 c (XXIV) of 31 July 1957).

**See Code of Conduct, commentary to article 3.

39. In considering this question, the International Preparatory Meeting had agreed that the following elements should be considered in the course of further work on the discretionary use of force and firearms by law enforcement officials:

"(a) Armed law enforcement officials should be selected by a proper procedure of screening and should be psychologically and emotionally fit. They should receive thorough training in the use of firearms;

"(b) Governments should set up and enforce rules and regulations to ensure that weapons and ammunition are appropriate to the circumstances and situations in which the need to use firearms is likely to occur;

"(c) The type of weapons and ammunition to be employed should be so selected that the risk of causing harm to the public in general would be minimal;

"(d) The only weapons and ammunition that officers should be permitted to use should be those officially issued by the competent authorities;

"(e) The competent authorities should formulate and issue detailed regulations governing the control, storage and use of firearms by law enforcement officials."

40. In the light of the observations made by the Seventh Congress, the Baden Meeting focused its attention on a number of specific issues, including the question of whether the Draft Basic Principles should also apply to prison officials. On the one hand, the view was expressed that the use of force or firearms to control persons raised common problems, whether it occurred in a prison or policing context. On the other hand, it was observed that while the Code was formulated in terms wide enough to encompass prison officials, the Standard Minimum Rules for the Treatment of Prisoners should not be changed. These contained clear and explicit provisions on the use of force and firearms by institutional personnel, particularly in rules 33, 34 and 54.

41. The Baden Meeting therefore accepted the view that the Draft Basic Principles should be oriented more towards law enforcement officials in general, than towards prison officials in particular. Such Principles should contain standards and procedures going beyond those applicable to institutional personnel under the Standard Minimum Rules. It was further noted that the operational exigencies of prison situations were different than those of the policing situation, and generally more predictable.

42. Another issue considered by the Baden Meeting was the responsibility of law enforcement officials who used force or firearms against persons in obedience to superior unlawful orders. One view was that compliance with standards was so essential that law enforcement officials should accept full responsibility for their actions. But it was argued that it was unrealistic to expect law enforcement officials to refuse to follow the operational commands of their superiors. The matter was considered of such complexity that it would need further examination.

43. Other main points discussed at the Baden Meeting included the following:

(a) The importance of addressing ethical issues concerning the use of force and firearms;

(b) The significance of new technologies relating to the development of non-lethal incapacitating weapons and ammunition for use in appropriate situations;

(c) The need for graduated responses by law enforcement officials that should be proportionate to the situation to be controlled;

(d) The importance of training if the use of force or firearms by law enforcement officials was to comply with the Basic Principles;

(e) The need for stress-counselling for law enforcement officials who become involved in situations where the use of force or firearms is necessary in the course of their duties;

(f) The requirement of effective reporting and review procedures in relation to such incidents.

44. Taking into account the observations made by Governments in the present survey, as well as by the meetings at Varenna and Baden, the Draft Basic Principles set out, on the basis of general consensus, provisions accepted by the international community so that favourable consideration could be given to their use within the framework of national legislation and practice. The Committee, in pursuing its task, may wish to consider these Draft Principles and may deem it appropriate to finalize them at its tenth session for follow-up.

III. FUTURE IMPLEMENTATION OF THE CODE

45. The need for further promotion of the implementation of the principles of the Code at all levels was referred to by all the Governments. It was also noted that activities of the United Nations such as technical assistance, advisory services and the organization of seminars should be strengthened to facilitate implementation.

A. National level

46. At the national level, the widest possible dissemination and information of the ideas of the Code to all sectors of the population was proposed by many Governments. The need to develop more detailed rules in areas that might cause conflicts owing to the lack of precise definition, such as the use of force and firearms, was emphasized.

47. Several Governments stated that a more effective implementation of the Code could be achieved by training, and that the training should be oriented towards a high level of professional competence and moral qualities in order to improve relations between the public and law enforcement officials.

48. Other Governments stressed the importance of the development of professional skills by modern scientific means and the use of computers to increase the efficiency of the police, and by having as much information as possible at their disposal, with appropriate safeguards against its misuse.

B. Regional and international levels

49. The importance of the role of the United Nations in promoting regional and international meetings at all levels was generally stressed. Many countries expressed their need for technical assistance through the United Nations advisory services and other means on a permanent or more regular basis.

50. It was emphasized further that the role of the United Nations regional and interregional institutes should be strengthened, and that co-operation with them in the field of crime prevention and criminal justice should be

intensified. In that connection, some Governments mentioned the need to promote national or regional seminars and other meetings at a professional and non-professional level for further implementation of the Code.

51. Many Governments referred to the importance of a continuing co-operation between Governments, the United Nations, INTERPOL and other international organizations in that field. The hope was expressed that, at the international level, criteria to unify the relevant national and international standards and norms in the interest of improved application of the Code might be established by such international meetings.

C. Draft Guidelines for the effective implementation of the Code

52. The Seventh Congress, in resolution 14, inter alia, recalled the concern expressed by Member States with regard to disseminating the Code and to establishing a set of guidelines for its more effective implementation. The Congress also invited attention to the guidelines for the more effective implementation of the Code formulated at the International Preparatory Meeting at Varenna (see annex II). Accordingly, the Economic and Social Council, in resolution 1986/10, section IX, requested the Committee 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.

53. The Committee, in pursuing its task, may wish to take into account the Varenna guidelines and may deem it appropriate to finalize them for further follow-up. The Committee would thus make an essential contribution to translating the provisions of the Code into reality, in accordance with Seventh Congress resolution 14 and General Assembly resolution 41/149 on human rights in the administration of justice, which requested the Council and, through it, the Committee, to pay special attention to effective ways and means of implementing existing standards and to new developments in this area. This was followed up in General Assembly resolution 42/143, which encouraged the continuing development of strategies. The following 62 countries responded to the previous survey: Algeria, Argentina, Austria, Bahamas, Bahrain, Bangladesh, Belgium, Belize, Botswana, Bulgaria, Canada, Chad, Chile, Colombia, Cuba, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, Guatemala, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Israel, Japan, Kenya, Kiribati,* Kuwait, Mauritius, Madagascar, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea,* Rwanda, Seychelles, Somalia, Spain, Sri Lanka, Suriname, Sweden, Switzerland,* Thailand, United Arab Emirates, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia and Zimbabwe.

*Non-member State.

Annex I

DRAFT BASIC PRINCIPLES ON THE USE OF FORCE AND
FIREARMS BY LAW ENFORCEMENT OFFICIALS

Whereas the work of law enforcement officials is a social service of great importance and, therefore, there is 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 person, as guaranteed in the Universal Declaration of Human Rights 1/ and reaffirmed in the International Covenant on Civil and Political Rights, 2/

Whereas the Standard Minimum Rules for the Treatment of Prisoners 3/ 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 provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty, 4/

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, 5/

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights, 6/

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, invites 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, inter alia, welcomes this recommendation made by the Council,

Whereas it is, therefore, appropriate that, with due regard to their personal safety, consideration should 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 listed 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 should be brought to the attention of law enforcement officials, lawyers, judges, prosecutors, members of the executive and the legislature and the public in general.

A. 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 continuously under review.

2. Governments and law enforcement agencies shall develop a range of police means as broad as possible and equip law enforcement officials with various types of weapon 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.
3. Law enforcement officials, in carrying out their duty, shall make every effort to apply alternative measures before resorting to the use of force or firearms.
4. In those circumstances where the lawful use of force or firearms is justifiable, law enforcement officials shall use such force or firearms with restraint and in proportion to the legitimate objective to be achieved.
5. Whenever the use of force or firearms is justifiable, law enforcement officials shall seek to minimize injury and respect and preserve human life.
6. Law enforcement officials who resort to the use of force or firearms shall ensure that assistance and medical aid is rendered to any injured persons at the earliest possible moment.
7. Where injury or death is caused by the use of force or firearms by law enforcement officials, they shall report the incident immediately to their superiors.
8. Governments shall ensure that arbitrary or abusive use of force or firearms by law enforcement officials is punished as a criminal offence under their law.

B. Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or in the defence of others against the immediate threat of death or serious injury, or to prevent the commission of a serious crime involving great danger to persons or national security, or to arrest a person suspected of such a crime when less extreme measures are not sufficient to achieve these objectives.
10. Should the need for the use of firearms arise, law enforcement officials shall, as far as circumstances permit, identify themselves as law enforcement officials and give a warning of their intent to use their firearms, with sufficient time for the warning to be observed.
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 and use firearms, both on and off duty, and the types of firearms and ammunition officially issued by the competent authorities;
 - (b) Ensure that firearms are appropriate to the situation so as to prevent, as far as practicable, the risk of harm to the public;
 - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk to the public;

(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.

12. Law enforcement officials who resort to the use of firearms in the performance of their duty shall report the incident immediately to their superiors.

C. Policing unlawful assemblies

13. 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 everyone is allowed to participate in lawful and peaceful assemblies.

14. 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, restrict such force to the minimum necessary.

15. In the dispersal of violent assemblies, law enforcement officials shall not use firearms if less dangerous means are practicable. In particular, law enforcement officials shall not use firearms in such cases, except in self-defence or in the defence of others against the immediate threat of death or serious injury.

D. Policing persons in custody or detention

16. 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 or personal safety.

17. 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 detainee suspected of a serious crime involving great danger to persons or national security.

18. 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.

E. Qualifications, training and counselling

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are persons of integrity, have appropriate psychological and physical qualities for their service and receive continuous and thorough professional training. Those law enforcement officials who are required to carry firearms should be selected by proper screening procedures and should receive regular in-service training.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the techniques of persuasion, negotiation and mediation, with a view to limiting the use of force or 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 provide stress counselling to law enforcement officials who are involved in situations where force or firearms are used.

F. Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 7 and 12. Every case shall be thoroughly examined to determine whether the use of force or firearms was authorized and justified under the circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent immediately to the competent authorities responsible for independent administrative review and judicial control, including those responsible for prosecution.

23. Persons subjected to the use of force or firearms or their legal representatives shall have the right to initiate the independent administrative review and the judicial control procedures referred to in principle 22.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they are aware that law enforcement officials under their command are resorting to the unlawful use of force or firearms and they do not take all measures in their power to prevent or suppress such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary action is taken against law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these Basic Principles, refuse to carry out an unlawful order to use force or firearms.

Notes

1/ General Assembly resolution 217 A (III) of 10 December 1948.

2/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

3/ Economic and Social Council resolution 663 c (XXIV) of 31 July 1957.

4/ Human Rights: A Compilation of International Instruments (United Nations Publications, Sales No. E.83.XIV.1), sect. G.31.

5/ A/CONF.121/IPM/3, para. 34.

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

Annex II

VARENNA GUIDELINES FOR THE MORE EFFECTIVE IMPLEMENTATION OF
THE CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS*

A. Application of the Code

1. General principles

(a) Efforts shall be made to incorporate the Code of Conduct into national legislation and practices;

(b) In order to achieve the aims and objectives set out in article 1 of the Code and its relevant commentaries, the definition of "law enforcement officials" shall be given the widest possible interpretation;

(c) The Code of Conduct shall be made applicable to all law enforcement officials, regardless of their jurisdiction;

(d) Governments shall adopt the necessary measures to instruct, in basic training and in all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation that is connected with the Code of Conduct and other basic texts in human rights.

2. Specific issues

(a) Selection, education and training. The selection and training of law enforcement officials shall be given prime importance. Governments shall also promote training through a cross-fertilization of ideas at the regional and interregional levels;

(b) Salary and working condition. All law enforcement officials shall be sufficiently remunerated and their working conditions shall be adequate;

(c) Discipline and supervision. Effective mechanisms to ensure the internal and external discipline as well as the supervision of law enforcement officials, shall be established;

(d) Complaints by members of the public. Particular provisions shall be made, within the mechanisms mentioned under (c) above, for the receipt of complaints against law enforcement officials by members of the public, and the existence of these particular provisions shall be made known to the public.

B. Implementation of the Code

(a) At the national level:

- (i) The Code of Conduct shall be made available to all law enforcement officials and relevant competent authorities in their own language;
- (ii) Governments shall disseminate the Code to ensure that the principles and rights contained therein become known to the public in general;

(iii) In considering measures to promote the application of the Code, Governments shall organize national symposia on the role of law enforcement officials in the protection of human rights.

(b) At the international level:

- (i) Governments shall inform the Secretary-General of the United Nations every five years of the extent of the implementation of the Code;
- (ii) 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;
- (iii) As part of the information mentioned in (ii) above, Governments shall provide the Secretary-General with 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;
- (iv) The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate;
- (v) The Secretary-General shall disseminate the Code and the present guidelines and make them available to all States and the inter-governmental and non-governmental organizations concerned;
- (vi) 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 of law enforcement officials in the protection of human rights;
- (vii) Regional institutes shall be encouraged to organize seminars and training courses on the Code of Conduct and to conduct research on the extent to which the Code is implemented in the countries of the region and the difficulties encountered.