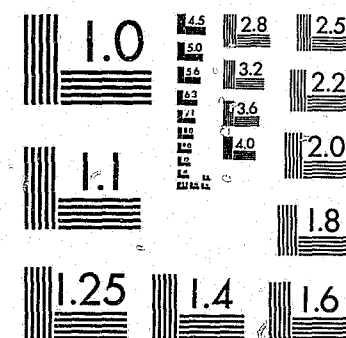


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**UNITED NATIONS NORMS AND GUIDE-LINES IN CRIMINAL JUSTICE:
FROM STANDARD-SETTING TO IMPLEMENTATION**

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INTRODUCTION

1. The attainment of a just world order is possible only when the citizens of all countries are assured of a just juridical order within the context of a just social order. An equitable social order depends as much on freedom from victimization by crime as an equitable juridical order depends on freedom from arbitrary, oppressive or racist crime prevention efforts. Since its foundation, the United Nations has been dedicated to these principles. The inclusion of a topic entitled: "United Nations norms and guidelines" in the agenda of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was, therefore, strongly supported by the Committee on Crime Prevention and Control. The Committee viewed this topic as offering the opportunity of continuing the long history of the development of human rights instruments by the United Nations, with a view toward the eventual creation of a coherent network of human rights standards in the administration of criminal justice. 1/ The regional preparatory meetings for the Congress also placed the strongest emphasis on the topic. 2/

2. To facilitate the consideration of the topic, the working paper has been divided into three parts. Part one of the paper deals with a survey of existing and emerging United Nations norms and guide-lines in criminal justice as background material for the discussion of the following items, namely, recommended new norms and guide-lines and general principles for more effective implementation. The information given in this part summarizes the main features of the principal instruments and draft tests pertinent to criminal justice and most frequently referred to in the preparatory meetings of the Congress. 3/

3. Part two deals with recommended new United Nations guide-lines in criminal justice. It outlines areas of priority in which the Congress may wish to provide policy guidance, as recommended by the Committee on Crime Prevention and Control 4/ and endorsed by the Economic and Social Council 5/ and the regional preparatory meetings for the Congress. 6/ Four areas of priority for guide-lines have been suggested on which the Congress may wish to focus its attention: (a) to improve

1/ "Report of the Committee on Crime Prevention and Control on its fourth session" (E/CN.5/536), para. 62.

2/ See A/CONF.87/BP/1-4.

3/ See also working paper for the Sixth Congress on relevant developments in human rights bodies, prepared by the United Nations Secretariat; Human Rights, A Compilation of International Instruments (United Nations Publication, Sales No. E.78.XIV.2) 1978; The United Nations and Human Rights (United Nations Publication, Sales No. E.78.I.18), 1978.

4/ See E/CN.5/536, chap. I, sect. B.

5/ Economic and Social Council resolution 2075 (LXII), para. 2.

6/ See A/CONF.87/BP/1-4.

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the selection and training of judges; (b) to provide minimum rules for the treatment of offenders in the community; (c) to strengthen inmate grievance procedures; and (d) to facilitate the return of persons convicted of crime abroad to their domicile to serve their sentences.

4. Part three is concerned with general principles for the more effective implementation of United Nations norms and guide-lines in criminal justice at the national, regional and international levels. In accordance with the recommendations of the regional preparatory meetings, 7/ the Congress may wish to place emphasis on the formulation of general principles for more effective implementation at the national level. As regards the regional and the international levels, emphasis has been placed on the need for developing general principles for more effective implementation which would centre on regional and international co-operation.

7/ Ibid.

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PART ONE. EXISTING AND EMERGING UNITED NATIONS NORMS AND GUIDE-LINES IN CRIMINAL JUSTICE

I. EXISTING NORMS AND GUIDE-LINES

A. Universal Declaration of Human Rights 8/ and the International Covenant on Civil and Political Rights and its Optional Protocol 9/

5. The principal rights relevant to criminal justice proclaimed in the Universal Declaration and set forth in the International Covenant include the following: the right not to be arbitrarily deprived of one's life (art. 6); the right to protection from torture or cruel, inhuman or degrading treatment or punishment (art. 7); the right to equality before the law and to equal protection of the law (art. 26); the right of protection from arbitrary arrest or detention (art. 9); the right to a fair and public hearing by an independent and impartial tribunal (art. 14); the right of everyone charged with a penal offence to be presumed innocent until proved guilty, according to law (art. 14); and the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10).

6. The International Covenant on Civil and Political Rights and its Optional Protocol develop most of these rights into more detailed provisions. Since its entry into force in 1976, the Covenant has become one of the most important international legal instruments which is binding upon a great number of Member States of the United Nations. 10/

B. Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

7. The Declaration was first adopted by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 11/ and referred to the General Assembly which adopted it by resolution 3452 (XXX) and recommended that it serve as a guide-line for all States and other entities exercising effective power. It proclaims, in reference to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Declaration then deals with a number of detailed measures against torture such as the training of law enforcement officials, the treatment of detained

8/ General Assembly resolution 217 A (III).

9/ General Assembly resolution 2200 A (XXI), in force since 23 March 1976. See also General Assembly resolution 34/45.

10/ For implementation procedures see part three, chap. IV, sect. A below.

11/ See Report of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.76.IV.2), paras. 2 and 300.

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persons, and provision of criminal law and procedure against acts of torture and other cruel, inhuman or degrading treatment or punishment. In related resolutions the General Assembly took measures for the elaboration of additional standards with a view to implementing the Declaration. 12/

C. Code of Conduct for Law Enforcement Officials

8. A draft of the Code was prepared by the Committee on Crime Prevention and Control at its fourth session in 1976 13/ in pursuance of General Assembly resolution 3453 (XXX). In two consecutive seminars of the General Assembly, an open-ended informal working group prepared a new draft which was adopted by the General Assembly by resolution 34/169 in 1979. 14/ 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. 15/

9. The Code deals with the rights and duties of law enforcement officials in the performance of their duties, stressing in particular the obligations to respect and protect human dignity and human rights, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the inadmissibility of all acts of corruption.

D. Standard Minimum Rules for the Treatment of Prisoners 16/

10. In 1957, the Economic and Social Council, by resolution 663 C (XXIV) approved the Standard Minimum Rules for the Treatment of Prisoners as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955. 17/ The Council invited Governments to give favourable consideration to the adoption of the Rules and their application in the administration of penal and correctional institutions. 18/

12/ See part one, chap. I, sect. C, and chap. II, sects. A, B and C below.

13/ See E/CN.5/536, paras. 71-77 and annex V. See also Report of the Fifth Congress, op. cit., para. 3 and paras. 254-259.

14/ See decision 32/419 and General Assembly resolution 33/179 and the Report of the Secretary-General on the draft code (A/33/215, and Add.1).

15/ See also the "Report of the United Nations Regional Symposium on the role of the police in the protection of human rights", The Hague, held from 14-25 April 1980 (transmitted to the Congress).

16/ For an historical review see International Review of Criminal Policy No. 26 (United Nations publication, Sales No. E.70.IV.1).

17/ See the Report of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. 1956.IV.4). See also the Report of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.71.IV.8), paras. 143-199.

18/ For the implementation of the Rules, see part three, chap. IV B infra, and A/CONF.87/6.

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11. The Rules set out, on the basis of consensus on the essential elements of the most adequate systems, what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions. The Rules contain special provisions applying to prisoners under sentence and prisoners under arrest or awaiting trial. A new rule 9⁵ was included by Economic and Social Council resolution 2076 (LXII) which provides that persons arrested or imprisoned without charge shall be accorded the same protection as that accorded to persons detained on the basis of criminal charges or convictions.

12. The Fifth Congress recommended that the Rules should not be substantively revised, but consideration should be given to the need for revising specific rules to assure that they are not in conflict with correctional contemporary policies and practices. 19/

13. At the regional level, the Council of Europe adopted an amended text of the Rules for the countries of the region. 20/

19/ Report of the Fifth Congress, op. cit., para. 23 (d-g).

20/ Resolution (73)5 of the Committee of Ministers. For details see "Council of Europe Activities in the Field of Crime Problems 1956-1976", Strasbourg 1977, p. 45. See also part three, chap. III, sect. B below.

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II. EMERGING NORMS AND GUIDE-LINES

A. Draft Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

14. The General Assembly, in its resolutions 32/62 and 34/167, requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

25. At its thirty-sixth session, in 1980, the Commission on Human Rights adopted a report of its Working Group on the Draft Convention which had agreed on a number of articles. 21/ They include provisions on effective measures to prevent acts of torture in accordance with the principles set forth in the Declaration. The item is included in the provisional agenda of the General Assembly at its forthcoming thirty-fifth session in accordance with its resolution 34/167.

B. Draft code of medical ethics

16. By its resolutions 3218 (XXIX), 3453 (XXX) and 31/85, the United Nations General Assembly invited the World Health Organization to prepare a draft code of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment, against torture and other cruel, inhuman or degrading treatment or punishment. In pursuance of these resolutions a report of the World Health Organization on the development of codes of medical ethics 22/ was transmitted to the United Nations General Assembly at its thirty-fourth session in 1979, which set forth principles endorsed by the Executive Board of the World Health Organization.

17. The principles are intended to supplement the Declaration of Tokyo adopted by the World Medical Association 23/ and the Standard Minimum Rules for Treatment of Prisoners. They state, among others, that prisoners and detainees have the same rights to the protection of health and the treatment of disease as free citizens and declare it to be a gross violation of medical ethics for a physician to participate actively or passively in acts of torture.

18. By its resolution 34/168, the United Nations General Assembly requested the United Nations Secretary-General to circulate the draft Code of Medical Ethics to Member States, to specialized agencies concerned and to interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council for comments and suggestions and to submit a report to the General Assembly at its thirty-fifth session in 1980.

21/ See E/CN.4/1367.

22/ See A/34/273.

23/ Ibid., annex.

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C. Draft body of principles for the protection of all persons under any form of detention or imprisonment

19. By resolution 3453 (XXX), the General Assembly requested the Commission on Human Rights to study all necessary steps for the formulation of a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile and the draft principles attached to it, prepared in 1962 by a committee appointed by the Commission on Human Rights. ^{24/}

20. In pursuance of General Assembly resolution 3453 (XXX), the Commission on Human Rights requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to elaborate a new body of principles. ^{25/} The Sub-Commission, upon the request of its Special Rapporteur, Mr. Nettel (Austria), adopted the draft body of principles unanimously in 1978. Upon the proposal of the Commission on Human Rights, the Economic and Social Council, by resolution 1979/34, requested the Secretary-General to transmit the principles to all Governments, to solicit their comments and to report to the General Assembly at its thirty-fifth session, so that the Assembly might consider their adoption.

21. The Commission on Human Rights considered the matter in substance at its thirty-fifth (1979) and thirty-sixth (1980) sessions, on the basis of a draft submitted by Sweden (E/CN.4/1285; E/CN.4/WG.1/WP.1). At the close of the thirty-sixth session in 1980, an open-ended working group of the Commission had adopted all substantive articles of the draft except three (see Commission report E/1980/13, para. 205). These draft articles provide for: a definition of "torture", without prejudice to stronger protection in international instruments and national legislation (art. 1); the obligation for States Parties to take effective measures against torture, even in exceptional or emergency circumstances, it being further stated that superior's orders shall in no case be a justification (art. 2); the prohibition of expulsion or extradition towards any State where the person concerned may be in danger of undergoing torture (art. 3); the obligation of States to provide effective criminal sanctions for torture (art. 4); rules concerning the States' jurisdiction as regards the arrest, trial and punishment of offenders, their extradition, and mutual assistance between States for investigation and trial (arts. 5, 6 and 8); the duty of States to include the prohibition against torture in the training of competent officials, as well as their obligation to keep interrogation practices and the treatment of detained persons under systematic review (arts. 10 and 11); the right of the victims, upon complaint, to set an official inquiry into motion, as well as the State's obligation to investigate ex officio wherever torture is suspected (arts. 12 and 13); the victim's right to

^{24/} Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile (United Nations publication, Sales No. 65.XIV.2) and "Study of the right of arrested persons to communicate with those whom it is necessary for them to consult in order to ensure their defence or to protect their essential interests" (E/CN.4/996).

^{25/} See E/CN.4/1296, para. 109.

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compensation and rehabilitation (art. 14); and the inadmissibility of evidence obtained through torture (art. 15). Article 16, adopted by the Working Group of the Commission on Human Rights, extends the scope of various provisions to "acts of cruel, inhuman or degrading treatment or punishment which do not constitute torture as defined in article 1".

D. Draft principles on equality in the administration of justice

22. The United Nations has repeatedly expressed its concern for the principle of equality in the administration of justice, particularly in article 10 of the Universal Declaration of Human Rights and articles 14 and 15 of the International Covenant on Civil and Political Rights. Provisions against racial discrimination in the administration of justice appear in article 7 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and article 5 of the International Convention on that subject. In addition, free access to courts of law is guaranteed to refugees in article 16 of the Convention relating to the Status of Refugees and to stateless persons in article 16 of the Convention relating to the Status of Stateless Persons. ^{26/}

23. In 1973, the Commission on Human Rights transmitted to the General Assembly the Study of Equality in the Administration of Justice and draft principles on the subject, prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and approved in the Commission on Human Rights resolution 3 (XXIII). ^{27/} The draft principles provide that everyone shall be entitled to a number of guarantees in the determination of his rights and obligations and of any criminal charge against him, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status. The General Assembly called upon Member States to give due consideration to the draft principles in formulating legislation and taking other measures affecting equality in the administration of justice.

E. Draft guide-lines for expeditious and equitable handling of criminal cases

24. At its fifth session, in 1978, the Committee on Crime Prevention and Control considered a report by the Secretary-General ^{28/} and a conference room paper ^{29/} containing draft guide-lines on expeditious and equitable handling of criminal cases

^{26/} For the text of these instruments see Human Rights, A Compilation of International Instruments (United Nations publication, Sales No. E.78.XIV.2).

^{27/} Study of Equality in the Administration of Justice (United Nations publication, Sales No. E.71.XIV.3).

^{28/} E/AC.57/34.

^{29/} Conference Room Paper No. 1 of 17 May 1978 of the Committee at its fifth session.

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at the pre-trial stage, elaborated by an ad hoc expert meeting. 30/ The Committee entrusted the Secretariat with the task of redrafting the guide-lines in accordance with the Committee's observations. 31/

25. The draft guide-lines deal with effective measures for the prompt and equitable disposition of criminal cases within the criminal justice system and guarantees for persons detained in the pre-trial stage of the criminal justice process. 32/

30/ The meeting was held at Reno, Nevada, United States of America, from 23 to 27 May 1977. The National Judiciary College acted as host.

31/ E/CN.5/558, paras. 69-81.

32/ Reports on the subject by Mr. di Gennaro and Mr. Versele and a related commentary are with the United Nations Secretariat.

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III. OTHER INSTRUMENTS RELATING TO CRIMINAL JUSTICE

26. The foregoing enumeration of United Nations instruments pertaining to criminal justice is not exhaustive. Other important instruments which bear upon the subject or certain aspects thereof to a greater or lesser extent are numerous, among them the United Nations Declaration on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the United Nations Convention against Racial Discrimination; the Declaration on the Elimination of Discrimination against Women; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; and the principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity. 33/

27. Mention may also be made of the draft code of offences against the peace and security of mankind, 34/ the international instruments relating to the prevention and punishment of terrorism 35/ and the United Nations instruments pertaining to the international drug control system. 36/

33/ For the text of these instruments, see Human Rights: A compilation of International Instruments, op. cit.; with regard to the Convention on the Elimination of All Forms of Discrimination Against Women, see General Assembly resolution 34/180.

34/ Yearbook of the International Law Commission, vol. II, 1951, p. 134 and vol. II, 1954, p. 150.

35/ See A/C.6/418; with regard to the International Convention Against the Taking of Hostages see General Assembly resolution 34/146.

36/ Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol (United Nations publication, Sales No. E.77.XI.3) and Convention on Psychotropic Substances, 1971 (United Nations publication, Sales No. E.73.XI.3).

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IV. CONCLUSIONS AND RECOMMENDATIONS

28. In considering the survey, the Congress may wish to take note of the diversity of United Nations norms and guide-lines in criminal justice: instruments had been adopted one after the other, in an incremental process. Thus, gaps in international norm-setting are being progressively closed. The risk of States giving preference, between two provisions on similar matters, to the one least protective of human rights is quite generally precluded through saving clauses which safeguard any stronger rights which may be granted under other international instruments or national laws. The Congress may conclude that the multiplicity of instruments may be considered, on balance, as favouring protection of persons who come into contact with the criminal justice system.

29. In the preparatory meetings, it was pointed out that it was appropriate to draw distinctions between conventions pertaining to criminal justice which have the status of international law, and principles, guide-lines and standards which are in the nature of guide posts for nations. ^{37/} The latter instruments are not meant to be legally binding: they are recommendations to Member States that favourable consideration should be given to their use within the framework of national legislation or practice. ^{38/}

30. It is also important to note that some of the instruments have already received the requisite approval of the competent United Nations policy-making bodies, while others are still in the stage of drafting and discussion.

31. With respect to their content, not all of the United Nations norms and guide-lines referred to above are concerned, either wholly or largely, with problems relating exclusively to criminal justice.

32. In this context, the attention of the Congress may be drawn to the recommendation of the Committee on Crime Prevention and Control at its fifth session that the Secretariat should produce a single-volume publication for the widest possible distribution containing all relevant provisions. ^{39/} The preparatory meetings for the Congress noted that a consolidated publication of all relevant instruments would assist Governments to make appropriate recommendations for the revision, improvement, extension or consolidation of United Nations norms and guide-lines in criminal justice.

33. It was also noted in the preparatory meetings for the Congress that in many countries, actual conditions are already superior to the provisions contained in United Nations instruments in criminal justice, while in others, these may lag behind. It was suggested that it was appropriate to disseminate, on a larger scale, such norms, guide-lines and standards in all United Nations working languages, and perhaps in all languages, so that the widest possible respect for them could be secured in all countries. ^{40/}

^{37/} "Report on the European Regional Preparatory Meeting on the Prevention of Crime and Treatment of Offenders" (A/CONF.87/BP/1), para. 64.

^{38/} See K. F. Gutsenko and E. G. Lyakov, consultant paper, *op. cit.*, p. 11.

^{39/} E/CN.5/558, para. 81.

^{40/} A/CONF.87/BP/1, para. 64.

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PART TWO. RECOMMENDED NEW UNITED NATIONS GUIDE-LINES IN CRIMINAL JUSTICE ^{41/}

I. PRIORITIES

34. The preparation of new United Nations standards, guide-lines or principles in criminal justice was recommended by the Committee on Crime Prevention and Control in its report on its fourth session under the heading "Human rights in the administration of justice" ^{42/} and endorsed by the Economic and Social Council in its resolution 2075 (LXII), paragraph 2. These recommendations include:

(a) Guide-lines that would ensure just, humane and effective judicial proceedings, improved selection and training of judges and prosecutors and the establishment of safeguards against the abuse of discretion in sentencing;

(b) Rules for the treatment of offenders in the community;

(c) The strengthening of inmate grievance procedures by ensuring prisoners the right of recourse to an independent authority both at the national and international levels;

(d) The facilitating of the return of persons convicted of crime abroad to their domicile to serve their sentences; and

(e) The improvement of the situation of persons detained either in police custody or in prison before trial.

The Committee on Crime Prevention and Control had also recommended the preparation of a study which might lead to principles intended to protect victims of criminal justice systems. In this connexion it should be mentioned that the Commission on Human Rights and its subsidiary organs are also undertaking research and studies which may well lead to the preparation of new international standards on human rights in the administration of justice. One may cite, among these studies, those of the Sub-Commission concerning: the duties of the individual to the community; the impact of states of emergency upon the human rights of detainees; the independence and impartiality of judges, assessors, jurors and lawyers; and discrimination against members of racial, religious or linguistic groups at the various levels of administrative and judicial investigation.

35. Subsequently, at the Meeting of the Interregional Ad Hoc Group of Experts on United Nations Norms and Guide-lines in Criminal Justice, held at The Hague,

^{41/} See also A. Cassese, "Policy guidance in priority areas for the development of United Nations standards and guide-lines in criminal justice", consultant paper for the Sixth Congress, with the United Nations Secretariat.

^{42/} E/CN.5/536, chap. VI.

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from 28 August to 1 September 1978, in preparation for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, it was suggested that the Congress might wish to provide policy guidance in the following areas of priority:

- (a) Guide-lines for the improved selection and training of judges and prosecutors;
- (b) Guide-lines to provide minimum rules for the treatment of offenders in the community;
- (c) Guide-lines to strengthen inmate grievance procedures; and
- (d) Guide-lines to facilitate the return of persons convicted of crime abroad to their domicile to serve their sentences.

36. As far as guide-lines to ensure just and effective judicial proceedings were concerned, the Meeting noted that the United Nations had already developed several norms and principles relevant in force as well as in preparation, such as pertinent provisions of the International Covenant on Civil and Political Rights, the draft principles on equality in the administration of justice ^{43/} as well as the conclusions of the Ad Hoc Meeting of Experts on Expeditious and Equitable Handling of Criminal Cases, held at Reno, Nevada, United States, in May 1977. ^{44/}

37. In view of the fact that new standards to improve the situation of persons detained in police or prison custody before trial were already under consideration by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its draft principles for the protection of all persons under any form of detention or imprisonment, ^{45/} the group was of the opinion that the Congress might find no urgent need at this time for inclusion of this topic in its discussion.

^{43/} Study of Equality in the Administration of Justice, *op. cit.*, annex III.

^{44/} E/CN.5/558, paras. 69-81.

^{45/} E/CN.4/1296, para. 9.

/...

II. GUIDE-LINES FOR THE IMPROVED SELECTION AND TRAINING OF JUDGES AND PROSECUTORS

38. The Congress may wish to base its considerations concerning the development of United Nations guide-lines for the improved selection and training of judges and prosecutors on article 10 of the Universal Declaration of Human Rights which entitles everyone equally to a fair and public hearing "by an independent and impartial tribunal" in the determination of his rights and obligations and of any criminal charge against him. Similarly article 14, paragraph 1, of the International Covenant on Civil and Political Rights provides that in the determination of any criminal charge or civil law suit, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. This fundamental principle is confirmed, as far as racial discrimination is concerned, by article 5a of the International Convention on the Elimination of All Forms of Racial Discrimination which provides for the right of everyone to equal treatment before the tribunals and all other organs administering justice.

39. It follows that everyone should have the right to be tried by judges whose evaluations are not marred by political, social, racial, religious, cultural, sexual or any other bias. Where discrimination operates in the selection and appointment of judges, jurors and prosecutors, the quality of justice will suffer, since they will be less likely to perform their functions impartially. The same is true if members of the judiciary have not received proper training for their office.

40. Given the broad variety of modes of appointment and training of judges, jurors and prosecutors in different countries, ^{46/} only very general guide-lines guaranteeing the independence and impartiality of the judiciary, applicable to all countries, could be envisaged. Member States could take them into account to the extent that this would be compatible with their specific judicial systems.

41. The Congress may deem it appropriate to recommend that United Nations efforts in this area be co-ordinated with the preliminary study on the independence of the judiciary and of lawyers authorized by the Economic and Social Council in its resolution 1979/34 to be undertaken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The study subsequently prepared has been approved by the Economic and Social Council at the first regular session of 1980. This Council decision may be seen as a partial implementation of the broad programme on the judiciary envisaged in the earlier Council resolution 2075 (LXII), para. 2.

42. Viewed in the light of these remarks, United Nations guide-lines or principles in this area could request Member States to ensure the independence and impartiality of members of the judiciary by national laws and practices governing their selection and training. Such laws and practices could include related issues such as tenure of office, privileges and immunities, salaries and pensions, the possible limitations placed on non-judicial activities of judges, jurors and prosecutors, the

^{46/} See Study of Equality in the Administration of Justice, *op. cit.*, paras. 218-221.

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circumstances disqualifying them from acting in particular cases, the protection against improper influences accorded to them, the sanctions applicable to them if they fail to display independence and impartiality and the role of judicial service commissions, superior councils of the judiciary and similar bodies.

43. In particular, United Nations guide-lines to improve the training of judges and prosecutors could envisage the widest possible training for members of the judiciary in such a way as to ensure greater protection of defendants and detainees against possible bias and discriminations.

44. At the national level, for example, the primarily legal training in many countries could be supplemented by providing for members of the judiciary contacts, on a regular basis, with social and cultural organizations concerned with the protection of detainees. In addition, special meetings with human rights organizations could be held with a view towards promoting an exchange of ideas and experience between the judiciary and groups concerned with the protection of human rights.

45. While human rights training for the judiciary is important, equally important is training in substantive and procedural law, in human psychology, in judicial administration and in the social and behavioural sciences, so that judges understand the limits of dealing with offenders by means of adjudication and corrections, that is, the limits of the criminal justice system. In this context, account could be taken of the different systems for training judges, all of which could contribute toward a world-model.

46. At the international level, greater use could be made of the facilities offered by the United Nations, particularly the regional training institutes for the prevention of crime and the treatment of offenders. By way of example, reference could be made to the successful 42nd Seminar Course on the Formation of a Sound Sentencing Structure and Policy, held by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI). 47/ Similar seminars could be organized, for instance, for members of the judiciary of various countries with a view to making known, on a wider and more detailed basis, the United Nations guide-lines and standards in criminal justice as well as the experience gained in the area of the administration of justice by some United Nations bodies, such as the Human Rights Committee, the Commission on Human Rights and the Sub-Commission for Prevention of Discrimination and Protection of Minorities. Greater use should also be made, for the purpose of better informing judges, of the United Nations programme of advisory services in the field of human rights. In the past, several seminars on human rights and criminal justice, gathering many judges, were held under this programme. In addition, greater use could be made of the advisory services of the United Nations. Moreover, the experience of the Human Rights Committee, the deliberations within the Committee on the Elimination of Racial Discrimination and the results of its considerations of the reports of the States Parties, particularly with regard to articles 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, should be made known.

47/ See UNAFEI Resource Material Series, No. 12, part I. For more information on similar seminars and training courses organized by the regional United Nations institutes for the prevention of crime and the treatment of offenders see last section of this paper.

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III. GUIDE-LINES TO PROVIDE MINIMUM RULES FOR THE TREATMENT OF OFFENDERS IN THE COMMUNITY 48/

47. Contemporary developments in correctional theory and practice have brought about a shift of emphasis from institutional detention towards treatment in the community at large or in conditions of semi-liberty. This approach has been gathering momentum as a result of accumulating evidence that has tended to erode belief in the efficacy of institutional experience in rehabilitating offenders. As societies revalue human behaviour and their responses to it, the trend to divert delinquents from prison to non-custodial treatment programmes is likely to receive further impetus in spite of an opposite trend which, in some countries, revives retribution and fixed and longer sentences.

48. Although penalties involving elements of community treatment, semi-liberty and social control are valuable alternatives to imprisonment, they also raise questions concerned with the assurance of respect for the human dignity of the offender and the obligations of the supervising authorities towards those sentenced to their charge. Because of the different situation and circumstances of non-custodial correctional programmes, the Standard Minimum Rules for the Treatment of Prisoners, 49/ adopted by the United Nations, are not applicable to or suitable for convicted offenders under community treatment; and the same seems to be true, to a large extent at least, of the recommendations on Open Penal and Correctional Institutions contained in the annex to the Rules. Accordingly, the question has been raised as to the desirability and feasibility of preparing a new set of minimum guiding rules for offenders under community treatment comparable with and parallel to the Standard Minimum Rules for the Treatment of Offenders.

49. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should elaborate new rules for the treatment of offenders in the community by first articulating principles and standards for programmes that would be alternatives to imprisonment, and then closing with guide-lines concerning the content of the programmes. It was observed that the task of preparing such rules "was an extremely complicated and difficult one and should be approached with a view to providing maximum flexibility with respect to substantive matters". 50/ Consequently, the different judicial and social systems, cultures and traditions in Member States would have to be taken fully into account. In particular, the great experience of developing countries with respect to the use of indigenous non-custodial forms of treatment should be fully taken into account in the development of non-custodial sanctions in all systems and in consonance with basic human rights standards.

48/ For a general discussion of the treatment of offenders in the community see "De-institutionalization of correction and its implications for the residual prisoner", working paper prepared by the United Nations Secretariat for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.87/4). See also the Report of the Fifth United Nations Congress, *op. cit.*, paras. 23 (a and b) and 264-269.

49/ Report of the First United Nations Congress, *op. cit.*

50/ *Ibid.*, paras. 23 (k), 283 (c) and 288.

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IV. GUIDE-LINES TO STRENGTHEN INMATE GRIEVANCE PROCEDURES

50. The Congress may recall that remedies for the resolution of inmate grievances are contained in the Standard Minimum Rules for the Treatment of Prisoners, in rules 35-36 ("Information to and complaints by prisoners") and rules 37-39 ("Contacts with the outside world"). The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concluded that "there was a need to strengthen inmate grievance procedures through provisions for recourse to an independent authority such as an ombudsman". 51/

51. In this connexion, reference may be made to General Assembly resolution 34/178 on the right of amparo, habeas corpus or other legal remedies to the same effect, in which the Assembly expressed its conviction that the application within the legal system of States of these remedies is of fundamental importance for the protection of detained persons. Of further interest is a study made by a Committee of the Commission on Human Rights in 1969 on the right of detained persons to communicate (E/CN.4/996). As a result of this study, some provisions on the matter were included in the Draft Principles on Freedom from Arbitrary Arrest and Detention.

51/ Ibid., paras. 23 (h) and 285. With regard to the need for guide-lines at the regional level see further "Report of the Latin American Regional Preparatory Meeting" (A/CONF.87/BP/2), para. 58.

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V. GUIDE-LINES TO FACILITATE THE RETURN OF PERSONS CONVICTED OF CRIME ABROAD TO THEIR DOMICILE TO SERVE THEIR SENTENCE

A. International initiatives

52. Considerable support was given to the proposal made at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to begin work on the development of methods to facilitate the international exchange of prisoners. 52/ Consequently, the Congress recommended that "in order to facilitate the return to their domicile of persons serving sentences in foreign countries, policies and practices should be developed by utilizing regional co-operation and starting with bilateral arrangements." 53/

53. This recommendation of the Congress has been one of the principal motivating factors for extensive research in this area carried out in recent years at the national level as well as by intergovernmental and international non-governmental organizations interested in the treatment of offenders, such as the Council of Europe, the Howard League for Penal Reform, the International Association of Penal Law, the International Council on Alcohol and Addictions, the International Prisoners' Aid Association and the National Council on Crime and Delinquency (United States).

54. The reasons why the international community is at present endeavouring to have imprisoned foreign nationals serve their sentence in their own countries are manifold. If resocialization is one of the prime aims of correctional systems, it makes little sense to try to integrate a foreign prisoner into a society alien to him or her. 54/ Moreover, a convicted person who serves a sentence in a foreign country frequently undergoes greater hardship than other inmates. If imprisonment entails being largely cut off from the community, a foreign detainee is twice isolated from the outside world, for he or she has less opportunity of communicating with others than have other detainees. The foreign prisoner often does not know the language of the country, is normally accustomed to different patterns of behaviour and, consequently, cannot easily adjust to the mentality and way of life of the nationals. In addition, it may occur that other inmates and the prison authorities mete out discriminatory treatment to foreign prisoners. 55/

55. While concern over the predicament of foreign detainees is the primary consideration behind present efforts aimed at facilitating the international exchange of prisoners, States which are involved in the exchange may, in addition, have diverse, and sometimes conflicting, interests. The State from which the offender may be transferred may have an interest in handing over the convict inasmuch as the transferral can forestall problems in the penal institution;

52/ Fifth United Nations Congress, op. cit., paras. 283 (d) and 289.

53/ Ibid., para. 23 (j).

54/ See, for example, "Report of the Latin American Regional Preparatory Meeting", op. cit., para. 57.

55/ See Council of Europe, document PC-R-DE(79)1.

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moreover, those States which suffer from overcrowding in prisons, may consider any opportunity to get rid of detainees to be advantageous. By the same token, however, detaining States may be concerned that the transfer of foreign nationals does not result in the thwarting of their criminal jurisdiction and, therefore, normally require that the sentence be served in the receiving State without any reduction. Furthermore, detaining States may wish to avert possible abuses by receiving States. Some States, for instance, may request that a convict be surrendered for political reasons, and the consequent transferral may result in even harsher treatment for the detainee.

56. The prisoner's national State, on its part, may be interested in receiving the detainee in order to alleviate his plight, for example by facilitating his contacts with the detainee's family or community. Home countries may be meticulously concerned with the fairness of the proceedings of the detaining State. If the trial was not fair, for example, because the convict was the subject of racial or political discrimination, the national State could not be expected to receive and further detain the convict because by so doing, it would endorse and condone the unfair trial.

57. In providing policy guidance for the development of United Nations guide-lines for the exchange of prisoners, the Congress may wish to take account of, and properly balance, the interests of both the States involved in the exchange and the detainee.

B. Regional co-operation and bilateral arrangements

58. At the regional level, the 1970 European Convention on the International Validity of Criminal Judgements, in force since 1974, is concerned with the execution of foreign prison sentences abroad. ^{56/} It is binding upon Austria, Cyprus, Denmark, Norway, Sweden and Turkey.

59. The European Convention upholds the principle of mandatory transfer, that is, upon the request of the sentencing State, foreign nationals are returned to the national State which is bound to accept them if certain detailed conditions are fulfilled. ^{57/} It is not necessary that the sentenced person consent to his transfer.

60. Recently, a Select Committee on Foreign Nationals in Prison of the European Committee on Crime Problems elaborated a Preliminary Draft Treaty on the Transfer of Detainees, based on the principle of voluntary transfer: the transfer shall only be effected with the consent of the prisoner and provided that both the transferring and the receiving States agree to it. The draft Treaty provides more general norms than the European Convention to be followed when considering transferring a foreign prisoner.

^{56/} For information on current questions pertaining to the implementation of the Convention, see "Secretariat memorandum of the Council of Europe" (PC-R-DE (79)).

^{57/} See in particular arts. 5 and 6 of the European Convention.

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61. The Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have uniform laws relating to transfer of criminal sanctions and offenders, applicable to fines, confiscation, sanctions involving deprivation of liberty and sentences on probation and parole.

62. Mention may also be made of the 1952 Extradition Treaty regarding the transfer of offenders between all Arab countries who are members of the Arab League.

63. Bilateral treaties on the execution of penal sentences abroad include the 1972 treaty between Denmark and Spain, the 1977 treaty between Canada and the United States, ^{58/} the treaties concluded by the United States with Mexico (1976), ^{58/} Bolivia (1978), Panama (1979) and Turkey (1979) and the treaties concluded by Canada with Mexico (1977) and France (1979).

64. France maintains with French-speaking African States agreements which allow for the transfer of prisoners to their native countries to serve their sentences.

65. Most of these agreements, with some exceptions such as the Danish-Spanish treaty, are based on the principle of voluntary transfer.

66. The system of voluntary transfer, as embodied in most bilateral agreements and in the European Preliminary Draft Treaty, may be regarded as a suitable model for United Nations guide-lines, because it allows for wider differences existing in domestic penal legislations to be taken into account, although it should be recognized that as a regional model, the system of mandatory transfer provided for by the European Convention may have its own merits. Under the system of voluntary transfer, States enjoy more leeway and can take a case-by-case approach which is more conducive to a settlement. Requiring consent of all three parties protects the rights and interests of all of them and obviates the need for identifying mandatory inclusions and exemptions. The concept of voluntary participation thus would simplify the guide-lines, protect the sovereignty of the countries involved and, at the same time, safeguard the rights and interests of the individual being considered for transfer.

67. As to the conditions for the transfer contained in the bilateral agreements, there is a nucleus required by all treaties, namely: that the offence on which any request is based shall be one punishable under the legislation of both the requesting and the requested State; that a certain minimum period (mostly six months or one year) of the offender's sentence remains to be served at the time of transfer; that the sentence be final and have executive force. In addition, each treaty provides for other specific conditions, for example, that the offence not be political or military, or the offender not be sentenced to the death penalty or not be a domiciliary of the detaining State, that the offence not be committed outside the territory of the detaining State etc.

^{58/} See M. Cherif Bassiouni, "Perspectives on the transfer of prisoners between the United States and Mexico and the United States and Canada", Vanderbilt Journal of International Law, vol. 11, No. 2, spring 1978, pp. 249-268.

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68. As for the possible revision or reduction of the sentence after the transfer, the bilateral treaties under consideration tend to take the same or at least a similar attitude. They provide that the sending State retain exclusive jurisdiction regarding the sentences imposed and any procedures that provide for revision, modification or cancellation of the sentences pronounced by their courts. The receiving State is bound to put such measures into effect, as soon as it is notified by the transferring States of any decision in this regard. However, the receiving State is sometimes entitled to grant amnesty or pardon, though concurrently with the sending State, and may also make provision for the reduction of the prison term by parole, conditional release or otherwise. These provisions appear to be suitable as a model for United Nations guide-lines, for they safeguard the right of the transferring State to "keep control" of the sentence; thus, the sovereignty of that State is fully respected. At the same time, the receiving State may duly consider any circumstances warranting a decrease in the sentence.

C. Model for United Nations guide-lines

69. In the preparation of a model for United Nations guide-lines for the transfer of foreign prisoners, it may be useful to refer to the broad evaluation of the existing instruments given above. Accordingly, the basic principles which the Congress may wish to incorporate in such a model could tentatively include the following:

- (a) General principles:
 - (i) The social rehabilitation of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their domicile to serve their sentence;
 - (ii) This end may be achieved through international co-operation based on the principle of respect for national sovereignty and jurisdiction;
 - (iii) For this purpose, Governments may wish to give favourable consideration to the use of the following guide-lines within the framework of national legislation or practice and in their international relations.
- (b) Voluntary transfer:
 - (i) A person sentenced in the territory of a Member State (sentencing State) may on request be transferred to the territory of another Member State (administering State) in order to serve there the sanction involving deprivation of liberty imposed on him or her;
 - (ii) A request for transfer may be submitted by the sentencing State as well as by the administering State;
 - (iii) The transfer may only be effected with the consent of the sentenced person. If for reasons of the person's mental condition, he or she is judged incapable of freely determining his or her will, any authorized representative or counsel may consent to the transfer.

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(c) Other requirements:

- (i) A sentenced person may be transferred only to the country of citizenship or ordinary residence;
- (ii) The offence on which any request is based shall be one punishable by deprivation of liberty under the legislation of both the sentencing and the administering State;
- (iii) The sentence must be final and must have executive force;
- (iv) At the time of receipt of the request, the sentenced person shall still have to serve his sanction of deprivation of liberty in the sentencing State for an established minimum period of time;
- (v) The legal conditions of a sentenced person may never be aggravated by a transfer. A sentence may be lessened but shall never be increased;
- (vi) A sentenced person transferred for execution of a sentence may not be tried in the administering State for the same offence upon which the sentence to be executed is based.

70. The Congress may wish to review this model as to its feasibility and make recommendations on possible action to be taken by the United Nations.

71. The Congress may also deem it advisable to discuss whether additional provisions might be included in the text of the model, for example, whether:

- (a) The sentencing State would retain exclusive jurisdiction regarding the sentences imposed and any procedures that provide for revision, modification or cancellation of the sentences pronounced by its courts;
- (b) The administering State may reduce the term of imprisonment by parole, conditional release or otherwise;
- (c) Amnesty or pardon may be granted by either State.

72. The Congress may also wish to explore whether it would be useful to develop a parallel United Nations model for the reciprocal exchange of parolees and probationers. In this context, it could draw on the experience made at the regional level, with the European Convention on the Supervision of Conditionally Released Offenders of 30 November 1964. In all such efforts, the traditions and cultural identity of Member States, of areas within nations and of regions would have to be recognized. It could never be the purpose of United Nations norms and guide-lines in criminal justice to eradicate such valuable differences. ^{59/} The prior study of each subject-matter by expert groups may have to be regarded as an important means of ensuring a solid conceptualization of new guide-lines.

^{59/} "Report of the Asian and Pacific Regional Preparatory Meeting" (A/CONF.87/BP/2), para. 63.

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73. Finally, the Congress may wish to consider the possibility of developing a model for the transfer of the prosecution of foreign nationals whereby, among others, the general principles established at the regional level by the European Convention on the Transfer of Proceeding in Criminal Matters of 15 May 1972, could be used as one of the references.

VI. CONCLUSIONS AND GENERAL RECOMMENDATIONS

74. The Congress will be confronted with the task of providing policy guidance and setting priorities with regard to the above-named four areas of recommended new United Nations guide-lines in criminal justice. Such guide-lines probably cannot presume to describe in detail models for certain aspects of the criminal justice systems. Conversely, their purpose would be to set out, on the basis of general consensus, principles accepted by the international community so that favourable consideration could be given to their use within the framework of national legislation or practice.

PART THREE. GENERAL PRINCIPLES FOR THE MORE EFFECTIVE IMPLEMENTATION OF UNITED NATIONS NORMS AND GUIDE-LINES IN CRIMINAL JUSTICE ^{60/}

I. IMPLEMENTATION AT THE NATIONAL LEVEL

75. At the regional preparatory meetings for the Congress, it was suggested that the Congress may wish to consider the need for devising more effective ways and procedures for implementation of United Nations norms and guide-lines in criminal justice. Success in the implementation of United Nations norms and guide-lines in criminal justice may depend not only on collective actions but, in the first instance, on the efforts undertaken by Member States and on their active and conscientious introduction of domestic measures.

76. For example, the General Assembly, in its resolution 3452 (XXX), adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a guide-line for all States and other entities exercising effective power. Moreover, the Code of Conduct for Law Enforcement Officials was adopted by General Assembly resolution 34/169 with the provision to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. With regard to the implementation of the Standard Minimum Rules for the Treatment of Prisoners, the Economic and Social Council, in resolution 663 C (XXIV), invited Governments to give favourable consideration to the adoption of the Rules and their application in the administration of penal and correctional institutions. The General Assembly, in resolutions 2858 (XXVI) and 3218 (XXIX), reiterated the importance placed by the Council on the implementation of the Rules at the national level.

^{60/} See also K. Shibahara, "General principles for the more effective implementation of the Standard Minimum Rules for the Treatment of Prisoners and other United Nations standards in criminal justice", consultant paper for the Sixth United Nations Congress, with the United Nations Secretariat.

II. IMPLEMENTATION AT THE REGIONAL LEVEL

A. Implementation by way of co-operation between Governments, the United Nations and its affiliated regional institutes in crime prevention and criminal justice 61/

77. United Nations norms and guide-lines in criminal justice are being implemented with great success at the regional level with the assistance of the United Nations-affiliated regional institutes: the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) at Fuchu, Japan, the United Nations Centre for Social and Criminological Research at Cairo, Egypt and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) at San José, Costa Rica. The same is true, on a global basis, for the United Nations Social Defence Research Institute in Rome, Italy.

78. The regional institutes hold on a regular basis seminars and training courses and provide fellowships for the purpose, inter alia, of disseminating United Nations norms and guide-lines in criminal justice, exchanging information and experience and adapting the implementation of United Nations instruments in criminal justice to the particular needs and priorities of the countries of the region. By way of examples, reference may be made to the 47th International Training Course on Speedy and Fair Administration of Criminal Justice, and the United Nations Human Rights Training Course on Safeguards against Deprivation of the Rights to Liberty and Security of Person, both held at UNAFEI in 1977. 62/ Other examples in this area are the seminars on human rights held at ILANUD, most recently in 1979, and a number of activities in this regard of the Centre at Cairo and UNSDRI. 63/

79. The training courses and seminars were held in co-operation with the host

61/ On the activities of the institutes see Y. Suzuki, "The United Nations-affiliated Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders", International Review of Criminal Policy, No. 34 (United Nations publication, Sales No. E.78.IV.8), pp. 75-81; A. Khalifa, "The United Nations-affiliated Centre for Social and Criminological Research at Cairo", ibid., p. 82; A. Montero Castro, "The United Nations-affiliated Latin American Institute for the Prevention of Crime and the Treatment of Offenders", ibid., p. 83; and P. Könz, "United Nations Social Defence Research Institute", ibid., pp. 73 and 74.

62/ UNAFEI Report for 1977 and Resource Material Series, No. 15, 1978.

63/ Progress reports of the institutes for the sixth session of the Committee on Crime Prevention and Control, prepared by M. Shikita for UNAFEI, A. Khalifa for the Centre at Cairo, A. Montero Castro for ILANUD and T. Asuni for UNSDRI. The reports are with the United Nations Secretariat.

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countries, and several of them formed part of the United Nations programme of advisory services in the field of human rights. 64/

80. As regards the implementation of United Nations norms and guide-lines in criminal justice in the region of Africa south of the Sahara, the Congress may wish to recall Economic and Social Council resolution 1979/20, which requested the Secretary-General to establish an institute in the field of crime prevention and the treatment of offenders for this region. Efforts in this regard are now well under way. In this connexion, the attention of the Congress may also be drawn to General Assembly resolution 34/171 on regional arrangements for the promotion and protection of human rights in areas where such arrangements do not yet exist.

B. Implementation by way of co-operation between Governments, the United Nations regional intergovernmental organizations and other regional bodies interested in crime prevention and criminal justice

81. An important means for more effective implementation of United Nations norms and guide-lines in criminal justice, at the regional level, is by way of promotion of co-operation between Governments, the United Nations and regional intergovernmental organizations and other regional bodies interested and active in the field of crime prevention and criminal justice.

82. The League of Arab States co-operates with the United Nations in promoting United Nations principles, standards and guide-lines of social defence and criminal justice at the regional level and applying them in the context of contemporary Arab society. 65/ At the Ninth Arab Conference for Social Defence, held at Cairo in 1978 in preparation of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, particular attention was given to the United Nations declarations and convention of human rights and their reflections on the United Nations strategy for crime prevention and criminal justice, in particular with regard to Arab countries. 66/

83. Implementation of United Nations norms and guide-lines in criminal justice by way of co-operation between Governments of the region and the United Nations is also one of the foremost concerns of the Organization of American States, particularly the Inter-American Commission on Human Rights, established in 1960. Its principal function is to promote human rights as set forth in the American Declaration of the Rights and Duties of Man. The Declaration contains a number

64/ United Nations Secretariat, "Training courses in human rights: an interdisciplinary training device", International Review of Criminal Policy, No. 34, pp. 38-42.

65/ See A. W. El-Aschmaoui, "The activity of the League of Arab States in the field of social defence", International Review of Criminal Policy, No. 34, pp. 85 and 86.

66/ Final Report of the Ninth Arab Conference for Social Defence, Arab Organization for Social Defence Against Crime (AOSD), Cairo, Egypt, 1978, pp. 31 and 32.

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of provisions concerning the protection of human rights in criminal justice such as the right to fair trial (art. 18), the right to protection from arbitrary arrest (art. 25) and the right to due process of law (art. 26). 67/

84. The Inter-American Court of Human Rights, established at San José, Costa Rica, under the 1969 American Convention of Human Rights, in force since 1978, hears cases involving violations of human rights, including those referring to criminal justice. 68/

85. The Council of Europe, created in 1949 and its principal organs, the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers, co-operate with Governments of the region and with the United Nations in implementing United Nations norms and guide-lines in criminal justice, on the basis of the 1952 European Convention for the Protection of Human Rights and Fundamental Freedoms, 69/ which transformed the principles proclaimed by the Universal Declaration of Human Rights into a regionally binding instrument.

86. The Council, through its European Committee on Crime Problems of the Committee of Ministers, assists Governments of the regions in harmonizing their legislations relating to criminal law, criminal procedure and corrections in accordance with United Nations principles, standards and guide-lines. 70/ The conventions and resolutions of the Council of Europe concerning crime prevention and criminal justice, including the "European Standard Minimum Rules for the Treatment of Prisoners", 71/ are important elements in the relations between its Member States, the Council and the United Nations.

67/ See "Remedies and mechanisms for the enforcement of the United Nations Standard Minimum Rules for the Treatment of Prisoners and similar guarantees and principles of offender treatment", Academy for Contemporary Problems, 1975, pp. 27-29.

68/ See L. Levin, "Human rights: questions and answers", a paper submitted to the International Congress on the Teaching of Human Rights in 1978, pp. 22-23.

69/ See E. Harremoës, "The Council of Europe: activities in the field of crime problems", International Review of Criminal Policy, No. 34, pp. 87-92.

70/ See "Council of Europe activities in the field of crime problems 1956-1976", op. cit.

71/ Resolution (73)5 of the Committee of Ministers of the Council of Europe. In addition, the Committee of Ministers, upon the recommendations of the European Committee on Crime Problems, adopted a number of resolutions containing recommendations concerning the treatment of offenders, for example, a resolution on electoral, civil and social rights of prisoners (res. (62)2); on group and community work of offenders (res. (74)24); on prison labour (res. (75)25); on the treatment of long-term prisoners (res. (76)2); and on alternatives to imprisonment (res. (76)10).

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87. As regards regional arrangements for the promotion and protection of human rights - including the implementation of United Nations norms and guide-lines in criminal justice in areas where such arrangements do not yet exist, reference may be made to the appeal of the General Assembly in its resolution 34/171 to States to consider the establishment of such arrangements in the respective regions.

88. The General Assembly expressed the hope that due consideration would be given by the Governments and organizations concerned to the Monrovia Proposals for the setting-up of an African Commission on Human Rights, adopted by the United Nations Seminar on the Establishment of Regional Commissions on Human Rights with special reference to Africa, held at Monrovia, in 1979, with the participation of the Organization of African Unity. 72/

72/ ST/HR/SER.A/4.

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III. IMPLEMENTATION AT THE INTERNATIONAL LEVEL

A. Some existing implementation procedures

89. It was stressed in preparatory meetings for the Congress that the implementation of United Nations norms and guide-lines at the international level was difficult and required special attention, with regard to comparative and evaluative research. 73/ In accordance with the different legal characters of international instruments, implementation procedures would have to be differentiated. The following types of implementation procedures at the international level may be mentioned:

- (a) Reporting systems for Governments;
- (b) Complaint procedures for individuals;
- (c) Investigative procedures on an ad hoc basis; and
- (d) Educational processes to mobilize public opinion.

90. As regards the implementation procedures applied by United Nations organs concerned with human rights in particular, reference may be made to the annual review ex officio of developments regarding the human rights of detained persons by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights; the mandatory reporting system for Governments and the optional system of communications from individuals under the International Covenant on Civil and Political Rights and its Optional Protocol as well as the International Convention on the Elimination of All Forms of Racial Discrimination; the voluntary reporting system for Governments under the United Nations Charter and the relevant United Nations resolutions; the procedure for communications from individuals under Economic and Social Council resolution 1503 (XLVIII); and the ad hoc investigation of alleged violations of human rights in certain countries. 74/

91. With a view to strengthening the implementation of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 75/ the General Assembly adopted the following resolutions, in addition to measures concerning the elaboration of a convention on torture, codes in the area of law enforcement and medical ethics and principles for the protection of detained persons: 76/

73/ "Report of the European Regional Preparatory Meeting", op. cit., para. 66.

74/ "Report on the Meeting of the International Ad Hoc Group of Experts on United Nations Norms and Guidelines in Criminal Justice", The Hague, from 28 August to 1 September 1978, para. 30.

75/ See part one, chap. I, sect. B below.

76/ See ibid., chap. II, sect. C, and chap. III, sects. A, B and C.

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(a) Resolution 32/63, in which the Assembly requested the Secretary-General to circulate among Member States a questionnaire soliciting information concerning steps they had taken to put into practice the principles of the Declaration;

(b) Resolution 32/64, by which Member States were called upon to reinforce their support of the Declaration by making unilateral declarations against torture and other cruel, inhuman or degrading treatment.

92. The forthcoming thirty-fifth session of the General Assembly will review the progress achieved in these matters, in accordance with its resolution 34/167.

B. Proposals for the strengthening of the implementation of the Standard Minimum Rules for the Treatment of Prisoners 77/

93. In resolution 663 C, the Economic and Social Council invited Governments to give favourable consideration to the adoption of the Rules and their application in the administration of penal and correctional institutions. The Council recommended that the Secretary-General be informed every five years by Member States of the progress made with regard to the application of the Rules.

94. The Congress may wish to recall that the results of the first inquiry, to which 44 countries replied, were presented to the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 78/ and that the results of the second inquiry, to which 62 countries replied, were presented to the Fifth Congress. 79/ Information on the third inquiry is before the Sixth Congress. 80/

95. The Fifth Congress recommended that vigorous efforts should be undertaken to assure the dissemination of the Rules and that the United Nations should strongly encourage their implementation, prepare a commentary and a brochure on the Rules and offer assistance in their implementation to countries requesting it. 81/ At its fourth session, in 1976, the Committee on Crime Prevention and Control developed draft procedures for the effective implementation of the Rules, 82/ in pursuance of Economic and Social Council resolution 1993 (LX). These are before the Congress (A/CONF.87/7, annex II).

77/ For information on the Rules themselves see ibid., chap. II, sect. D.

78/ A/CONF.43/3, paras. 1-51 and annex; see also Report of the Fourth United Nations Congress, op. cit., paras. 164-190.

79/ A/CONF.56/6, annex I.

80/ A/CONF.87/6, annex.

81/ Report of the Fifth United Nations Congress, op. cit., paras. 23 (d-g).

82/ E/CN.5/536, paras. 96-100 and annex VI.

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IV. CONCLUSIONS AND RECOMMENDATIONS

96. The Congress will have the opportunity to make significant contributions to national, regional and international efforts for the more effective implementation of United Nations norms and guide-lines in criminal justice by establishing general principles to that end. In the formulation of these principles, the Congress may wish to give consideration to the following.

A. General principles

97. An important factor for the effective promotion and implementation of United Nations norms and guide-lines in criminal justice is the application of these instruments in the context of the United Nations strategy for economic and social development. 83/

98. Among the biggest obstacles to successful implementation of United Nations norms and guide-lines in criminal justice are lack of co-ordinated action, public apathy and the lack of funds, issues which are closely linked. If there were true public concern, funds might well be forthcoming. The public would have to be made aware of the fact that the adherence to humane standards in criminal justice is not only a matter of the right of every human being to decent treatment but also that it is good crime prevention policy which may well pay off in the long run through lower crime rates. 84/

99. Community participation and reliance on public opinion are valuable means for implementation. Possibilities for the improvement of the implementation of United Nations norms and guide-lines in criminal justice may be found through a consideration of measures for the mobilizing of world public opinion and creating a world-wide atmosphere of readiness towards the observance of the principles embodied in these United Nations instruments. 85/

B. Implementation at the national level

100. As pointed out at the preparatory meetings for the Congress, United Nations norms and guide-lines in criminal justice, like any other United Nations instruments, depend for their effectiveness in the first instance, on the willingness of Member States and other addressees to accept, translate, disseminate and implement them. The best possible implementation could be achieved at the national level, by incorporation of United Nations instruments in national legislation and practice whether verbatim or in spirit, 86/ and by the strengthening of national recourse procedures.

83/ Report on the Meeting of the Interregional Ad Hoc Group of Experts on United Nations Norms and Guidelines in Criminal Justice, op. cit., paras. 31 and 34.

84/ Report on the Asia and Pacific Regional Preparatory Meeting, op. cit., para. 64.

85/ K. F. Gutsenko and E. G. Lyakov, op. cit., p. 41.

86/ Report of the Asian Regional Preparatory Meeting, op. cit., para. 61.

101. As far as specific areas are concerned on which the Congress may wish to focus its attention when considering the elaboration of general principles for more effective implementation of United Nations norms and guide-lines in criminal justice, the 1978 Meeting of the Interregional Ad Hoc Group of Experts suggested the following at the national level: 87/ utilization of educational and promotional processes in schools, colleges and academies of criminal justice and corrections, as well as law faculties, which should include human rights courses in their curricula; the role of the mass media; dissemination of the Standard Minimum Rules for the Treatment of Prisoners in the local languages; community involvement; establishment of national human rights committees for the promotion of the Rules; 88/ procedures for the settlement of disputes; incorporation of the Rules in national legislation; availability in appropriate language and form, of the Rules to all persons concerned; and evaluative research. 89/

C. Implementation at the regional level

102. The Congress may wish to consider that implementation of United Nations norms and guide-lines in criminal justice at the regional level is one of the most valuable methods for the promotion of these instruments. To make this approach more effective, especially in the developing countries, requires continuing and strengthened regional co-operation and support and an intensified level of technical assistance and technical advisory services for the benefit of the regions, particularly in the light of recent directives of the policy-making bodies of the United Nations focusing on regional and intercountry activities and the proved success of this approach to crime prevention and criminal justice. 90/

87/ Report of the Meeting, op. cit., para. 32 (a).

88/ One of the experts felt that this provision should state at the end: "in accordance with national law". On national institutions for the promotion and protection of human rights, see General Assembly resolution 34/49 and the report of the United Nations Seminar on National and Local Institutions for the Promotion and Protection of Human Rights (ST/HR/SER.A/2 and Add.1).

89/ See A Pilot Study on Standard Minimum Rules, The International Prisoners' Aid Association, 1970; Analysis of Extent of Applicability of the United Nations Standard Minimum Rules for the Treatment of Prisoners to Community Based Supervision and Residential Care for Convicted Offenders, Academy for Contemporary Problems, 1974; Survey of United States Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, The United States American Bar Association Commission on Correctional Facilities and Services, 1974; and a working paper on "World Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners", submitted to the Seventh Conference on the Law of the World, by D. L. Skoler, 1975.

90/ See, in particular, General Assembly decision 34/440, Economic and Social Council resolutions 1979/20 and 1979/21, and the "Report of the Latin American Regional Preparatory Meeting", op. cit., para. 61 and annex I.

103. For the purpose of further strengthening the implementation of United Nations instruments in criminal justice through the regional institutes and commissions, especially in the developing countries, the Congress may wish to consider the strengthening of the institutes by taking steps to ensure permanent financial resources and the exploration of new formulae with a view to facilitating technical assistance and technical advisory services available through the institutes for the benefit of the developing countries of the region, pursuant to Economic and Social Council resolutions 1979/20 and 21.

104. The Congress may also wish to consider methods and ways for the promotion of the goals set forth under General Assembly resolution 34/171, including the establishment of regional arrangements for the promotion and protection of human rights in criminal justice in areas where such arrangements do not yet exist.

105. The Congress may further deem it appropriate to explore the possibilities of further strengthening the co-operation of the United Nations with the existing intergovernmental regional organizations such as the Organization of African Unity, the League of Arab States, the Organization of American States, the Council of Europe and the Commonwealth Secretariat with a view to more effective implementation of United Nations instruments in criminal justice. In this context, the Congress may wish to give special attention to a strengthened role for the regional commissions.

D. Implementation at the international level

106. The ratification of a number of international instruments, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Optional Protocol to the Covenant and to article 14 of the Convention against Racial Discrimination, and the conscientious fulfilment of their provisions, including those referring to criminal justice, may be the best way of bringing about an improvement in national legislation. This may also ensure the effective adoption of measures at the international level within the framework of the procedures established by these instruments. It may be appropriate if the Congress would consider appealing to Member States which have not yet done so to ratify these international instruments. 91/

107. As regards the scope of principles for more effective implementation of United Nations norms and guide-lines at the international level, which the Congress may wish to discuss, it may be appropriate to consider whether some of the implementation procedures envisaged for the Standard Minimum Rules for the Treatment of Prisoners could not also be utilized for other United Nations standards and guide-lines in crime prevention and criminal justice, including the Code of Conduct for Law Enforcement Officials.

108. In this context, the Congress may wish to discuss the general principles

91/ K. F. Gutsenko and E. G. Lyakov, op. cit., p. 40.

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embodied in the draft procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners 92/ with a view to making recommendations for finalizing them and making them generally applicable to other United Nations standards and guide-lines in criminal justice. The potential role of the Committee on Crime Prevention and Control in this regard, in the light of the Committee's extended functions under Economic and Social Council resolution 1979/19, may have to be explored.

109. The Congress may deem it appropriate when dealing with general principles for the more effective implementation of United Nations norms and guide-lines in criminal justice, at the international level, to refer to General Assembly resolution 34/46, in which the Assembly reaffirmed that it is of paramount importance for the promotion of human rights and fundamental freedoms that Member States undertake specific obligations through accession or ratification of international instruments in this field, and that, consequently, the standard-setting work within the United Nations system in the field of human rights and the universal acceptance and implementation of the relevant international instruments should be encouraged.

110. In the same resolution, the Assembly referred to the effect of the present unjust international economic order on the economies of developing countries and the obstacles that this constitutes for the implementation of human rights and fundamental freedoms and, in particular, for the right to enjoy an adequate standard of living, as stated in article 25 of the Universal Declaration of Human Rights.

92/ E/CN.5/536, annex VI.

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