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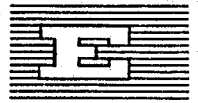
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IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE SEVENTH
UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS

Declaration of Basic Principles of Justice
for Victims of Crime and Abuse of Power

Report of the Secretary-General

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*E/AC.57/1990/1.

INTRODUCTION

1. The Economic and Social Council, in its resolution 1986/10 (III) of 21 May 1986, recommended that continued attention should be given to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders ^{1/} and by the General Assembly in its resolution 40/34 of 29 November 1985. The Council also requested the Secretary-General to submit to the Committee on Crime Prevention and Control, at its tenth session, and at its eleventh session if it occurred before the Eighth Congress, a report on measures taken to implement the Declaration, including progress achieved since the Seventh Congress. The first report (E/AC.57/1988/3) was, accordingly, submitted in 1988 and the second one is submitted herewith.

2. On the recommendation of the Committee on Crime Prevention and Control at its tenth session, the Economic and Social Council adopted resolution 1989/57 of 24 May 1989 recommending the preparation, publication and dissemination of a guide for criminal justice practitioners and others engaged in similar activities, taking into account the work already carried out.* With the co-operation of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, a draft guide for practitioners on the application of the Declaration was prepared. A working group of experts, including two members of the Committee, met in London on 23-24 November 1989, with the support of the Home Office, to finalize the draft guide (E/AC.57/1990/CRP.1).

3. In conjunction with the Fourteenth International Congress on Penal Law, a meeting was convened at Vienna on 4 and 6 October 1989, and attended by 30 experts from 18 countries of all regions, who made proposals on international means for preventing the abuse of power and providing redress for the victims where national channels might be insufficient.

4. The regional and interregional preparatory meetings for the Eighth Congress, which considered the implementation of the Declaration under different topics of the provisional agenda for the Eighth Congress, made recommendations, ^{2/} and in the case of the Western Asia Regional Preparatory Meeting, a draft resolution was formulated for adoption by the Eighth Congress, which is before the Committee (E/CONF.144/RPM.4, resolution 2). An ad hoc expert group meeting was held at the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, from 17 to 20 November 1988. ^{3/} An International Symposium on Law Enforcement and the Human Rights of Victims, which was organized by the Government of Egypt and held at Cairo in January 1989, adopted a resolution in pursuance of the Declaration. Several other recent international meetings dealt with some aspects of the subject-matter: their conclusions are reflected in the present report.

*In particular, the procedures for the effective implementation of the Declaration, which were prepared by an ad hoc Committee of Experts convened at the International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy, in 1986, and endorsed by an international symposium on crime prevention and criminal justice held at Milan in 1987.

I. ACCESS TO JUSTICE AND MEANS OF RECOURSE

5. While there has been substantial progress in certain countries in improving the situation of victims of crime in the criminal justice process in recent years, much remains to be done. The development of guidelines and the exchange of experience is helping to improve the status of victims in the administration of justice. 4/

6. If the victim of conventional crime has often been a forgotten party in criminal proceedings, the possibilities of recourse and redress for a victim of the abuse of power have been still more limited. Although most States have included protective provisions and an indication of possible remedies in their national constitutions or other legislative texts, there is frequently a gap between these stipulations and actual practice. Signs of progress are nevertheless evident in the increased awareness and more vocal articulation of claims to exercise certain basic rights. Yet, if there is little knowledge among the general population of the domestic means of recourse and procedures for obtaining possible redress, there is even less awareness of the international mechanisms that might be used. A public information campaign, linked to the fortieth anniversary of the adoption of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III) of 10 December 1948), has sought to increase knowledge of the instruments and procedures.*

A. International mechanisms

7. International supervision of the domestic implementation of human rights instruments relies largely on reporting provisions as is the case with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Procedures for complaints and appeals directed to the United Nations exist primarily in the framework of its human rights mechanisms. The Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities may appoint Special Rapporteurs, special representatives, commissions of inquiry or groups of experts, or set up working groups, in order to examine the situation of a State deemed to be violating human rights, or to deal with violations of a specific human rights norm.** Complaints from individuals or non-governmental organizations under the jurisdiction of any of the States Members of the United Nations may be submitted to these entities and can also be examined under the procedure established by the Economic and Social Council, in its resolution 1503 (XLVIII) of 27 May 1970, which brings to the attention of the Commission on Human Rights, through the Sub-Commission, communications indicating "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms".

*The inclusion of the Declaration in Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.37, is a recognition of its importance and should foster the application and observance of its provisions.

**These entities deal, for example, with arbitrary or summary executions, enforced or involuntary disappearances, torture, slavery, religious or other discrimination (e.g. against women), rights of the disabled, indigenous populations, states of siege or emergency (when basic rights tend to be derogated or suspended), and with the situation in certain countries.

8. The international mechanisms that can be invoked in cases of complaint and appeal against acts of torture, disappearances and other inhuman or degrading treatment have been detailed in a Practical Guide, prepared by the World Organization against Torture, which contains information on the names, mandates, composition, persons or bodies to whom complaints may be addressed. 5/ Persons under the jurisdiction of a State party to the Optional Protocol to the International Covenant on Civil and Political Rights, 6/ or those acting on their behalf, who have exhausted all domestic remedies, can address their complaints to the Human Rights Committee for alleged violations of the Covenant. Complaints from persons who claim to be victims of torture, in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 7/ can also be submitted to the recently constituted Committee against Torture, which can investigate allegations of its systematic practice, including an on-site visit with the agreement of the State concerned. The Special Rapporteur to examine questions relevant to torture, who reports to the Commission on Human Rights, also receives requests for urgent action, which are brought to the attention of the Government concerned. The Working Group on Enforced or Involuntary Disappearances receives and examines reports of disappearances submitted by relatives or friends of missing persons or by human rights organizations acting on their behalf.

9. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizes the principle of universal jurisdiction for its infringements, which, at least in principle, implies the establishment of an international criminal court. Moreover, the existence of international crimes in violation of international law, as embodied in United Nations conventions, especially the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III), annex), the International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly resolution 3068 (XXVIII), annex), and the International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX), annex), give legal expression to basic moral standards.* 8/ As the public prosecution of acts proscribed by national laws is justified by their being against the community's interests, so practices infringing international instruments or norms can be said to contravene the general public good. It has been suggested that basic human rights, which have universal relevance, may eventually be guaranteed by transnational institutions rather than nation States. This would not only involve infringements of international law, but also of the growing body of transnational law and norms that transcend national frontiers and represent the collective human conscience.**

*Other such crimes have also been identified, for example, cultural genocide and barbarity.

**It has been noted that, while international law is primarily of and for States, the term "transnational law" recognizes a multiplicity of objects of the law, both internal and external to the limits of nation States, including a variety of transnational situations that may involve individuals, society, groups of States, intergovernmental and non-governmental organizations (Renato Treves, "Diritti umani e sociologia del diritto", and William M. Evans, "Diritti umani, stato nazione e diritto transnazionale", in Sociologia del Diritto (Milan) vol. XVI, No. 1 (1989), pp. 7-14 and 37-51, respectively).

10. While the human rights procedures of the United Nations provide a mechanism for recourse against violations of basic rights enshrined in internationally agreed instruments, they have some limitations in their practical application. Foremost is the fact that complaints can come only from persons or organizations under the jurisdiction of States parties to such instruments, and that it is difficult to lodge complaints at the time when the abuses are occurring. Under the complaint procedure provided by the Economic and Social Council, in its resolution 1503 (XLVIII), allegations of systematic violations are generally referred back to the Governments concerned, which may sometimes have serious consequences for the complainants. Furthermore, in order for the Committee against Torture to be able to investigate the complaint, the particular country must recognize the competence of the Committee under articles 20, 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, which it can decline to do when ratifying the Convention. Notwithstanding these and other constraints, at least some international means exist for recourse where national channels may be insufficient.

11. The specialized agencies of the United Nations have mechanisms to consider complaints against alleged violations of rights contravening their constitutions or international instruments in their areas of concern. The conventions of the International Labour Organisation (ILO) prohibit forced or obligatory labour; others seek to promote safe working conditions and to reduce occupational hazards and injuries. There is a uniform system of supervision by a commission of experts and a tripartite commission consisting of representatives of Governments, employers and workers, who can review complaints. The Executive Board and General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) examine massive, systematic or flagrant violations of human rights and fundamental freedoms. The World Health Organization (WHO) has the main responsibility for promoting compliance with 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 (General Assembly resolution 37/194, annex), which proscribes the participation of medical personnel in torture, and with the draft body of principles and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder (E/CN.4/1989/3, draft resolution VI), which aim at preventing psychiatric abuses and provide basic standards for treatment.

12. Other bodies and specialized agencies of the United Nations exercise certain protective functions, which may include formal or informal means of conveying grievances alleging victimization. Thus, the Office of the United Nations High Commissioner for Refugees (UNHCR), *inter alia*, fosters judicial protection for refugees and their treatment according to recognized international standards, including the right to seek asylum and not to be forcibly returned to a country where they have reason to fear persecution. With the adoption of the Convention on the Rights of the Child by the General Assembly in 1989 (A/44/616), the United Nations Children's Fund (UNICEF), together with the human rights bodies of the United Nations, will carry responsibility for its application. The Secretary-General and heads of bodies and specialized agencies of the United Nations can use their good offices to try to curtail victimization and to help individual victims,* especially when threatened

*Within the United Nations system, there is an appeals machinery for presumed violations of staff rights but it is limited to recourse for internal administrative decisions.

with execution, but must rely on the goodwill of Governments and quiet diplomacy. The fact that even in the case of United Nations staff under detention these efforts have been protracted and not always successful shows the grave nature of the problem of victimization nationally and internationally, with truly effective remedies not yet clearly in sight.

13. Although the intergovernmental machinery for the submission of possible claims of victimization is often cumbersome and not always effective because of its restricted nature and inevitable reliance on the co-operation of the Governments concerned, it does offer an avenue of recourse that needs to be strengthened further.

B. Regional mechanisms

14. The regional mechanisms, primarily the commissions for human rights and courts, provide models for more effective recourse. The European Commission of Human Rights may receive complaints from persons, groups of individuals or non-governmental organizations alleging one or more violations of the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms by one of its State parties that has recognized the competence of the Commission to deal with individual complaints, provided that the petitioner has exhausted all domestic remedies. The European Court of Human Rights has established an impressive record in dealing with cases submitted by appellants from its member States involving, largely, claims of persons under detention.

15. Communications alleging violations of the American Convention on Human Rights may be submitted to the Inter-American Commission on Human Rights by any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization of American States, provided that domestic remedies have been exhausted or that the party has been prevented from having recourse to them, or if there has been an unwarranted delay in rendering a final judgement at the national level. In a "contentious proceeding", the case is forwarded to the Inter-American Court of Human Rights for a decision. The Court, on 29 July 1988 and 20 January 1989, respectively, rendered judgements in two cases, each concerning a disappeared person, holding a Government accountable for the violation of its duties and the fundamental guarantees contained in the American Convention on Human Rights.* The Court stated that the Government must (a) prevent the practice of disappearances; (b) investigate those of the persons on behalf of whom the action was initiated until there was a certitude about what had happened to them; (c) punish those responsible for causing the disappearances; and (d) provide appropriate indemnification. 2/ A number of other cases, lodged by presumptive victims or their families, have been submitted to the Inter-American Commission on Human Rights or are being prepared for submission to it, for probable transmission to the Inter-American Court of Human Rights for action.

*The argument was invoked that, in committing a crime against humanity (crimen de lesa humanidad) in violation of the American Convention on Human Rights, the international community and humanity as a whole were the direct victims, and those who had disappeared and their families were the specific, immediate but indirect (occasional or incidental) victims; furthermore, that the State's responsibility under international law did not relate only to the actual personal injuries suffered but also to the denial of justice involved in failing to take all the precautions necessary to prevent harm from being done, or in condoning illegal acts.

16. The recently established African Commission on Human and Peoples' Rights has, inter alia, a promotional mission: to collect information, to conduct research, to formulate principles and rules and to co-operate with other African and international institutions in order to foster the observance of fundamental rights and reduce victimization. Procedures envisage two kinds of communications: (a) "negotiation-communications" and (b) "complaint-communications". Under article 56 of the African Charter on Human and Peoples' Rights, communications may also be submitted by sources other than States, including individuals, non-governmental organizations and international and national organizations. If the communications reveal a series of serious or massive violations of human and peoples' rights, the Commission brings them to the attention of the Assembly of Heads of State and Government. The resultant publicity is in itself a type of sanction aimed at deterring States from committing grave abuses.

C. Non-governmental organizations

17. Non-governmental organizations, both national and international, play an important role as guardians and advocates of human rights, monitors of their observance and facilitators of possible recourse. They have also been in the forefront of campaigns for the rights of victims of crime. Local chapters of international non-governmental organizations and national organizations, including associations of victims' families, have played a major part and are often the only source of support and advice on the avenues to be pursued, including supranational channels.

18. The International Committee of the Red Cross provides humanitarian aid to the victims of disasters of human, as well as natural, origin. It also has widely accepted mechanisms for investigating victimization arising from armed international or local conflict and procedures for visiting places of detention and investigating allegations of torture and the fate of missing persons. Amnesty International, which publishes general and special country and subject reports, is concerned particularly with prisoners of conscience and seeks to eliminate capital punishment, summary and arbitrary executions, forced disappearances and torture. Through its representations to Governments, wide publicity and massive write-in campaigns, Amnesty tries to prevent executions and to secure the release of prisoners it has "adopted". The International Commission of Jurists collaborates in the development and application of international and national standards and norms for the maintenance of the rule of law and the observance of human rights in the administration of justice. Through its fact-finding missions, whose results are summarized in published reports, it brings to light some of the serious allegations of violations of human rights in certain countries or concerning certain groups with a view to securing redress. The International League for Human Rights and the Lawyers' Committee for International Human Rights also draw attention to the abuses perpetrated in some States, and assist groups and individuals whose rights have been violated or are in danger.

19. Many other organizations defend basic rights as do professional associations in various disciplines bearing on the situation of victims. The International Association of Penal Law promotes the application of international standards and norms: together with other major international organizations in the field, it has significantly advanced the development of principles for implementing the Declaration. The International Society of Social Defence, through the Centro Nazionale di Prevenzione e Difesa Sociale, Milan, organized a follow-up meeting that finalized these principles, which were subsequently submitted on behalf of the organizations concerned to the Committee on Crime Prevention and Control, at its tenth session.* The International Society of

Criminology, at its Tenth International Congress held at Hamburg, in September 1988, included the abuse of power as the subject of a plenary session. The World Society of Victimology held its Sixth International Symposium on Victimology at Jerusalem, from 28 August to 1 September 1988, and has organized annual courses and workshops on victims, including one on the victimization and protection of minorities, which was held at Dubrovnik, Yugoslavia, in May 1989. The World Federation for Mental Health, which together with the World Society of Victimology played an important role in the development of the Declaration, gave the subject attention at its World Congress, held at Wellington, New Zealand, in August 1989.

20. Other events include the Fifth International Congress of Victimology, held at Acapulco de Juárez, Mexico, in July 1989; an international conference on victims of abuse of power, held at Recoaro Terme, Vicenza, Italy, in September 1989; the Fifth Annual Meeting of the Society for Traumatic Stress Studies, held at San Francisco, in October 1989; and two forthcoming meetings, one, organized by the World Society of Victimology, on the implementation of the Declaration with regard to victims of the abuse of power (Dubrovnik, May 1990), and another, organized by the International Institute for the Sociology of Law, on victims' rights and legal reforms (Oñate, Guipúzcoa near San Sebastian, Spain, May 1990).

II. RESTITUTION AND COMPENSATION

21. The increased emphasis being placed on reparation to victims of crime and the abuse of power is evident in recent national and international initiatives. At the National Conference on Criminal Justice: Restitution, Compensation and Remedies for Victims of Crimes, held at Abuja, Nigeria, in June 1989, an integrated system and institutional framework were proposed, drawing on the Declaration and other texts, adapted to the African context and precepts, with emphasis on the function of criminal justice in maintaining social harmony and providing appropriate redress. It was urged that suitable provisions for restitution/compensation should be incorporated in national legislation, in accordance with the Declaration and African orientations. 10/

22. Restitution of unlawfully acquired property or compensation for the injury, loss or damage inflicted are still practised in African States in cases of theft or malicious damage. They provide both a remedy and an alternative to formal criminal proceedings, derived from other legal systems, which all too often exclude the victim and thus run counter to African values and traditions. There is a reluctance to invoke the penal process, which not only apportions blame but also metes out punishment, leading to possible bitterness and strained relationships rather than promoting reconciliation, the goal of customary mechanisms. This is borne out by public opinion, as reflected in empirical studies and the findings of official bodies that have suggested that restitution and compensation should be used in cases involving personal injury and property offences, with reparation serving as the pivot of the criminal justice system applicable to all offences except capital crimes. It was suggested at the National Conference that the necessary machinery should be incorporated in the Nigerian and other African criminal justice systems, which would enable a victim to seek redress from the offender without

*The proposed implementation principles and background papers have been published in a special volume; see International Association of Penal Law, International Protection of Victims, M. Cherif Bassiouni, ed. (Paris, Èrès, 1988).

necessarily going through a judicial process. The right to settle a case should exist at all stages of a criminal trial, and the interests of society, the victim and the offender should be properly and consistently balanced. 10/ Programmes for victim-offender reconciliation, an established option in other jurisdictions, are being expanded elsewhere, often with judicial assistance.* There is also a wider use, in some countries (e.g. Italy), of community service instead of short-term imprisonment.

23. The Economic and Social Council, in its resolution 1989/57, recommended that, at the national, regional and international levels, all appropriate steps should 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 return to their own country of residence or nationality, in protecting their interests and obtaining adequate restitution or compensation and support services, as necessary. The European Court of the European Economic Community, in a precedent-setting judgement of 2 February 1989, ruled that national compensation laws should apply not only to nationals and residents of the Community's member States, but also to tourists. 11/

24. Special consideration has been given in a number of countries to the victims of terrorism and organized crime. The progressive internationalization of crimes has both national and wider implications for the treatment of their growing numbers of victims. This is strikingly so with regard to the victims of terrorist acts, such as air or sea piracy where the origin of the victims, site of crime, carrier and perpetrator(s) may involve a number of jurisdictions and have implications under both national and international law. Some countries (e.g. France, Italy, Spain) 12/ have provisions for compensation of victims of terrorism but most do not. Compensation for victims of terrorism has been limited by government acts and by international instruments and treaties. A number of practical problems complicating litigation have also curtailed the availability of compensation for victims of terrorist acts, especially the problem of definition, both of terrorism and of its victims, and the difficulty of identifying a responsible party who can be brought within a court's jurisdiction. Groups presumably exposed to greater hazards by virtue of their professions, such as diplomats and armed service personnel, enjoy special protection but legislation usually restricts the extent of their compensation. In the last two decades, a passenger's ability to recover damages and the amount have been substantially increased, the carriers' liability clarified and the burden of proof eliminated. Emotional anguish has also come to be recognized in compensation awards. 13/

25. The very nature of organized crime makes its victims difficult to identify: it is often camouflaged, interfaces with legitimate business activities, uses sophisticated organizational forms and advanced techniques to escape detection, and harms many people who may not even know that they are being victimized (like the collective victims of environmental or consumer offences). All too often, syndicate bosses enjoy impunity because of the power they wield and the corruption on which their enterprises thrive. Their vast means, derived from the proceeds of crime, could, if seized,** serve as a

*Originally used in juvenile cases, such programmes are increasingly being extended to other cases. See, for example, Johannes Feest, "Schlichtung als Form der Opferhilfe", Bewährungshilfe, vol. 35, No. 3 (1988), pp. 364-373.

**Many countries have enacted or are contemplating enacting such legislation. See, for example, David McClean, "Seizing the proceeds of crime: the state of the art", International and Comparative Law Quarterly, vol. 38 (April 1989), pp. 334-360.

resource for victim compensation. In some jurisdictions (e.g. New York City) the profits of drug traffickers have financed drug treatment programmes: initiatives of this kind could be pursued, involving different groups of victims or "generic" reparation (e.g. for assistance to victims). An innovative scheme has been devised suggesting modes of handling and of sentencing those engaged in different types of organized crime, which uses restitution/compensation; although the scheme was proposed in the African context, 14/ it has wider relevance.

26. Incisive action is necessary, particularly where entire nations have been victimized by predatory organizations or unscrupulous rulers. To redress the situation and to meet public needs, the affected countries must have the capability to trace, seize or have seized or forfeited the proceeds of corruption and abuse. The assets accumulated by despotic rulers at the expense of their subjects, usually deposited abroad, should properly revert to them and be used especially for indemnification of the victims and/or their surviving family members. The co-operation of other States and of banking institutions in devolving the funds to the pillaged countries is necessary. The immunity and impunity of the victimizers must be avoided but due process rigorously observed. The development of guidelines, treaties and other arrangements to facilitate this process, including the curtailment of the political exception in extradition provisions, would be a significant step forward and a fitting response to the growing recognition of the need to compensate victims of gross violations of human rights.

27. The increased recognition of the need for recourse and redress for victims of various kinds of abuses has spurred some new international initiatives. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its forty-first session, adopted a draft resolution on compensation for victims of gross violations of human rights (E/CN.4/Sub.2/1989/L.9/Rev.1), in which it expressed deep concern about the substantial damage and acute suffering such violations caused to individuals, groups and communities. The Sub-Commission stressed the need to develop international standards further in order to ensure that such victims have an enforceable right to restitution, compensation and rehabilitation, fully recognized at the international level. It designated one of its members to study this question, taking into account existing international norms and judgements by courts, including the Declaration, as well as the decisions and views of international organs and bodies, with a view to developing basic principles and guidelines for submission to the Sub-Commission at its forty-second session. The Committee may wish to consider the ways in which it can establish a fruitful partnership with the Commission on Human Rights and the Sub-Commission in this endeavour.

28. A summary of United Nations instruments was prepared for an expert meeting on compensation for victims of human rights violations convened by the Canadian Human Rights Foundation at Ottawa, in April 1989. 15/ Recent judicial decisions have recognized the merit of claims lodged by victims of abuses even when they reside under a jurisdiction other than that in which the violation occurred, and a draft law to facilitate cross-jurisdictional action has been prepared by the Association of the Bar of the City of New York. 16/

29. Some experience is available on the application of legislative provisions mandating compensation to victims of massive persecution. On the basis of an

in-depth study of Wiedergutmachung concerning reparation to victims of nazism,* practical principles were distilled and included in a working paper (A/CONF.121/6, pp. 40-41) that was submitted to the Seventh Congress under agenda item 5. These principles refer to the organizational and administrative requirements, the basis for assessing damages, the precautions to be observed and other salient aspects. They are concrete and yet general enough to permit adaptation to other situations. Other more recent instances include the laws of Canada and the United States of America mandating compensation, respectively, for Japanese-Canadians and Japanese-Americans interned during the Second World War.

30. Important new precedents for the compensation of victims of human rights abuses and/or their families have been established by regional courts. The Inter-American Court of Human Rights has recently settled the amount and form of compensation that a Government is required to pay to the relatives of two persons who had disappeared. The Court sought, inter alia, the opinion of the victims' relatives who requested that non-pecuniary measures be included in the compensation. The Court limited the awards to a sum of money for the pecuniary losses suffered by the relatives and for the moral damage (based on psychiatric testimony), payable in instalments, including interest, with the Court exercising supervision of the implementation of the judgement. 17/ In the legal arguments, it was stressed that the claim to reparation must correspond to the right violated and not only to the material damage caused; and that it involved also reparation for moral, immaterial or non-pecuniary damage caused by a State. Just and equitable indemnification in these cases was deemed to be an amount determined independently from the provisions that might obtain under national law. 18/

31. People's increased awareness of their basic rights and of the possibility of redress is being directed not only against Governments, but also against other entities, especially industrial concerns and other corporate enterprises. Thus, a group of women used as forced labourers during the Second World War has lodged a compensation claim against the company for lost earnings, the harm and pain suffered, social security benefits and for wilful exposure to noxious substances. It was proposed that a foundation be established, with the help also of industry, so that the surviving victims, even if they lived elsewhere, could also receive at least a symbolic sum as reparation. 19/

32. The Bhopal tragedy and recent nuclear and other disasters have spawned a plethora of class and individual actions for compensation in various jurisdictions, with implications for other kinds of litigation involving collective victims. Such persons may be unaware of the violations of their rights or lack ready access to means of redress. Particularly in the case of disadvantaged and vulnerable segments of the population, who may have no other option than to live in the proximity of potentially harmful operations, information on the risk and appropriate preventive measures must be provided; failure to do so and to expose people knowingly to danger should be a criminal offence and is increasingly being treated as such. The traditional division between civil and criminal liability is not helpful in such cases; sanctions, including a special form of responsibility under an international régime on liability for

*For a comprehensive account, see Walter Schwarz, Die Wiedergutmachung nationalsozialistischen Unrechts durch die Bundesrepublik Deutschland (Bonn, Bundesministerium der Finanzen, 1984) and Christian Pross, Wiedergutmachung: der Kleinkrieg gegen die Opfer (Frankfurt, Athenäum, 1988).

mass disasters, has been suggested as being more appropriate. This régime would apply particularly to transnational entities, which would be subjected to restitutionary sanctions to compensate the victims and to redress the environmental or other damage inflicted by mass disasters. Punitive measures could be applied in case of intent (e.g. derived from the differential level of safeguards used in developed vs. developing countries). At the same time, there is a need for risk-distribution and cost-sharing systems of redress through insurance and development of the law relating to "toxic torts". 20/

33. The movement towards the internationalization of norms relating to environmental damage or hazards and compensation procedures is reflected in the adoption, on 22 March 1989, of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and by a new international convention on the transport of dangerous goods, adopted by the Economic Commission for Europe, on 10 October 1989. The latter Convention establishes uniform international rules to ensure adequate and speedy compensation from a carrier whose transport of dangerous goods (which account for more than 50 per cent of all shipments) causes loss of life or personal injury and loss or damage to property or to the environment by contamination. It takes account of the interests of victims of environmental accidents, as well as those of the responsible carriers. The Committee, which, at its tenth session, manifested its concern about the need to control dumping practices, especially in developing countries, may have a special interest in this new instrument and its wider applicability, as well as in additional measures to be taken in cases of wilful dumping or criminal negligence.

34. Claims are increasingly being submitted against Governments and other entities for the failure to take appropriate preventive measures against possible harm. Suits have been lodged in some States on behalf of thalidomide victims on the ground that the Governments failed to safeguard the rights of the unborn in violation of national human rights guarantees and international instruments such as the Declaration of, and Convention on, the Rights of the Child. Claims have also been instituted for blood transfusions contaminated by the human immunodeficiency virus (HIV). In many cases, the suits concern transnational sources of harm (e.g. radiation caused by the Chernobyl accident), with claims for compensatory damages lodged in other countries for failure to inform the public of harmful trans-border effects. Such claims can be expected to proliferate, raising complex procedural and other issues and underlining the need for common standards and measures to be taken across frontiers.

35. International initiatives are also required to assist victims of serious abuses where no other means exist. The establishment of 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 abuse of power, as suggested by participants in the Western Asia Regional Preparatory Meeting for the Eighth Congress (A/CONF.144/RPM.4, resolution 2), deserves serious consideration. While a United Nations Trust Fund for the Victims of Torture already exists, its resources have been very limited and devoted mostly to the clinical treatment of victims of torture in specialized centres. Other seriously victimized persons or their co-victims (families of those killed), however, usually have no means of redress, especially where national avenues of recourse are insufficient or non-existent. The creation of such a fund would give tangible proof of the concern of the international community about the plight of victims. Awards could be made to particularly desperate cases and for specified purposes, serving as seed money for the development of services

for victims and of innovative programmes, including community-based efforts to prevent victimization and to assist those victims denied assistance and support in the past. There is a need for action-oriented research on various aspects of victimization and on optimal ways of assisting victims, and for the formulation of policies, training and practical aid to Governments. An international resource would permit wide-ranging action with a multiplier effect, and the Committee may wish to make further recommendations.

III. SERVICES AND ASSISTANCE FOR VICTIMS

36. Some advance has been made in recent years in the development of models of treatment and techniques for dealing with different kinds of victims, in the establishment and application of victim services and victim support schemes, and in generating and upgrading expertise. Measures are being taken to establish an empirical base for the efforts undertaken and to assess them. New service delivery systems are emerging, sometimes by the further development of an incipient victim-helper role (e.g. of the police), of assistance geared to the needs of certain victim groups (e.g. refugees), 21/ or the use of innovative treatment techniques. 22/ Governments are taking an increased interest in providing help for victims and a number of countries are either themselves supporting such efforts or have stressed their interest in receiving international aid. It is difficult to determine whether this is a result of the Declaration; it may be part of the growing sensitivity to human needs and rights. In many publications, reports and legislative acts, however, there are references to the Declaration* and sometimes its provisions have been included in full or in part. 23/

*"The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power has been commonly considered as an outstanding achievement, a real Great Charter for victims. No doubt, the United Nations Declaration has already been and will be a very strong impetus to develop victim protection at the international and national levels" (Andrzej Marek, "Protection and assistance to crime victims in the socialist countries of Europe: a comparative approach in outline", Eurocriminology, vol. 2 (1988), pp. 101-113); "Il n'en demeure pas moins que la Déclaration des Nations-Unies a représenté en Europe un point fort, un moment très fort de l'évolution des choses. Bien plus, et en vérité, on peut même prétendre que cette réforme de politique criminelle en Europe a été une véritable révolution" [Be that as it may, in Europe, the United Nations Declaration has represented a turning point, a milestone in developments. Far more, in fact, it can even be asserted that this criminal policy reform in Europe has been a genuine revolution.] (P. H. Bolle, statement made at the International Symposium on Law Enforcement and the Human Rights of Victims, Cairo, January 1989). The Attorney-General of South Australia, which was the first jurisdiction to apply the Declaration, states: "When the United Nations General Assembly approved the Declaration on Victims of Crime and Abuse of Power in December 1985, it confirmed the victims' role and status as of paramount concern for crime and justice policy. No longer is there need to argue for greater recognition of victims' rights; the challenge now is to translate this acknowledgement into effective programmes and legislation" (C. J. Sumner and A. C. Sutton, "Implementing victims' rights: an Australian perspective", paper presented to the Sixth International Symposium on Victimology, Jerusalem, 28 August-1 September 1988).

37. At the same time that Governments are adopting new measures in this field, there is also a trend towards the privatization of victim-related initiatives through the more extensive use of mediation and conciliation techniques, including community service, ranging from the Norwegian conflict councils, Yugoslav conciliation boards, and neighbourhood dispute settlement centres in the United States to the traditional methods used by Philippine barangays, Indian panchayats and African customary justice mechanisms. The interest in exchanging expertise and experience is evident in the growing number of international and national conferences devoted to issues related to victims, including those focusing on victim services and mediation etc. A European Conference on Victim Support Services was held at Valencia, Spain, in November 1989; another, on crime and public policy in Europe, dealt, inter alia, with victim-related alternatives and the criminal justice system,* and other events are taking place. 24/

38. This fairly new area of specialization is arousing major interest among a number of professions, facilitating a multi-disciplinary approach. In some countries (e.g. Argentina), interdisciplinary pilot centres for assistance to victims of crime have been established with State aid; their wider replication is envisaged but impeded by financial constraints. The potential of voluntary action has been shown in many countries, particularly when there is some official support, for example, in the United Kingdom of Great Britain and Northern Ireland, which is providing increased aid for the work of the National Association of Victims Support Schemes (NAVSS), now called Victim Support, 25/ in France, where the Institut national d'aide aux victimes et médiation (INAVEM), the co-ordinating body for local victim assistance associations, has long enjoyed the active partnership of the Victim Protection Service of the Ministry of Justice, 26/ and in the United States, where the National Organization for Victim Assistance (NOVA) has played a leadership role in the legislation on victims' rights and the provision of victim services. In several countries, there are handbooks for victims, 27/ and in France, there is a computerized telephone information service on the assistance available. A practical guide for professional and voluntary staff of victim services has been developed jointly by some countries for translation and publication in each collaborating State.

39. Major strides are also being made in the methodology of treating victims of abuse of power, although the capacity is as yet limited when compared with the numbers in need. The progress made is due largely to the initiative of dedicated professionals and lay helpers who, together with the victims and family co-victims, have been exploring a largely uncharted terrain. Centres for the treatment of victims of torture, operating in Australia, Canada, Denmark, France, the Philippines and the United States, have brought deeper insight into the destructive effects of torture and the therapeutic requirements of its victims. Most use a clinical treatment model. Recent meetings of representatives of the various torture treatment centres in San Francisco (October 1989) and San José, Costa Rica (November 1989) afforded a valuable opportunity of exchanging experience and discussing problems and techniques. The Philippine BALAY Centre for ex-political detainees is relying not only on

*See, for example, Martin Killias's paper entitled "Victim-related alternatives to the criminal justice system: compensation, restitution and mediation" and comments thereon, presented to the Second European Colloquium on Crime and Public Policy in Europe, organized by the Max Planck Institute at Buchenbach, Federal Republic of Germany, 3-7 September 1989.

professionals or para-professionals and lay workers, but also on the partnership of the victims in their treatment, including the development of the treatment plan.* 28/ Argentine therapists working with families of disappeared persons use similar methods, drawing on self-help efforts and promotion of mutual support and social solidarity as key elements. These factors are particularly important where uncertainty, ostracism and social isolation have exerted their pernicious effect. Retrospective analysis has yielded important cues for treatment. 29/

IV. RESEARCH AND TRAINING

40. Research has been playing an increasingly important role both in the generation of knowledge and as a guide to policy-making and treatment, not only nationally, but also cross-nationally. A whole range of priority issues has become a subject for research and scientific analysis, with important implications for action; 30/ others require further study.** The first major international victimization survey was carried out in January-February 1989, among the population of 17 countries, using a standard questionnaire and measuring the experience of crime and related issues, including the distribution of victimization risks, responses to crime, opinions about the police and need for support by a specialized agency. The results indicate that the risks of being victimized by conventional crimes are highest among young persons living in cities of more than half a million inhabitants; that a third of all victims are dissatisfied with the way in which the police handled their cases; and that there is a wide gap between the limited supply of specialized services for victims and their demand for them, especially for serious crimes of violence, and among multiple victims, female victims and elderly victims. 31/ It was also found, in another investigation, that changes in the proportion of residents with divergent life-styles and value orientations, minority status or subculture affiliations may have a greater effect in fostering the fear of crime than the actual incidence of victimization. 32/

41. It has been observed that abused children and witnesses of domestic violence often become abusive parents. Research findings point to the personality damage suffered by victims of early, prolonged traumatic stress, and a recent study concludes that "when children are subjected to prolonged violent stress - terrorized - they are likely to become terrorist".***

*A children's rehabilitation centre for victims of political violence has also been functioning in Manila, using a community and family-centred approach; see International Newsletter on Treatment and Rehabilitation of Torture Victims, vol. 1, No. 2/3 (January 1989), pp. 1 and 11.

**Among the neglected issues meriting the attention of cross-cultural research is the effect of punishment of the offender, or lack thereof, on the victim, as well as of formal, if only symbolical, admissions of wrong done. See, for example, Peter Vesti, "Why are torturers never punished?" Danish Medical Bulletin, vol. 35 (1988), pp. 493-495, and H. Wagatsuma and A. Rosett, "The implications of apology: law and culture in Japan and the United States", Law and Society, vol. 20, No. 4 (1986), pp. 461-507.

***A recent mass murderer in Montreal, in December 1989 was found to have been subjected to extreme, persistent abuse as a child. See, also, Rona M. Fields, "Terrorized into terrorist: sequelae of PTSD in young victims", 1988, and C. S. Widom, "The Cycle of Violence", Science, No. 244 (1989), pp. 162-166.

Similarly, children in inner cities who have been victimized by violence have been found to be more inclined to delinquency, though early intervention shows promise of interrupting the vicious circle. 33/ Many aspects remain to be elucidated, including the complex factors leading to victimization 34/ and the implications of the often tenuous dividing line between victim and victimizer. 35/

42. The dynamics of massive victimization are also being explored: a recent study analyses the social processes leading to genocide, as in the massacre of the Armenians and the Holocaust. 36/ The long-term effects of such extreme forms of victimization now reaching the second and third generations, are coming to be recognized and scientifically explored.* A research organization (Pion Foundation) has been established to promote the comparative, interdisciplinary study of the processes and factors contributing to the perpetration and perpetuation of abuses of human rights and those inhibiting them; the results should provide indications for preventive action.

43. Although the special treatment of victims of crime and of Post-Traumatic Stress Disorder (PTSD) is fairly new and limited by the still fragmentary knowledge and dearth of expertise, it is being rapidly developed. A spectrum of training activities exists, ranging from attempts to upgrade the capabilities of some of the agencies dealing with victims to multiform initiatives. Thus, for example, the preliminary assessment of an in-service training programme for the municipal police in Utrecht, the Netherlands, points to the success of the three-month training programme designed to make victim assistance a core function of the police (and a rubric in their rating) and to integrate training, evaluation and policy-making. 37/ There is also a need to sensitize the media to the needs and rights of victims, especially their right to privacy. The development of a code of conduct and the dissemination of the Declaration would help.**

44. A multi-disciplinary, interprofessional Task Force on Curriculum, Education and Training of the Society for Traumatic Stress Studies has developed training modules in 10 areas, which are either specific to an interest (e.g. ethics) or emphasize the training needs of a particular discipline (e.g. psychiatry, psychology, social work, clergy, nursing, para-professionals, media etc.), that cover the concerns encountered in victim assistance at various professional levels and in different time frames. According to the statement of purpose in its report, the Task Force implements the Declaration. This initiative fills a void in the training of members of the helping professions in a field where their services are increasingly being sought. 38/

*See, for example, the papers presented to the International Conference on the Psychological and Psychiatric Sequelae of the Nazi Terror in Aging Survivors and their Offspring, held at Hannover, from 11 to 14 October 1989.

**Recent initiatives taken by schools of journalism (e.g. Columbia University and New York University) have sought to foster greater awareness and informed action in this respect, but more needs to be done. See, also, Emilio C. Viano, "I mezzi di informazione e le vittime della criminalità: il diritto di sapere contro il diritto alla privacy", paper presented to an international conference on victims of abuse of power, Recoaro Terme, Vicenza, Italy, 15-17 September 1989, in Rezzara Notizie, vol. XX, No. 8 (October 1989), pp. 3-7.

45. In-service training to meet the needs of victims has also been introduced as part of the specialization in the curriculum for psychiatric studies (e.g. in the United States)* and of primary health care in developing countries.* Training programmes have also been developed for certain groups of victims, for example, refugees, 39/ with potential replicability. Further systematization of these efforts and their application in different contexts will advance the methodology and determine the proper mix for different groups of victims.

V. PREVENTION OF VICTIMIZATION

46. At its tenth session, in its consideration of the report on measures taken to implement the Declaration (E/AC.57/1988/3), the Committee stressed the need for more effective prevention of victimization. The inventory of crime prevention measures, prepared under the auspices of the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, describes preventive measures for varying situations and circumstances. 40/ A recommendation on the organization of crime prevention, adopted by the Council of Europe, provides some guidelines. By reducing crime, preventive measures also curtail victimization, which has become a priority concern in different parts of the world, as reflected in three major meetings on urban insecurity/security held in the last three years (Barcelona, 1987; Cordoba, Argentina, 1988; Montreal, 1989). All three meetings urged that a broad-based yet focused approach be taken to crime problems both as an objective reality and in its subjective perception (fear of crime),** and gave prominence to the needs of victims.

47. Efforts to increase the safety of cities involve measures of two kinds: concrete environmental and physical preventive steps (now called "space management" instead of "defensible space") and other forms of "situational crime prevention"; and - motivated by a deeper analysis of urban ills and their relationship to socio-economic change, marginalization, conflict, fear of strangers etc. - attempts to modify social structures and economic programmes, and to institute integrated (or at least co-ordinated) strategies likely to increase popular well-being and, inter alia, to prevent crime. Intersectoral and inter-agency collaboration with central and local co-ordinating councils has been the mainstay of this approach (e.g. in France, the Netherlands, Spain and the United Kingdom), which also draws heavily on social solidarity and public participation in crime prevention. 41/

48. To take this approach further, a European and North American Conference on Urban Safety and Crime Prevention was held at Montreal, in October 1989. Organized by the Forum of Local and Regional Authorities of Europe for Urban Security and counterpart organizations in the United States, the report is to be submitted to the Eighth Congress and will contribute to the Urban Charter being drafted by the Council of Europe. The Conference, which was attended by participants from other regions, proposed a programme of action to prevent violent and property crime, to reduce the demand for drugs and to decrease the

*A pilot training scheme in New York City is being carried out in collaboration with a major medical school, see, for example, "Recent accomplishments at the Victim Services Agency", New York City, 1989.

**As the Secretary-General has noted, "Frequent incidents of lawlessness cause widespread fear and, for the individual, a haunting sense of insecurity". ("Report of the Secretary-General on the work of the Organization: September 1989" (A/44/1), sect. XII).

feeling of insecurity in cities. Municipalities were asked to institute a unified strategy against violence and fear, with emphasis on vulnerable segments of the population. The Conference recommended that mediation and conciliation should be encouraged to avoid conflicts and that information on the outcome of cases, access to effective judicial remedies and reparation should be urgently provided to victims of crime. Vigorous national and international leadership was called for to strengthen the gathering and dissemination of information and the systematic sharing and exchange of knowledge and experience, as well as the education and mobilization of the public, action-oriented research, training in inter-agency settings, co-ordinated efforts and the provision of technical assistance. International action was urged to control firearms, drug trafficking and money-laundering and to establish an international data base for use by local authorities and officials of all countries, and others eager for up-to-date comparative information on effective crime prevention policies and programme models, and for appropriate referrals.

49. Two main preventive orientations are crystallizing, which are not necessarily contradictory. In some countries, there is an emphasis on crime preventive programmes geared to particular situations, ^{42/} with scepticism about their transferability. Elsewhere, especially but not only, in developing countries, there has been an attempt to map out a comprehensive approach to planning for crime prevention within which specific programmes can be implemented. ^{43/} Scientific forecasting techniques are used, for example in the Union of Soviet Socialist Republics, as a basis for preventive planning. ^{44/} In developing countries, where debilitating economic crises and the social cost of structural adjustments have increased the incidence of crime, the need for broad-based, as well as specific, preventive strategies has become painfully evident. It is to be hoped that this insight will be increasingly reflected in development planning, particularly in country programmes proposed for international support, in the response of funding agencies and in the priorities accorded to different aspects of the International Development Strategy for the Fourth United Nations Development Decade.

50. One of the challenges facing contemporary societies is how to exercise the crime control function in the context of democratic institutions and human rights guarantees. This question is receiving increased attention at international conferences and in policy analyses. ^{45/} Steps have been taken in some jurisdictions to prevent and curtail the victimization of ethnic, racial or religious minorities through crime and discriminatory treatment. Police forces in certain countries have developed policies for reporting on ethnically, racially or religiously motivated incidents and for providing support for the victims, including practical measures such as special telephone lines, interpreters and the incorporation of more minority members in the force. Basic standards are being developed and attempts made to strengthen the partnership between the police and local communities with large minority populations.*

51. A prime means of preventing victimization through the abuse of power is by increasing accountability, monitoring the performance of official agencies and providing a means of recourse against them. Various procedures exist in

*The Community Relations Branch of New Scotland Yard has issued best practice guidelines for the recording and monitoring of racial incidents. See, also, Jayne Seagrave, Racially Motivated Incidents Reported to the Police: Research and Planning Unit Paper 54 (London, Home Office, 1989).

different countries to prevent abuses and to afford alleged victims a channel for seeking redress. The institution of ombudsman, as an independent instance envisaged in the constitution or created by the legislature (especially in federated States), exists in many countries.* An ombudsman usually enjoys considerable independence and has the power to monitor government institutions (sometimes also the private sector) and to review administrative decisions. He or she often affords the complainants direct access through a small staff acting with flexibility. 46/ Although not a substitute for judicial review, the ombudsman offers a valuable channel for recourse, especially in precarious situations such as detention where other means may not be available or are procedurally more cumbersome. The large amount of petitions submitted to the ombudsman in many countries, especially where this institution has only recently been introduced 47/ attests to its value. The experts convened at Vienna on the occasion of the Fourteenth International Congress of Penal Law in October 1989 suggested that countries set up such an independent authority to investigate and adjudicate complaints. It was recommended that this authority, a reinforced kind of ombudsman, would dispose of a fund fed through fines and be able to recover money etc. from the offending party for the benefit of the victim. The latter would be able to initiate proceedings and would be encouraged to seek redress, as is the case with civil or professional responsibility. The prospect of being sued for misconduct was deemed to serve as an effective deterrent. Codes of conduct are increasingly being seen as an effective means of complementing constitutional or legislative provisions.

52. A related question is preventing the excessive use of power, which may constitute an abuse even though it involves the exercise of authority in good faith by an official (e.g. police) for an acceptable goal.** This kind of situation often arises in crisis situations (another reason for limiting states of emergency). The victims of such acts, though they may be gravely harmed, generally find their claims for indemnification for acts or omissions by agents of the State who have exceeded their authority thwarted by the necessity of proving injurious intent, which may not necessarily be the case. For this reason, it has been proposed that the training of such personnel should include explicit indications of the standards and rights to be observed and of the limits of the actions and that suitable protection should be afforded against disciplinary measures or other sanctions that might be invoked against a

*Variants of this principle exist in some countries: for instance, the public prosecutor discharges similar functions in socialist States; in the United Kingdom, there is a Parliamentary Commissioner for Administration; in France, a médiateur; in Uganda, an Inspector-General of Government and a Human Rights Commission; and in Nigeria and some other African States there are Public Complaints Commissions.

**"Zealous concern for State interests not infrequently served to justify facts of arbitrariness, violation of the constitutional rights of the citizens and the bureaucratic attitude to them. We resolutely reject this approach as being incompatible with general democratic and social values and ideals. The common good cannot be built on injustice committed to even one person. Every citizen is responsible for his actions before society, but society and the State, in turn, are responsible before the citizen for observance of his legal rights, personal immunity and property" (Mikhail Gorbachev, Report of the Congress of People's Deputies, 30 May 1989 (Moscow, Novosti Press Agency, 1989)).

refusal to obey a superior's illegal order.* In countries seeking to consolidate democratic institutions, a clear articulation of acceptable behaviour, through specific guidelines, is particularly important. This includes the dissemination of United Nations norms and implementation principles, especially the Declaration, the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex) and the basic principles on the use of force and firearms by law enforcement officials (E/AC.57/1990/5/Add.5).

53. Acts of omission as well as commission must be properly taken into account, not only nationally but also internationally. For this reason, a preparatory meeting for the Fourteenth International Congress on Penal Law, held at Batna, Algeria, in May 1989, recommended that victims of international offences should have the right to initiate criminal actions. Criminal jurisdictions could also play an important preventive role by consistently proscribing acts that might be preparatory or conducive to the excessive use of power. The creation and prosecution of such acts (délits-obstacles) would serve an important preventive function in reducing the likelihood of the escalation of crime and victimization. 48/

54. The growing acknowledgement of people's legitimate rights, especially in Eastern Europe, has increased accountability and strengthened the quest for guarantees against possible abuses. Steps taken elsewhere in the region are helping to forestall victimization. Under the new European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, a Committee of Eminent Persons has been established, which can act on its own initiative to verify the situation of persons under detention. If abuses are detected, the Committee can propose to the State in question ways in which they could be avoided. A similar inter-American initiative is being pursued. 49/ Measures are also needed to overcome impediments to the attainment of economic and social rights that are thwarting the well-being of millions of people in the world.

55. The prevention or curtailment of victimization is a priority matter underlined by the human price of its neglect. Knowledge of the abuses in progress and steps to stop their continuation and possible aggravation are necessary to forestall major tragedies. Crisis intervention, mediation and other forms of conflict resolution hold promise in this respect. An international Seminar on Early Warning and Conflict Resolution was held at Oslo, from 24 to 25 April 1989, sponsored by the International Peace Research Institute, Norway, and International Alert, United Kingdom. The participants found increasing consensus on the importance of creating an early warning capacity to predict potential conflicts likely to escalate into violence. But they noted that new preventive strategies were required and new coalitions would have to be created to develop and use it. They recommended collaborative research on the various factors and processes contributing to conflict escalation, including the role of non-State entities, such as transnational corporations or networks operating in such areas as the arms trade, drug trafficking and finance. They emphasized that the capacity to handle information, especially in developing countries, should be strengthened, with primary reliance on non-governmental organizations trained to use objective

*It has been recommended that, for this purpose, a procedure should be instituted permitting a practical way of refusing a superior's illegal order without incurring the danger of reprisal. See, for example, Jacques Verhaegen, "De l'adaptation de l'action pénale à la prévention des excès de pouvoir", Mélanges en l'honneur de Phédon Vegleris (Athens, 1988).

means of reporting, such as the Human Rights Information and Documentation System, International (HURIDOCs), which is developing standard formats for recording and exchanging information on violations involving disappearances, torture, extra-judicial killings and detention.* The Seminar called for a division of labour between the different organizations and for information-sharing arrangements. Attention was drawn to the need for training not only in methods of collecting and transferring information, but also in mediation and other conflict resolution techniques.**

VI. CONCLUSIONS: AN AGENDA FOR ACTION

56. The above-mentioned initiatives and other recent developments reflect the need for more effective, concerted national and international action to prevent and reduce victimization. They mirror the suggestions submitted in the report of the Secretary-General to the Committee at its tenth session (E/AC.57/1988/3, para. 70). It was noted that United Nations preventive monitoring and emergency response systems existed in respect of natural disasters and political crises but that there was a void, as yet, as far as human crises and abuses were concerned, which had to be filled. The Committee suggested that this aspect might be developed further.

57. By transferring the knowledge gained in crisis intervention, mediation and other forms of conflict resolution from the micro- to the macro-level, or situations in between, progress can be made in defusing tensions and stopping incipient victimization before it increases further. Some of the United Nations institutes for crime prevention and the treatment of offenders are giving special attention to informal means of social control and conflict resolution as an adjunct or alternative to criminal justice: 50/ this work could be expanded for application in relevant situations.

58. On the basis of the proposals made by the group of experts convened at Vienna, in October 1989, on the occasion of the Fourteenth International Congress on Penal Law, and of other initiatives mentioned in the present report, certain additional recommendations can be made for the consideration of the Committee.

*"Nothing that has been done can lighten the burden on the human conscience imposed by the frequent, sometimes massive, violations of human rights in different parts of the world. The institutionalized system of racial discrimination ... the gross mistreatment of ethnic groups, the systematic practice of torture, the killings of unarmed demonstrators, the disappearances of individuals, summary arrests and executions furnish a most deplorable record. The year under review has brought little relief" (Report of the Secretary-General on the work of the Organization: September 1989" (A/44/1), sect. VII).

**International Peace Research Institute and International Alert, Early Warning and Conflict Resolution: A Conference Report. Oslo, 23-25 April 1989, p. 31. Also, the group of experts convened at Vienna in October 1989 on the occasion of the Fourteenth International Congress on Penal Law stressed that the international community must establish a warning system to monitor, and alert the world to, impending massive victimization anywhere so that progress could be made in defusing tensions and stopping incipient victimization before it increased further.

59. Action-oriented research is needed to determine the practices involving abuses of power that have not (yet) been proscribed and the groups most vulnerable to them. The formulation of guidelines, in a comparative law perspective, would facilitate national legislative reviews to bring existing provisions in line with changing socio-economic reality and the degree of harm inflicted by certain kinds of conduct. The exercise of power in the legislative process has to be analysed to ensure more equitable justice commensurate with the victimization caused. 51/ Interdisciplinary studies of the factors leading to the abuse of power and the dynamics of victimization are needed to facilitate counter-action. They could help to elaborate preventive strategies and control techniques. Research is also required to assess the effectiveness of the measures taken, as well as of the different methods of treatment for victims.

60. Little is known of the needs of certain groups, such as the victims of terrorism: these should be more fully explored, as should those of other particularly vulnerable victims, so that they can be afforded the requisite protection and assistance, as recommended by the Interregional Preparatory Meeting for the Eighth Congress on Topic III (A/CONF.144/IPM.4, para. 100). The ever-increasing victims of organized crime also require special measures and protective strategies, as do communities victimized by environmental depredations, such as dumping. Transnational victimization is the counterpart of transnational criminality and will have to be dealt with properly.

61. The overriding importance of training, at all levels and for all categories of staff, has been stressed repeatedly. This means not only technical know-how, but also education in the observance of human rights and the norms of ethical conduct. The Declaration and other international standards can serve as basic training materials, especially if they are made widely available and applied with technical assistance from the United Nations. Such training must include the police and the army, who are often serious abusers, and judges and others at the highest levels. Regional and interregional courses and seminars, organized in co-operation with the United Nations institutes for crime prevention and the treatment of offenders and with the support of United Nations funding agencies and interested Governments, could help to train the trainers. Workshops should also be held on various forms of conflict resolution, conducted jointly with other interested institutions and combined with pilot projects testing different models. Upgrading the response of the media by sensitivity training would enhance their role.

62. Since it is not always possible to take suitable action at the national level to remedy abuses of power, an external umbrella seems to be necessary. Subregional associations of the bar could fulfil a useful function, if properly assisted but, in the view of the group of experts convened at Vienna in October 1989, an international body with investigative powers is required, co-operating with national counterparts. As victimizing actions can be legalized nationally and many of them transcend domestic affairs and involve fundamental values beyond national jurisdictions, effective transnational means of recourse are required. The group therefore called for the establishment of an internationally recognized standing panel of experts or negotiators, drawn from all regions, entrusted with the tasks of fact-finding, mediation and arbitration and acting as a sort of ombudsman. It was also suggested that, in the case of persisting victimizing practices, punitive measures should be instituted: for instance, credit granted to the offending State could be withdrawn. The consideration of strategies and mechanisms that might feasibly be employed would benefit from the guidance of the Committee.

63. In line with the proposals made by the preparatory meetings, an international convention should be formulated to help countries to assist victims, with international aid in the identification and handling of cases. It should provide for the mutual recognition and enforcement of judgements in victim compensation cases, as well as broaden the scope of international judicial assistance. As recommended by the Fourteenth International Congress on Penal Law, "the victims of international crimes, in particular those committed through abuse of power, should be assured access to justice, for example, by giving them the possibility of initiating criminal proceedings." 52/ This matter should also be considered in the context of proposals for an international criminal jurisdiction,* and the Committee may wish to bear it in mind in related initiatives.

64. In accordance with the recommendations of recent meetings and those presented to the Committee, at its tenth session, in the report of the Secretary-General on measures to implement the Declaration (E/AC.57/1988/3), a comprehensive framework for international collaboration in preventing crime, abuses and victimization needs to be established, with a clear division of responsibilities, under the leadership of the United Nations and involving various entities of the United Nations system, intergovernmental (including regional) bodies and institutions and non-governmental organizations. The Committee could play a special role in this respect, with the help, possibly, of an inter-agency task force.

65. The right of people to international protection is being increasingly recognized.** It is now almost universally accepted that the safeguarding of human rights is the concern not only of individual States, but also of the entire international community. This includes Governments and intergovernmental organizations, as well as non-governmental organizations, which have been in the forefront of the defence of human and victims' rights; the media, which have drawn world attention to ongoing abuses; and the public at large, which must be ever vigilant. The United Nations has a special responsibility and can provide the framework for concerted action, using all parts of the system, other international and regional entities, professional associations, scientific institutions and broad-based support. Much can be done to contain victimization and suffering if the political will and the vision are there.

Notes

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. C.

2/ See "Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of

*Statutes for an international commission of criminal inquiry have been drafted by the International Law Association, as have those for an international court, whose establishment has been considered by the General Assembly (A/44/195) and by national legislatures (e.g. the U.S. Congress).

**As stated in a recent report, "The principle of international responsibility is being institutionalized, written into international law and practice" (Amnesty International, Report 1988 (London, AI Publication, 1988)), p. 2.

Offenders on Topic I: 'Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation', Vienna, 15-19 February 1988" (A/CONF.144/IPM.1), recommendation 10; "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', Vienna, 30 May-3 June 1988" (A/CONF.144/IPM.4), chap. I, paras. 20, 29 and 45; "Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic III: 'Effective National and International Action against (a) Organized Crime; (b) Terrorist Criminal Activities', Vienna, 14-18 March 1988" (A/CONF.144/IPM.2), chap. III, paras. 100 and 101; "Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic IV: 'Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions', Vienna, 18-22 April 1988" (A/CONF.144/IPM.3), chap. II, paras. 17, 22, 24, 25, 27, 32 and 48; "Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: 'United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting', Vienna, 27 June-1 July 1988" (A/CONF.144/IPM.5), recommendation C, sect. V; recommendation D, sect. V; recommendation H, and chap. II, sect. B; "Latin American and Caribbean Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, San José, Costa Rica, 8-12 May 1989: report" (A/CONF.144/RPM.3), chap. II, para. 83; "Western Asia Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, Egypt, 27-31 May 1989: report" (A/CONF.144/RPM.4), resolution 2, and chap. II, paras. 98-100 and 106; and "African Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Addis Ababa, Ethiopia, 5-9 June 1989: report" (A/CONF.144/RPM.5), paras. 59-60 and 100-101.

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