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**THE INTEGRATION
OF PRISON LABOUR WITH
THE NATIONAL ECONOMY,
INCLUDING THE REMUNERATION
OF PRISONERS**

GENERAL REPORT

by

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and
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Preface

The present report on The integration of prison labour with the national economy, and the remuneration of prisoners, was prepared at the Secretariat's request by Mr. J. Carlos García Basalo, Inspector-General of Penal Institutions and Professor of Penology and Prison Organization at the National School of Penology, Buenos Aires, Argentina, as one of the general reports for submission to the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in London from 8 to 20 August 1960.

The report was drafted with the aid of documentation supplied by the Secretariat and by the various United Nations social defence correspondents mentioned in the text. The Secretariat wishes to express its gratitude to the author of the report, and to the correspondents concerned, for their valuable co-operation.

On the subject in question, a report embodying the Secretariat's views will be submitted to the Congress, together with such reports as the United Nations specialized agencies and non-governmental organizations may decide to prepare.

I. INTRODUCTION

1. In dealing with the execution of penal sanctions involving loss of liberty, the basic problem to be considered is the question of prison labour. Its importance is such that it is included, in one form or another, on a permanent basis in the agenda of all international congresses, and in the work plans of all national or international organizations, which are concerned with this field.
2. The notion of prison labour evolves in close association with that of the prison system, as is shown, for instance, by the fact that the various aspects of prison labour have been discussed at nearly all the congresses of the International Penal and Penitentiary Commission. ^{1/} Unfortunately, Prison Administrations have not been able to apply in toto the recommendations of these and other congresses.
3. It was therefore natural that when the United Nations decided to assume the direction of international activities in the field of the prevention of crime and the treatment of offenders, the question of prison labour became one of the subjects studied, and received priority in the Organization's programmes of work.
4. In 1949 the Group of Experts in the field of the prevention of crime and the treatment of offenders recommended that the United Nations should study the role of prison labour in the training of the prisoner and in the economy of the institution as well as in its relationship to the national economy. In the same year, the Social Commission approved this recommendation and added that the study should also include the question of the maintenance of the prisoner's dependents. ^{2/}
5. In 1953 the Social Commission endorsed the Secretary-General's recommendation that the question of prison labour should be given high priority. In the same year the Ad Hoc Committee of Experts, working on the basis of a document prepared by the Secretariat, drew up a plan for dealing with the question of prison labour. The Committee proposed:

(1) An outline for a questionnaire on the following aspects:

- (a) purpose of prison labour;
- (b) economic and organizational aspects;
- (c) social aspects;
- (d) average daily population of persons serving prison sentences by category of work assigned.

(2) The inclusion of prison labour as one of the topics to be discussed at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders; and

^{1/} Negley K. Teeters, Deliberations of the International Penal and Penitentiary Congress, Philadelphia 1944, and International Penal and Penitentiary Commission, Twelfth International Penal and Penitentiary Congress, Proceedings, Berne, 1951.

^{2/} Economic and Social Council Official Records, tenth session, Supplement No. 2.

- (3) The use of a report, prepared principally on the basis of an analysis of the replies to the questionnaire, as a basic working paper of the Congress.

These recommendations were approved by the Secretary-General.

6. At its second session, from 22 August to 2 September 1954, the United Nations European Consultative Group on the prevention of crime and the treatment of offenders examined the question of prison labour and approved a report which was subsequently circulated at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955. At this Congress a number of aspects of prison labour were discussed. ^{3/}

7. The Congress adopted a number of recommendations on prison labour and suggested that certain aspects should be the subject of further study. In 1957 the Economic and Social Council adopted, among other recommendations of the Congress, the Standard Minimum Rules for the treatment of prisoners - which to some extent regulate prison labour - and recommendations concerning the general principles governing prison labour, likewise approved by the Congress. The Council invited Governments to take all those recommendations into account. In taking this action, the Council raised the technical and practical problem of how the Rules and recommendations were to be applied.

8. Prison labour has also been a subject considered at regional meetings, organized by the United Nations, on the prevention of crime and the treatment of offenders.

9. The proposals for further study recommended by the Geneva Congress included the two following:

(a) Integration of prison labour with the national economy. In this connexion it would be advisable to have the collaboration of persons outside the prison administration and in particular of economists and representatives of workers' and employers' organizations.

(b) Methods of remuneration, with particular reference to the principle of normal wages paid to prisoners for their work. Both advantages and disadvantages of that method should be carefully studied, as well as the question whether a portion of the remuneration should go to indemnify the victim.

10. Thus far these questions have been examined by the Second Asia and Far East Seminar, held at Tokyo in 1958, which considered the integration of prison labour with the national economy, and by the European Consultative Group at its fourth session, at Geneva in 1958, which in considering certain specific aspects of prison labour dealt with its integration with the national economy, methods of remuneration, and special labour programmes for special categories of offenders.

11. Finally, the Ad Hoc Advisory Committee of Experts at its session in 1958 recommended, on the basis of a Memorandum submitted by the Secretariat, that the agenda of the Second United Nations Congress on the Prevention of Crime and the

^{3/} For all references in this paper to United Nations documents on prison labour, see the appropriate document in the list given in annex 1.

Treatment of Offenders, to be held in London in 1960, should include the integration of prison labour with the national economy, and the remuneration of prisoners. Acting on a proposal by the Secretary-General, the Social Commission approved that recommendation in 1959.

12. For the preparation of the present report, the Social Defence Section of the United Nations made available to the author information from various countries which had been received in reply to an earlier request by the Secretariat for information on the subject. ^{4/} Various relevant publications collected by the author were also used. ^{5/} The variety of information assembled made it necessary for the author to make use of examples. The fact that there are certain omissions must in no circumstances be regarded as deliberate exclusion, but must be attributed to limitations of time and space.

13. This study makes no distinction between the male and female prison labour. In both cases, the basic principles are the same. In practice, however, it will always be necessary to adapt these principles, as required, to individual cases, as is done in respect of other aspects of prison administration.

^{4/} The reports were submitted by C.D. Triantaphyllidis, Director-General of the Ministry of Justice (Greece); James V. Bennett, Director, Federal Bureau of Prisons (United States); B.H. Sayed, Director, Public Health Services (Pakistan); N. Morris, Dean of the Faculty of Law, University of Adelaide (Australia); H. Klare, for the Howard League for Penal Reform (United Kingdom); R. Lhez, for the Société de législation comparée (France); V.N. Pillai, Director, Department of Prisons and Probation (Ceylon); the Government of the United Kingdom; Professor El Said Moustafa El Said, Rector, University of Alexandria (United Arab Republic); the International Society of Criminology and the United Nations national correspondents in Japan and the Federation of Malaya.

^{5/} Information, obtained in part through the co-operation of the Social Defence Section, was supplied by Messrs. C.H. Ericsson (Sweden), Calixto Belaustegui Más (Spain), V.N. Pillai (Ceylon), Hans Kellerhals (Switzerland), Alfonso Quirós Cuarón (Mexico), Alfonso Castro Martínez (Colombia), and Astor Guimaraez Días (Brazil).

II. THE INTEGRATION OF PRISON LABOUR WITH THE NATIONAL ECONOMY

14. When studying the integration of prison labour with the national economy, it seems appropriate first to define what "prison labour" exactly means and what the integration in question should properly imply. Thereafter consideration should be given to certain problems for which an adequate solution must be found if integration is to be achieved. Outstanding among these problems are those connected with the full employment of prisoners, vocational training when it is required, the various systems of organizing the labour, and competition between prison and free labour. Lastly, it seems advisable to consider, in general terms, some of the actual forms which integration may take - for example, in agricultural institutions, open institutions, public works projects, the individual employment of the prisoner outside the institution under conditions similar to those applied to free workers - as part of a pre-release programme - and the possible use of prison labour under economic and social development programmes.

1. Present concept of prison labour

15. In order to describe the present concept of prison labour accurately, it will doubtless be desirable to recall, in brief outline, how the concept has developed over the years. Such a review may, moreover, help towards an understanding of the reasons for the present position of prison labour in many of its most important aspects which, in the absence of an adequate solution, often seriously militate against the aims, in the way of social rehabilitation, assigned to prison systems.

16. In the slow and in some respects contradictory process which we shall call the historical development of prison labour, four successive periods can be distinguished, which although consecutive do not entirely supersede one another. They are in fact occasionally interwoven, somewhat confusedly, in time and space. In other words, although from the standpoint of doctrine and theory they are separate, in practice they are, to a varying extent, concurrent. The four periods are these: first, labour as a punishment; second, labour as an integral part of punishment; third, labour as a means of promoting the social rehabilitation of a prisoner on whom a sentence involving deprivation of liberty has been passed, whether as a punishment or as a security measure; and fourth, prison labour regarded simply as part of labour in general.

(a) Labour as a punishment

17. Labour as a punishment in itself is probably the oldest, and also the most cruel and inhuman concept of prison labour. It is found in ancient times, partly as a logical consequence of the low esteem in which many types of labour (especially manual) were held, such labour being termed servile and only much later being raised to an honourable status. It continued to exist for many centuries in a wide variety of forms, ranging from a sentence to work in the mines of Rome, for instance, or in the galleys, to one involving service in the armed forces (this latter was found in certain countries as recently as the last century, even, occasionally, as part of Penal Codes). Deprivation of

restriction of liberty, depending on the times and circumstances, was simply a practical measure to ensure that the labour was provided, i.e. that the sentence was carried out. The essential picture of this form of punishment was the use, the exploitation of the convict's labour, to the point of complete exhaustion if necessary, in rough, heavy and arduous work, without payment or compensation of any kind. The convict was provided with the minimum of goods and services, for his use and/or personal consumption, required for his bare subsistence - more perhaps in order to safeguard the potential economic value of his labour, than for any elementary reasons of humanity. In certain periods the classical formula "Condemned to X years in the galleys, on rations and without pay" summed up these basic features. Imprisonment with hard labour (presidio) and other variously designated but similar forms of punishment, for which provision was made in the laws of many countries, meant that the hard labour was performed without payment. In such cases, the labour itself was a punishment. Such a concept justifies the statement of the Spanish criminologist Rafael Salillas that the convict condemned to hard labour was the galley-slave on land, removed from the sea more because of progress in navigation than for any reason connected with progress in penology.

18. Although it is out of date, this utilitarian concept of prison labour is still apparently found in certain places. In 1936 the League of Nations Assembly registered its opposition to the concept when it decided, during its consideration of the Standard Minimum Rules for the Treatment of Prisoners, to inform Governments that the practice, still extant in certain parts of the world, of employing prisoners in gangs under conditions akin to slavery was inconsistent with the Standard Minimum Rules. 1/

19. Although a strictly economic approach to and organization of prison labour might be regarded as integrating it with the national economy, such integration runs counter to present-day penal practice.

(b) Labour as a part of punishment

20. Labour as a part of punishment constitutes a transitional stage between labour as a punishment in itself and labour as a means of treatment. Its main feature is that the work is invested with a "repressive" function in line with the "expiatory" aim which the imposition and execution of the sentence are designed to achieve. In itself, the work is a painful, or mortifying, aggravation of the sentence as executed. The punishment combines forced labour with deprivation of liberty. In its most typical form, it consists in the prescription of useless or unproductive work, which was a feature of certain countries' prison systems during a substantial part of the last century. Formally, this concept is still maintained in certain Criminal Codes, although the Prison Administrations, more progressive in this respect than the letter of law, have allowed it to fall into disuse. Against it should be cited United Nations Standard Minimum Rule 71, which states that "Prison labour must not be of an afflictive nature".

1/ League of Nations publication A.25.1936.IV, pages 1-2, and Recueil de documents en matière pénale et pénitentiaire, Volume XII, March 1947, pages 160-161.

(c) Labour as a means of treatment

21. As a method or means of treatment of persons sentenced to a term of imprisonment or to security measures entailing deprivation of liberty, prison labour was already employed in the correctional institutions that existed prior to the prison reform of the late eighteenth and early nineteenth centuries. Those institutions maintained that labour was an effective means of promoting and achieving the moral and social rehabilitation of the prisoners.

22. John Howard's well-known dictum, "Make men diligent and they will be honest," sums up the influential and optimistic formula which characterized an entire epoch. This basic idea was taken up and used in various ways by the majority of prison systems. Thus labour began to be considered as a beneficial influence which was required in certain cases, even in contravention of the letter of certain legal texts.

23. This concept of prison labour has been enthusiastically hailed by the international penitentiary congresses held during the last ten years, that is to say, in post-war period. Thus at the Twelfth International Penal and Penitentiary Congress (The Hague, 1950) it was stated:

"Prison labour should be considered not as an additional punishment but as a method of treatment of offenders." ^{2/}

24. For its part, the First United Nations Congress (Geneva, 1955), adopted the following general principle of prison labour, among others:

"Work is not to be conceived as additional punishment but as a means of furthering the rehabilitation of the prisoner, his training for work, the forming of better work habits, and of preventing idleness and disorder."

25. This concept of prison labour has continued to be the subject of partial reservations as well as of outright contradiction. At the Geneva Congress itself, for example, Mr. Paul Cornil (Belgium) declared that he was bound to admit, taking an exact and realistic view, that in certain cases, especially where short terms of imprisonment were involved, the question was not so much that of giving treatment in the strict sense as simply of keeping the prisoner occupied and maintaining order in the establishment. ^{3/} It was also said that precisely for treatment purposes some prisoners should be excluded from working; that the great majority of prisoners had been working, some of them well, before they had been convicted; and that the unskilled work provided by the majority of prisons could

^{2/} IPPC, Twelfth International Penal and Penitentiary Congress, Proceedings, (Berne, 1951), Vol. II, p. 591.

^{3/} See the report on the Congress referred to in the list, paragraph 238.

hardly be considered as treatment for those who, before coming to the prison, had been qualified workers. 4/

(d) Prison labour as part of labour in general

26. According to this theory, prison labour is merely one aspect of labour as a whole. Nevertheless, some supporters of this view are found to have misgivings about completely identifying prison labour with free labour.

27. To some extent, this is more a theoretical than a practical matter. Thus, on the basis of article 23 of the Universal Declaration of Human Rights of the United Nations, it is vigorously asserted that modern penology is opposed to the unnecessary suppression of individual rights, and it is argued that the right of society to punish the offender and to deprive him of his freedom prevents the prisoner from fully exercising, among others, his right to work but in no way deprives him of that right as such. In the recognition of the prisoner's right to work, conditioned but not suppressed by his imprisonment, the argument continues, lies the correct solution of, among other problems, that of competition between his work and free work, which, no longer a purely economic question, would become a fundamental problem of respect for human rights. 5/

28. Those who support this view do not deny that in certain well-defined cases labour may be a means of treatment in the strict sense. In any case, it is claimed that the integration of prison labour with labour in general and with the national economy would not only facilitate the prisoner's rehabilitation but would also help to solve some other problems, such as the questions of remuneration and general working conditions.

29. It may perhaps be said that the important thing is to see where this view of prison labour leads. There may be differences of opinion when it comes to determining its implications.

30. The conclusion which emerges from this complex of tendencies and practices is that in many cases prison labour should mean the continuation in a new form of a fundamental aspect of normal personal and socio-economic life. In some cases prison labour could be referred to as a means of treatment in the strict sense. As a general rule, prison labour is an indispensable and irreplaceable element in any present or future method of social rehabilitation.

31. To sum up, the notion of prison labour as part of labour in general accords with the spirit of paragraph (1) of Minimum Rule 60, which reads:

"The régime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings."

4/ See Manuel López-Rey y Arrojo, "Some Considerations on the Character and Organization of Prison Labour," Journal of Correctional Work, IV, (Lucknow, India, 1957), page 7, and in the Journal of Criminal Law, Criminology and Police Science (Chicago, May-June 1958).

5/ See M. López-Rey y Arrojo, op. cit., page 5.

2. The meaning of integration

32. It should be said at the outset that the integration of prison labour should not be understood to mean a purely economic process to which the interest of the prisoner and of society in achieving his social rehabilitation is subordinated. This will not prevent the economic aspect from playing its proper part, since, in accordance with Minimum Rule 71, labour should be of a useful nature. Nevertheless, this economic aim is subordinate to another principle established by another Minimum Rule, whereby the interests of the prisoners and of their vocational training must not be subordinated to the purpose of making a financial profit from an industry in the institution (Minimum Rule 72).

33. From the point of view of social rehabilitation, it is essential for the integration of prison labour with free labour and the national economy that the prisoner should know that the work he performs has the same nature, as much meaning and the same social value as the free work which he might have been doing before his incarceration and which he will do on his reintegration into society. The work he does in these circumstances will make him feel that there is a bond between himself and the community and that by his daily effort he is making a contribution to the community's economic and social development. From the point of view of society, the integration of prison labour with the national economy will make a vital contribution towards changing the public attitude of distrust, hostility or indifference to the prisoner of today and the free man of tomorrow. This will help to solve the problem of prison labour and the social rehabilitation of the prisoner.

34. In short, the integration of prison labour with the national economy, in conformity with the above-mentioned Minimum Rules, is a theory which merits further development in view of the advantages it offers for the social rehabilitation of the prisoner and for the interests of the community itself.

35. Isolated cases of integration do already exist but the problem is to broaden this integration and make it as general as possible. To begin with, the idea that prison labour is more closely related to punishment than to work in general should be abandoned.

36. In this regard, the European Consultative Group rightly considered that social integration should precede economic integration. That is to say, the community should be correctly informed of the nature and purposes of prison labour today. This involves a problem of public relations, which is important in correctional matters. 6/

6/ See the American Prison Association, A Manual of Correctional Standards (rev. ed., New York, 1954), chapter 27, "Public Relations and Public Education," pages 390-405, which can be summed up in this reflection by Abraham Lincoln: "Public sentiment is everything; with public sentiment nothing can fail; without it, nothing can succeed."

37. In dealing with prison labour, the need to form and inform public opinion is obvious. It is still generally believed that prison labour has to be an afflictive or humiliating measure, that it should cost little and that it is in any case of poor quality.

38. In order properly to inform public opinion, suitable means, such as exhibitions of prison work, should be employed. Such exhibitions should avoid displaying those articles of meticulous and patient workmanship that are still turned out in many prisons and are really only souvenirs or other trifles, the production of which is contrary to the proper concept of labour and its integration with the national economy. On the other hand, there is no reason why such articles, if produced during a prisoner's leisure time, should not be exhibited as hobby work.

39. The encouraging experience obtained in various regions of the world and in different socio-economic circumstances has shown that it is possible to achieve economic integration. Thus, during the Second World War, both in Europe and in the United States, there was an effective and economically satisfactory integration of prison labour with the national economy - a war economy - in both agricultural and industrial work, organized either by the State or by private persons. 7/ In the United States, this integration, which raised the proportion of prisoners performing work substantially above pre-war levels, ceased after the war. The immediate result was the rapid decline of prison labour, with the re-imposition of the restrictive regulation which prevails in that country and which contributes to the high rate of idleness of the prison population. 8/ The consequences of that restrictive legislation can be seen from the following statistics. In 1957 United States prison production amounted to almost \$90 million, almost 20 per cent of the 195,000 prisoners were employed in industrial activities, and they used equipment valued at approximately \$50 million to the extent of 70 per cent of its productive capacity. If their potential were fully developed, prison industries could produce goods and services to the value of \$1,000 million a year. However, this amount is less significant when compared with the national product, which in 1957 was estimated at nearly \$450,000 million, produced by a labour force of 70 million. This situation, which is no doubt common to many countries, clearly shows the possibilities of properly organized prison labour. But those socio-economic prospects should not make us succumb to the temptation to discuss prisoners as if they were ciphers in a profit-making enterprise. Both Minimum Rule 72 and the recommendations of the Geneva Congress clearly stipulate that the interests of the prisoners and of their vocational training - where appropriate - must not be subordinated to the purpose of making a financial profit from an industry in the institution. Moreover, "... the task of the prison is to train the whole man: a prison is not, therefore, and should not be, first and foremost a factory." 9/

7/ See Gearing Federal Prisons to the War Effort (Atlanta), MCMLII, 124 pages.

8/ See Frank T. Flynn, "Employment and Labour," in Paul W. Tappan, Contemporary Correction, 1st ed. (New York, McGraw-Hill, 1951), pages 238-243.

9/ Penal Practice in a Changing Society, Aspects of Future Development (England and Wales), Paper presented to Parliament by the Secretary of State for the Home Department (H.M.S.O., London, February 1959), Cmd. 645, page 15.

40. At the United Nations Second Asia and the Far East Seminar it was emphasized that the question was in fact one of extending and systematizing practices which already existed in rudimentary or isolated form in various countries. The principle of integration was accepted by the Seminar, which concluded that "The integration of prison labour with the national economy contributes greatly towards the rehabilitation of the prisoner", and added that "The principal aim of rehabilitating the prisoner and teaching him work habits should not be subordinated to the requirements of the national economy". Although the European Consultative Group did not in 1958 completely reject integration, it stated that a complete assimilation of prison labour with free economic labour seemed neither entirely possible nor desirable.

3. Questions relating to the integration of prison labour with the national economy

41. In order to consider prison labour as a part of labour in general, appreciate its value as an essential constituent of the social organization, and promote its proper integration with the national economy, it is necessary to deal with a number of closely related questions.

42. The most important of these questions are the following: full employment of the prison population; importance and scope of vocational training for prisoners; selection of a system of labour organization which will best fulfil those purposes; critical study of the possible competition between prison labour and free labour; and the fixing of remuneration for prison labour.

43. The adequate solution of these questions will help to bring about a satisfactory integration of prison labour with the national economy.

(a) Full employment

44. The need for every prisoner under sentence to perform productive work regularly in accordance with his physical and mental abilities is accepted without discussion, and prison labour is now considered a means of social rehabilitation, of vocational training, of instilling habits of work, of avoiding idleness and disorder in penal institutions, or a means of achieving of all these purposes at once. The question arises, however, whether sufficient work of a useful nature is in fact provided to keep prisoners actively employed for a normal working day, as Minimum Rule 71 stipulates.

45. The general situation in all countries throughout the world seems to leave much to be desired. Although the lack of adequate information makes it impossible to evaluate the existing situation, it would seem undeniable that in many countries prisoners do not work at all or at the most are engaged on tasks which do not constitute useful work. This situation must be remedied in order to eradicate open or concealed idleness, the existence of which makes it exceedingly difficult to conceive of the possibility that certain forms of treatment, if such there are, can achieve the social rehabilitation of the prisoner.

46. Systematic unemployment exists which might almost be described as organized idleness if that were not too harsh an expression and almost a contradiction in terms in a prison context. In such cases it seems that the prisoner, instead of

being sentenced to deprivation of liberty for a socially constructive purpose, has been sentenced to idleness and the inevitable psychological and social deterioration which accompanies it. In the past, work was used as a punishment in itself or as a punitive element of the sentence. But now, paradoxically, the opposite seems to be the case: idleness is a punishment or an essential part of it. Such a situation is, of course, indefensible.

47. Besides systematic idleness, which has sometimes caused certain prisons to be called "idle houses", other types of unemployment and under-employment are to be observed which, while less open, are equally pernicious and must also be eliminated in order successfully to integrate prison labour with the national economy.

48. Among these forms of employment which are not work but are equivalent to limited types of real work, the following may be mentioned:

- (a) the use of many more prisoners for the maintenance and upkeep of the institution than are really necessary;
- (b) the employment of prisoners on useful work but for shorter hours;
- (c) the assignment of prisoners to artificially created tasks.

As a Spanish penologist has observed, in some cases those activities are only pastimes to beguile idleness.

49. The situation in some prisons in the United States depicted by Barnes and Teeters probably exists with some variations in the prisons of other countries. ^{10/} According to them, the position with regard to prison labour can be summed up as follows:

- (1) A large percentage of men are completely idle. This group can be seen milling about the corridors and yards, some playing games, some reading. The majority will be doing nothing. This is the same day in and day out for months and years.
- (2) A large percentage is employed in maintenance work. Ten men do work that could be efficiently accomplished by two. This assignment of more

^{10/} Barnes and Teeters, New Horizons in Criminology, 2nd ed. (New York, Prentice-Hall, 1952), pages 733-734.

men to a job than are really needed in many cases makes this kind of work demoralizing drudgery. 11/

(3) A small percentage is engaged in productive industrial pursuits, but the work rarely involves the full working day of life outside the prison: three hours in some prisons, four in others, rarely six, and almost never eight.

(4) A very small percentage is employed in clerical work, in the school as teachers, in the library or in offices.

(5) A varying number of prisoners, small in some prisons and larger in others, work in shops or cells on tasks initiated by themselves. These are almost always the traditional prisoners' handicrafts, whose products sell, or are said to sell, for more than they are really worth simply because they are "articles made by prisoners" and are sold as such.

50. These and other conditions of chronic idleness seem to indicate that paragraph (3) of Minimum Rule 71, which reads: "Sufficient work of useful nature shall be provided to keep prisoners actively employed for a normal working day," is not being applied.

51. What causes this regrettable situation, which is sometimes openly admitted and at other times concealed in prison statistics and which the prison authorities in all countries are the first to deplore? The following, in a list which does not claim to be exhaustive or to assign an order of importance, are some of the causes of this situation:

(a) the antiquated architecture of many institutions, which failed to provide sufficient suitable places of work to keep all the prisoners occupied - a defect impossible to remedy today;

11/ Moreover, "the practice of employing inefficient labour, or of overloading assignments, results in inferior workmanship, encourages waste and theft of valuable materials, provides additional loopholes for traffic in contraband, and results in other practices affecting the welfare of other inmates and the security of the institution. ... In general, maintenance assignments should usually account for the employment of about 20 to 25 per cent of the total prison population, although the number and the percentage will naturally vary above and below this figure, depending upon the size of the institution, its physical arrangement, the type of inmates cared for, and other factors. The large and compact institutions should not require the services of more than 16 per cent of their prisoners in these activities, while the small women's institutions may employ up to as many as 40 per cent". Manual of Suggested Standards for a State Correctional System, ed. by the American Prison Association (New York, October 1946), page 29. The assignment of prisoners to the personal and domestic service of officials or employees should be added to the above.

(b) the strong pressure exerted by employers and workers against the development of prison labour on grounds of unfair competition, especially in periods of national economic stress;

(c) the Prison Administration's vacillation in establishing a policy designed to give every able-bodied prisoner a really productive task, and the lack of the proper organization and of personnel able to encourage and direct prison labour;

(d) the limited financial resources of the State, which does not assign sufficient funds to initiate new activities or to expand those already existing;

(e) the effects of unemployment among free workers.

52. In many countries the present prison system is still based on institutions constructed mainly during the past century in accordance with the then prevailing criteria of maximum security, in which the prisoner worked in his own cell or in common workshops with very limited equipment. The possible expansion of any programme designed to keep prisoners fully occupied on useful tasks in conditions similar to those governing the employment of free labour is hampered by the lack of sufficient premises with adequate facilities. In some cases it may be feasible to undertake additional construction given the necessary funds, but in others this is physically impossible because of architectural limitations.

53. The pressure exercised by employers' or workers' groups against the existence or expansion of prison labour may lead to the adoption of severe legislative or regulatory measures virtually putting an end to prison labour. The vacillations of the Prison Administration in some countries are due to a great variety of causes, among them the manner in which the work has been organized and the political nature of the appointment of the senior officials of the Prison Administration in certain countries.

54. Sometimes, though intentions may be good, the organization of prison labour is in the hands of unqualified persons. The situation could be corrected by the application of the recommendations approved by the First United Nations Congress with regard to the selection and training of personnel for penal and correctional institutions.

55. The lack or insufficiency of funds for the purchase of the necessary equipment or for the appointment and remuneration of suitable technical personnel, as well as the lack of the necessary initial capital, are obvious causes of the deficiencies indicated in the foregoing. It would be desirable if private capital could participate, with all due safeguards, in the organization of prison labour.

56. A question related to the present question is whether or not persons awaiting trial should work. Minimum Rule 89 states: "An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it". To this should be added the principle contained in point I of the "General principles" regarding prison labour approved by the First United Nations Congress, which reads: "Those who cannot legally be compelled to work should nevertheless be allowed and encouraged to do so".

57. The actual situation in many countries is as follows:

(a) In many cases, persons awaiting trial are kept in the same establishment and for practical purposes are subject to the same rules as prisoners under sentence. The result sometimes is that the status of the prisoner under sentence becomes assimilated to that of the person awaiting trial, but not vice versa. For economic reasons it is unlikely that this situation will change for some time.

(b) Because of the duration of the legal proceedings, it often happens that a prisoner spends more time in prison awaiting trial than serving his sentence, especially when his sentence involves only a short term of deprivation of liberty.

(c) The number of persons held in custody pending trial often equals or exceeds that of prisoners under sentence.

(d) The majority of persons awaiting trial do not have to be encouraged to work. Many of them are willing and able to do so. The question is: Does the State always offer them the opportunity to work (Rule 89) or does it force them to be idle?

58. In view of the foregoing it may be thought that the present Congress should decide that the integration of prison labour with the national economy should also include labour performed by persons under arrest or held in custody pending trial, unless there are special reasons why it should not.

(b) Vocational training

59. The part which vocational training should play in prison labour has been expressed in Minimum Rule 71 as follows: "Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners." This rule should be viewed in the light of principles II and III concerning prison labour, adopted at Geneva in 1955.

60. Clearly it is the young who are most in need of vocational training and are better able to assimilate it properly. In practice, many countries cannot provide vocational training adequate to meet technical and scientific requirements. The difficulties encountered are the following:

(a) vocational training cannot be assimilated by all young persons;

(b) there is a lack of special and separate establishments for young delinquents;

(c) prison terms are too short to permit of real vocational training.

61. With regard to other categories of prisoners, the following must be taken into account in the frequently far from simple matter of organizing vocational training: (a) prisoners who while still free were unskilled workers; (b) prisoners

accustomed to irregular work or to no work at all; (c) prisoners who are skilled or semi-skilled but whose trade or type of work is not provided for in the prison establishment. For this last category, vocational training would consist in improving the skills already acquired. If this proved impossible, the practical solution would be to give them vocational training in the work most similar to that with which they were already familiar. Another solution would be to let them work on their own account, particularly during the period immediately preceding their release.

62. The organization of vocational training is also determined by conditions in the country concerned. In the less developed countries, such training is different from that given in the highly developed countries. These differences demonstrate the connexion between vocational training and a country's economy.

63. Vocational training methods may basically be reduced to two: (a) training through productive work; (b) training through non-productive work. In the first case, practical on-the-job training is sometimes supplemented by classes on theory; in the second, training is systematic, both theoretical and practical, and is carried out without concern for productivity, but with an emphasis on apprenticeship - which sometimes leads to the granting of diplomas or certificates by the same public authorities that are responsible for general vocational training, or of ad hoc certificates that give no indication of the holder's status as a prisoner. The first method is intended to provide the prisoner with a skill by making him perform work, in keeping with his abilities, which will allow him direct entry into a given occupation or trade. The main purpose of the second system is to provide prisoners with knowledge that will enable them to obtain certificates or diplomas which they can use in order to find work after their release. The two systems can also be combined.

(i) Determination of cases in which vocational training is needed

64. The integration of prison labour with the national economy requires that greater attention should be paid to the following questions: (a) the needs of prisoners in the matter of vocational training; (b) trades and occupations which should be taught; (c) the most suitable methods for achieving effective vocational training.

65. Research along these lines was carried out in 1954 by the Danish Prison Administration. ^{12/} Analysis of the information collected made it possible not only to determine the needs of prisoners but also to evolve more rational principles with regard to the professional activities to be taught and the methods to be used.

(ii) Accelerated vocational training

66. One of the factors on which the successful development and use of vocational apprenticeship courses often depend is the time that the inmate spends in prison.

^{12/} See Carl Aude-Hansen, Report of an investigation on the need of training for prison inmates as the basis for a rational development of prison labour, 1955, 16 pages. The author was Chief of Prison Labour, Prison Administration, Ministry of Justice, Denmark.

The period may be very short, and the resulting lack of time raises the question whether it is possible to organize vocational training on an accelerated basis. In this connexion, experiments made by the Belgian Prison Administration with "short vocational training courses" are worthy of mention. At the end of 1955 that Administration undertook, in conjunction with the Office National du Placement et du Chômage, a plan to introduce such vocational training into the prison system, with methods already used for the vocational rehabilitation of the unemployed. After March 1956, accelerated vocational training centres were opened in eight different prisons. Staff of the Prison Administration and the Office National du Placement et du Chômage have so far held two meetings to examine the development trends, and results of this new method of vocational training. The first meeting took place at Hoogstraten on 27 October 1957, and the second at Marneffe on 15 June 1959. 13/

67. The first stage in the method's introduction was the dispatch of prison teaching staff to the centres of the Office National du Placement et du Chômage so that they might familiarize themselves with the techniques of accelerated vocational training. Thereafter the prisoners were selected by the two following procedures: (a) application by the prisoner himself; (b) persuasion of each prisoner who was considered likely to benefit from the course. In all cases a preliminary medical examination was made in order to establish the prisoner's suitability. The courses are from eight weeks to eight months in length. Attempts are always made to place the instruction on a concrete basis by combining theoretical with practical work and avoiding purely academic teaching. Between the dates when the method was started (March 1956) and the first meeting to determine its results was held (October 1957), the courses were attended by 136 prisoners, of whom 115, or some 85 per cent, completed them successfully. An essential factor was the competence and devotion to duty of the Prison Administration's teaching staff entrusted with the instruction. Between the introduction of the short courses and the second meeting (June 1959), 403 prisoners participated. Of these, 320, or 80 per cent, completed the courses successfully. The remaining eighty-three did not do so, for various reasons: conditional release; disciplinary measures; unfitness, or change of work at the prisoner's request. Of these reasons, conditional release was one of those most frequently recorded.

68. The report prepared for the 1959 meeting states that accelerated professional training is well suited to the prisoners' average intellectual level, and that the methods used by the instructors are well adapted to this type of pupil. On the other hand, it is said to be a matter for regret that the final examinations have not been presided over by the official examining board which grants qualifying certificates. According to a representative of the Office National du Placement et du Chômage, employers in general attach only relative importance to such certificates, as they prefer to judge a worker's ability by "watching him on the job". It should, however, be noted that the acquisition of a certificate tends to improve the prisoner's morale.

13/ J. Janssen and L. Devlieger, "Colloque sur la formation professionnelle accélérée des détenus," in Bulletin de l'Administration pénitentiaire (Brussels), November-December 1957, pages 295-305, and L. Devlieger, "Formation professionnelle accélérée des détenus", in Bulletin de l'Administration pénitentiaire (Brussels), July-August 1959, pages 151-162.

69. According to the information collected, of the 320 prisoners who completed the courses, 278 were released. Of these, ninety-six took up the trade which they had learnt, or a similar one; twenty obtained other forms of employment; seven found no employment; and as to the remaining 155, no information is available. Of the forty-two prisoners who have not yet been freed, thirty-two are carrying on their newly learnt trade in workshops or building yards attached to the prisons, while the other ten have no opportunity of applying the knowledge which they have acquired.

70. The report draws attention to the number of prisoners who, on being freed, are not employed in the trade that they have learnt. To remedy this situation, better contacts with the local branches of the Office National du Placement et du Chômage are suggested. The report also records the highly satisfactory results achieved by certain courses connected with construction; and on the principle that the end of accelerated vocational training should if possible coincide with release from prison, it makes the following suggestions:

- (a) Careful selection of the pupils is required;
- (b) It should be noted, on the reports accompanying recommendations for provisional or conditional release, that the prisoner concerned has satisfactorily completed his vocational apprenticeship;
- (c) When immediate release cannot be considered, a régime of semi-liberty for the prisoner might be contemplated, so that he could work in the trade that he had learnt;
- (d) When it is impossible either to free the prisoner completely or to accord him semi-liberty, he should be given an opportunity to use, inside the prison, the professional aptitudes which he has acquired there.

71. The experience of the Belgian Prison Administration can well serve as an example. It demonstrates, among other things, the value of securing the co-operation of other government bodies whose skill and experience may be of decisive assistance in finding new and better formulae for the supply of vocational training to prisoners who need it and can benefit from it.

(c) Systems of organizing prison labour

72. Systems of organizing prison labour have been described in a report, published by the United Nations, which was submitted to the Congress organized by the United Nations in 1955. According to that report, the systems may be divided into those in which private interests take part and those in which they do not. The first group includes arrangements such as hiring, contracts and piece-work. The second includes public accounting in which the State is the contractor, "State-use" in which the State is the consumer, public works, and the employment of prisoners in private undertakings during a period prior to their release. 14/

14/ See the United Nations report on Prison Labour, and Calixto Beláustegui Más, Fundamentos del Trabajo Penitenciario, Madrid, 1952.

73. Since the systems were described in the report - although they may all be applied in various ways - it is not thought necessary to deal with them here. A thorough examination is, however, required of the systems mentioned hereunder, which in general are not given due attention despite the fact that they can be used in the integration of prison labour with the national economy.

74. In a fair number of countries, prisoners are allowed to work on their own account. This system is characterized by the fact that they work how and when they like, without official or direct supervision by the Prison Administration, and that the profits derived from such activities are not regulated by or subject to the general system of industrial and economic organization applicable to prisons, but accrue individually to the prisoner concerned. 15/ This system may be put into effect either within the penal institution or under a régime of semi-liberty.

75. Such prisoners may include those who, owing to the special nature of their profession, are unable to adapt their work to the over-all labour organization of the institution. These use in fact, in their work, the knowledge which they themselves have acquired. 16/ They constitute more or less isolated cases. It may also be that this kind of work is done after "regulation" labour, during free time. Although in certain circumstances this kind of individual work may be considered part of a recreation programme, it may equally not be regarded in that light, in which case it will constitute prison labour properly so called.

76. Prisoners are accustomed to being authorized to sell the product of their labour through the penal institution itself or through persons connected with it, and this - according to the system in force - enables them to earn extra money for their personal use or for the assistance of their families. Another circumstance in which prisoners may be authorized to work on their own account arises when the Prison Administration gives the inmates no work at all, i.e. when no system for the organization of prison labour exists. In such cases, which occur more often than might be supposed, the prisoners themselves obtain the materials they require for their work, organize their labour and sell their output through persons connected with the prison or through friends.

77. The employment of individual prisoners outside the prison, in private or public undertakings, as an integral part of a régime of semi-liberty may also be regarded as a special case of prisoners working on their own account. Inmates leave the prison each day to work in conditions similar to those of free workers, and return at night. This system, which should not be confused with that of hiring prisoners out for work, has been successfully introduced to a varying degree and in different ways in various countries. 17/

15/ Calixto Beláustegui Más, op. cit., page 257.

16/ Ibid., page 254.

17/ See op. cit., in foot-note 14. The countries concerned are: Sweden, Scotland, England, Wales and Northern Ireland, Norway, Denmark and the Netherlands.

78. This system is perhaps the most natural one for the purpose of integrating prison labour with the national economy. It was the subject of recommendation IX of the Geneva Congress, which states: "Consideration should be given to the arrangement or extension of schemes under which selected prisoners, especially those serving long sentences, may qualify during the last few months prior to release to go out daily to work for a private employer or a public enterprise, preferably in the trade in which they qualified prior to, or have been trained during, their sentence." ^{18/} By its very nature this method is applicable only to carefully selected prisoners, and involves a régime of semi-liberty. The Benelux Prison Commission has defined this régime as being one feature of the prison régime, and as consisting in the authorizing of prisoners to leave the establishment, under given conditions and during certain hours of the day, to work or take part in activities likely to assist their rehabilitation. Semi-liberty is part of the "individualization" of prison treatment, which, without losing sight of the need to ensure that prison sentences act as a deterrent, endeavours to neglect no means of bringing about the social rehabilitation of offenders. Understood in this way, semi-liberty constitutes a sort of "trial period", is a valuable complement to prison life and opens up interesting possibilities in regard to certain prisoners. ^{19/}

79. A more highly developed variant of the systems considered in the foregoing section is the co-operative system. Attention has recently been paid to it, as it is in use in a number of countries. It is pointed out that this system, which in a slightly modified form is used in some prisons in Mexico and Colombia, developed as a result of the inability of Prison Administrations to provide work for prison inmates. At the practical level, the system also provides an opportunity for the integration of prison labour with the national economy. ^{20/} The following has been said about it: "The system which has given the best

^{18/} Since the beginning of 1957, satisfactory experiments of a similar kind have also been carried out in the women's prison at Saint-André-lez-Bruges, Belgium. Employment in semi-liberty may be permitted to prisoners convicted of common offences, to vagrants and to mentally deranged persons. See J. Gilson, "La semi-liberté", in Bulletin de l'Administration pénitentiaire (Brussels), May-June 1959, pages 83-94. One of the concessions granted under the recent National Prisons Act, supplementing the Criminal Code, of Argentina (1958) is that prisoners should, during a "probationary" period prior to final release from prison, be allowed temporary absences from the institution. One object of authorizing such absences is to enable prisoners to work outside the prison in conditions akin to those of life at liberty.

^{19/} Benelux Prison Commission, "Le régime pénitentiaire de la semi-liberté" in Bulletin de l'Administration pénitentiaire (Brussels), July-August 1958, pages 265-266.

^{20/} See Manuel Lopez-Rey Arrojo, op. cit., page 83.

results is that whereby the State hands over workshops and agricultural land to prisoners' co-operatives, while still maintaining proper vigilance and supervision over the goods produced and their proportional distribution in accordance with our penal laws." 21/ Further on, the same author adds: "The co-operative, or mixed, system is more effective than systems previously used, if the State ensures proper supervision and control of its operation and output. It is a great deal to expect that the State should provide every prison with the necessary workshops so that every prisoner shall have employment; but much can be done towards this praiseworthy end by the promotion and extension of co-operatives, the Department of Social Affairs being made responsible for developing this type of activity, because, even if no complete solution of the problem is reached, there will have been a much better attempt to implement the traditional principle that work is the basis on which the criminal's rehabilitation and reform are achieved. A government body will be made responsible for directing all productive activities of prisoners, prescribing general standards, organizing workshops so as to secure the best output, stipulating the principles to be observed for contracts, and ensuring that its directives are observed within the co-operatives." 22/

80. According to Alfonso Quirós C., Mexican correspondent to the United Nations Secretariat on the prevention of crime and the treatment of offenders, the Criminal Code in force in the Federal District of Mexico - each Mexican State has its own penal legislation - provides an opportunity for the organization of prison labour on a co-operative basis. The opportunity is supplied by article 79, which states: "The Government shall organize the prisons, penal colonies, penitentiaries, houses of correction and special establishments where persons are held for trial or are the object of punishment or security measures involving deprivation of liberty, on the basis of work as the means of rehabilitation, by securing the industrialization of such establishments and the development of a co-operative spirit among the prisoners." Mr. Quirós adds: "No serious attempt has yet been made to establish a co-operative prison labour system in Mexico. I nevertheless consider, without prejudging its results, that such a system, if introduced in our country, would have the potential benefit of much experience acquired in this field, since in Mexico the co-operative system has already been extended to many industrial activities such as fishing, salt-mining, etc." In more concrete terms, article 62 of the preparatory draft regulations for the execution of sentences involving deprivation of liberty in the Federal District states: "The establishment of co-operative systems shall be encouraged, after study of their applicability to the prison labour system." There is thus in Mexico a tendency towards the adoption of the co-operative system for the organization of prison labour, and this tendency should be watched with the closest attention, since it may be productive of interesting and fruitful ideas.

81. In the case of Colombia, Professor Alfonso Castro Martínez, of the Institute of Penal and Prison Sciences in the Faculty of Law of the National University of Colombia, informed us that: "Colombian prison law provides for the production of

21/ Juan José González Bustamente, Colonias Penales e Instituciones Abiertas (publications of the Asociación Nacional de Funcionarios Judiciales, Mexico City, 1956), page 61.

22/ Ibid., page 64.

manufactured goods in prison establishments only when this is organized directly by the Prison Administration and carried out with public funds or with the private resources of the prisoner concerned, or through contractors for whom labour and premises are arranged. In practice, however, prisoners themselves are allowed to have their own workshops which they manage and operate, the prison taking a percentage of the output. This has been happening (despite its express prohibition under article 238 of Decree No. 405) mainly owing to the very slight measure of "industrialization" officially introduced into Colombian prisons, and to force of custom, which meets with no opposition from prison administrators. It may well be supposed that individual initiative by prisoners in this field involves a number of disadvantages, such as the disorganization of prison labour as a whole, difficulties in the matter of its regulation and supervision, and de facto discrimination in favour of prisoners with greater financial resources."

82. Frequent analyses have been made of the advantages and disadvantages of the various systems employed, and there is no need to repeat them here. What seems certain is that so far no system has of itself solved the problem of prison labour, much less the problem of providing genuine work for all prisoners.

83. Under the United Nations Standard Minimum Rules and the recommendations on prison labour of the Geneva Congress, no known or as yet uninvented system should be excluded. In this connexion reference should be made to Rule 3, which states that the rules approved are not intended to preclude experiment and practices, provided that these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. In all circumstances it should remember that "where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel" (Rule 73, paragraph 2). The Geneva Congress approved the following recommendation: "It is the duty of the State to ensure that adequate and suitable employment is provided for prisoners. It is preferable that this be done under the State-use system with compulsory government markets. Recourse may be had to private industry when sound reasons exist, provided adequate safeguards are established to ensure that there is no exploitation of prison labour and that the interests of private industry and free labour are protected." The value of this recommendation can be seen from the fact that it was approved by 15 votes to 14 with 1 abstention. A number of delegations, however, took no part in this vote.^{23/}

84. If account be taken of the wide variety of legal, social, economic and geographic circumstances throughout the world, it seems difficult to express, at least internationally, a preference for any particular system. In the light of what is stated in the above-mentioned rules to the effect that it is the duty of the State to ensure that adequate and suitable employment is provided for prisoners, and that the latter's interests and vocational training must not be subordinated to the purpose of making a financial profit out of prison work, it will be seen that the choice of a particular system is closely linked to the social purpose of the sentence and to local and national characteristics. It may well happen that more than one system is applicable. For this reason, rather than discuss systems, it is more constructive to promote an exchange of ideas and experience on the different ways of organizing prison labour in accordance with United Nations rules and principles.

^{23/} See Report of the Geneva Congress, op. cit., page 30.

85. In short, what is of importance is not to record preferences, but to combine the organization of prison labour with the social rehabilitation of the prisoner, through, for instance, use of the new systems already considered, especially those of prisoners' work on their own account and of co-operatives. The purpose of such flexibility should be the achievement, so far as possible, of the integration of prison labour with the national economy.

(d) Competition between prison labour and free labour

86. Competition between the two types of labour has been frequently discussed, without any concrete solution having been reached. Such competition would seem to be non-existent if comparative output figures are considered. These figures show that prisons' output is very small, which would seem to rule out any question of competition. For those who allege such competition, the question revolves not around total output, but around the conditions in which prison labour is performed. Reference is then made to unfair competition through the output of goods with cheap labour and a lower cost of production generally.

87. In order to solve the problem of competition, recourse is often had to legislation restricting prison labour. The restrictions may be of many different kinds, and their most visible result is the prisoners' non-employment, occasionally more or less concealed - about which we have already spoken.

88. This question of competition between the two forms of labour needs to be examined from a new angle. It should be looked at from the standpoint of two fundamental principles: (a) recognition of the prisoner's right to work; (b) integration of prison labour with a country's over-all economy, on the basis of equal rights for equal responsibilities.

89. Recognition of the prisoner's right to work is based on article 23 of the Universal Declaration of Human Rights. It has been said that this article, more than anything else, provides the solution for the so-called problem of competition with free labour - which accordingly becomes, not an economic question, but a question of human rights. ^{24/} In our view, employers, workers and the public at large must be persuaded that the prisoner has this right to work since, despite his situation in respect of the law, he is still a member of the community. He, like all other members, retains the right to make his contribution to his country's productive economic effort. It should be added that productive labour is a prerequisite of social rehabilitation.

90. The other principle means placing the organization of prison labour on an economic basis equivalent to that used for the organization of free work. It has been said that complaints about unfair competition cannot be met so long as work conditions in prisons are not the same as those outside prisons. Opposition from the free markets can be overcome when work, wages and all economic activities in

^{24/} See M. López-Rey y Arrojo, op. cit., page 69.

prisons are organized in accordance with the principles governing free labour. Organization on these lines is, in the last analysis, that most likely to provide the best solution for the purposes of the prisons and the prisoners' rehabilitation. 25/ Once prison work has been organized according to an administrative system, the two principles considered here must be applied. This means that costs, which have so far been left out of account altogether or else treated quite arbitrarily, must be computed on a basis equivalent to that used in computing the costs of free work.

91. According to Delierneux, this criterion implies that, when work is organized on an administrative system, the following costs should be computed:

- (a) staff salaries and the cost of hiring and maintaining buildings used for work purposes;
- (b) various expenses arising out of labour management;
- (c) the purchase of raw materials, machinery and their amortization, as well as industrial and commercial costs;
- (d) prisoners' wages;
- (e) social security and similar expenses.

92. If such equality of responsibilities is brought about, prison labour will enjoy equality of rights with free labour, and on that basis prison labour output could compete on the free market. 26/

93. But such a radical change seems impossible with prison labour organized as it is today. One of the obstacles is the difficult problem of adequate remuneration for prison labour, which will be considered later. Nevertheless, all prison labour should be organized with such equal remuneration as an object. 27/ Meanwhile "Employer and labour organizations should be persuaded

25/ See Nico Gunzburg, "Le travail pénitenciaire et le droit ouvrier," in Revue du Travail (Brussels), 40th year, No. 9, September 1939, pages 1313-1314, and "A Legislaçao Trabalhista penitenciária," in the Arquivos penitenciários do Brasil (Rio de Janeiro), second and third quarters of 1941, pages 37-58.

26/ A Delierneux, "Travail des prisonniers et travail libre," in Revue du Travail (Brussels), 39th year, No. 11, November 1938, pages 1495-1497.

27/ Recommendation III on prison labour, passed by the Geneva Congress, reads in part: "The management and organization of prison labour, whether industrial or agricultural, should be as much as possible like that of free labour, so as to enable prisoners to adapt themselves to the conditions of normal economic life." Standard Minimum Rule 72, in its turn, provides that: "The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life." Although in both texts, especially that of the Standard Minimum Rule, the proposed assimilation of conditions appears to refer to the technical processes of production with (footnote continued on following page)

not to fear competition from prison labour", and the prison administration must avoid unfair competition. 28/ How far unfair competition can be avoided or reduced without extensive changes in the economic bases on which the traditional organization of prison labour at present rests is a question depending largely on the conditions obtaining in a particular country at a particular time. What the Prison Administration can do in this direction must be reinforced by a proper understanding of the problem among employers' and workers' associations and the public at large. The immediate aim should be to enlist the understanding of public opinion and of the sectors of the economy which are involved. To that end, Prison Administrations should employ the most effective methods of popularization in order to develop a systematic programme of public information, of popular education, on the aims and problems of prison labour and, where necessary, to rebut false information likely to confuse public opinion.

94. Several countries have already carried out successful experiments on these lines. Thus in Great Britain committees composed of prison officers, employers and other local representatives have been set up in order to stimulate the co-operation of private interests in the organization and development of prison labour. An expert with a high degree of knowledge and experience in the free labour field was recruited to serve as Industrial Adviser in the implementation of this plan. 29/ One feature of this programme is the official publication by the Federation of British Industries of a paper entitled "Work for prisoners in prison", in which, after referring to the existing overcrowding of prisons and the lack of productive work for prisoners, the writer makes some suggestions for collaboration by private industry in solving the problem. This is not merely a penal, but eminently a social question, and the Federation's representatives at Liverpool and Manchester are accordingly invited to co-operate. 30/ In the

(footnote 27, continued from preceding page)

27/ which the prisoner has to deal, these processes are closely related to and even conditioned by the economic organization of labour. Hence the best way to enable prisoners to "adapt themselves to the conditions of normal economic life" would be to bring all the management and organization of prison labour, including the economic and social aspects as well as the technical processes, into line with those of free labour. To assimilate only one of these aspects - the technical aspect - would be to keep prison labour divorced from labour as a whole and from the national economy.

28/ See resolution of the Twelfth International Penal and Penitentiary Congress (The Hague, 1950). Proceedings, Vol. II, Berne, 1951, page 591.

29/ See Report of the Commissioners of Prisons for the Year 1958 (London, H.M.S.O. Cmd. 825 (1959), page 32.

30/ See Albert Healey, "Work for prisoners in prison", in the Federation of British Industries Review, December 1958, pages 39-41. The author is Industrial Adviser to the Prison Commission. The article is illustrated by two photographs which convey an idea of the substantial reforms being introduced in methods of work. One shows a group of prisoners sewing mail-bags by hand. This, says the caption, is work worse than the ancient treadmill. The other photograph shows another group of prisoners in a mechanized workshop. Among the means suggested for finding work for unemployed prisoners, some of

(footnote continued on following page)

United States of America the American Federation of Labor and Congress of Industrial Organizations, in collaboration with the American Correctional Association, recently issued an interesting pamphlet which, while not specifically referring to the problem of prison labour, may be regarded as helping to promote a more progressive attitude towards prison problems. These two examples, one drawn from the employers and the other from the workers, show the possibility of securing the interest and co-operation of employers' and workers' groups, and the importance of their respective contributions. 31/

4. Some forms of integration

95. It is a prerequisite of the integration of prison labour with the national economy that the first consideration should be the rehabilitation of the prisoner; this, viewed in relation to such integration, entails the co-operation of economic experts and of workers' and employers' organizations. More specifically, it is necessary to take into account the following factors: size and composition of the prison population; organization and characteristics of the penitentiary system; location, number and type of penal institutions; amount of productive work done and vocational training given at each institution; possibility of diversifying the work done, in relation both to prisoners' individual aptitudes and to foreseeable economic trends; facilities for securing markets; possibility of modifying the existing penitentiary system by the introduction of a new type of institution; possible role of private enterprise; and the structure of, as well as the economic and social conditions in, the country. It will be seen that these factors, which do not represent an exhaustive list, are highly complex and vary from country to country. To examine them would require more space and time than are available, and therefore only a few forms of possible integration will be considered here.

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30/ them proposed by employers, are: (a) Improved contact for Prison Governors and their colleagues with local industry; (b) Even in cases of unemployment it might be greatly in the national interest for prisoners to recover rejected materials which are now completely abandoned because their recovery is rendered uneconomic by the wages paid to free workers. If this were done, there would be no question of taking work from free workers in order to give it to prisoners; (c) In sectors where manpower is scarce and workers cannot readily be moved in from elsewhere, prisoners might be employed; (d) The use of prison labour for certain semi-skilled jobs, such as assembling and packing, would make it possible to employ more workers of greater skill in the employers' factories; (e) The growing tendency to employ certain classes of prisoners on work in the prisons for outside employers might be encouraged if the Prison Governors obtained more information on possibilities in that direction. These and other suggestions are unquestionably of practical value.

31/ See American Federation of Labor, Congress of Industrial Organizations (AFL-CIO). Community Service Activities in co-operation with The American Correctional Association, The Man Who Lived Again, publication No. 63, November 1957, page 8.

(a) Agricultural institutions

96. It has sometimes been said that prison labour tends to follow the trends of the national economy. This is only a half-truth. One has merely to examine the penitentiary picture in the different regions of the world in order to see how, in countries with a mainly agrarian economy and a mainly rural prison population which in most instances will return to the agricultural areas, prison labour is conceived and organized in complete disregard of economic and social realities. This applies particularly in most Latin American countries but it is also true of other countries, including some in Europe. ^{32/} It signifies the divorcing of prison labour from the national economy, rather than the integrating of the two. One reason for this situation is that, in most of these countries, all the main penal institutions are of a single type, built and organized in the last century with maximum security and manual, or primitive industrial, labour as the only criteria. In such walled-in prisons, often situated in the national capital, a prisoner of rural origin and habits is psychologically thwarted and loses touch with his occupation. In such cases the need to adapt penal policy to the composition of the prison population calls for the diversification of institutions and the organization of establishments where the work programme is based on agricultural and ancillary activities.

97. An institution which is mainly agricultural in character can be organized on the basis of medium or minimum security. Furthermore the different criteria of maximum, medium and minimum security may be combined, according to circumstances, in one and the same institution. This solution was adopted at the new Agro-Industrial Penitentiary of the State of Goiás (Brazil), which was opened early in 1959 and whose prison population will be 80 per cent rural in origin. In the open section, prisoners can be accommodated with their families in separate

^{32/} Issa Assaly's remarks on the State of Sao Paulo (Brazil) apply equally to other countries. He says: "While our economic policy is to train men for the fields, our penal policy diverts field workers from agriculture by forcing them into urban tasks incompatible with their physical, psychological and social make-up. While the State endeavours to channel into the 'hinterland' every available pair of hands..., we unconsciously work in opposition to the State's interests, because we train our prisoners - if we train them at all - for urban occupations." See Alfredo Issa Assaly, O Trabalho Penitenciário. Aspectos Economicos e Sociais (Sao Paulo, 1943), pages 130-131. This policy was to some extent corrected years afterwards through the inauguration of the open institutions of Itapetinga, Baurú and San José de Rio Preto, in which the integration of prison labour with the national economy can be observed. See J. Carlos García Basalo, "La Política Penitenciária del Estado de San Pablo (Brasil)", in Revista Penal y Penitenciaria (Buenos Aires), January-December 1958, pages 97-156. The Memorandum from the Department of Prison Services of Portugal, 1957, states: "It is curious to note that for a criminal population of mainly rural origin there are, apart from the Bié Penal Settlement, only two distinctively agricultural institutions (Alcoentre and Pinheiro da Cruz)." Boletim da Administração Penitenciária e dos Institutos de Criminologia (Lisbon), No. 4, January 1959, pages 52-53.

houses, and single prisoners in collective dwellings. The State Government will lease half a goian alqueire of land (24,000 square metres) to each prisoner for cultivation. The output will be purchased by the institution itself, and when he has served his sentence the prisoner will be paid for the improvements he has made. In addition the State will supply agricultural tools, medical care and schooling. This simultaneous use of different degrees of security in the same institution provides a more satisfactory solution for the problem of the necessary custody of prisoners, with a minimum of expenditure on the building, equipment and operation of the institution.

98. Agricultural institutions make an effective contribution to the national economy by maintaining and improving the occupational skills of prisoners of rural origin and by producing foodstuffs and other products both for internal consumption and for the market. It should be noted that, generally speaking, there are relatively few complaints about the ability of agricultural production to compete with private enterprise. Moreover, such production may play an important part in the national economy if the institution is also used as an experimental centre for trying out new farming techniques, new varieties of plants or acclimatization tests. At the Witzwil institutions (Switzerland), for example, new crops such as soya, fodder crops, varieties of maize etc. are being tried. The results achieved are then passed on for use by farmers generally. ^{33/} In Argentina agreements have been concluded, so far on a small scale, between the Prison Administration and the Secretariat of Agriculture for the experimental cultivation of olives in new areas. This opens up very wide possibilities and affords an exceptional opportunity of co-ordinating the activities of the Prison Administration with those of the official and university authorities and private institutions responsible for stimulating a country's progress in agriculture and stock-farming.

(b) Open institutions

99. Open institutions, when organized in accordance with the recommendations of the Geneva Congress, offer broad opportunities for integrating prison labour with the national economy.

100. In this type of institution more than in any other, prison labour can be organized under conditions fairly similar to those of free labour. A contributory factor is that relations between staff and prisoners are very different from those prevailing in other kinds of institution, and that open institutions are less burdensome in operation than other types.

101. In many countries, especially under-developed countries, there is ample scope for the use of open institutions; this makes possible a diversified treatment of prisoners and, in the last analysis, greater integration of their labour into the national economy. It appears, according to Mr. Triantaphyllidis,

^{33/} Hans Kellerhals, "The integration of prison labour with the national economy", in International Review of Criminal Policy No. 14 (United Nations Publication, Sales No. 59. IV. 3), page 21. The writer's opinion on the subject is emphatic: "The prison should be in the vanguard of progress where agriculture is concerned."

the Director-General of Institutions in Greece, that between 10 and 15 per cent of all prisoners held in agricultural prisons live under conditions similar to those prevailing in open establishments. The information transmitted by Mr. James V. Bennett, Director of the Bureau of Prisons of the United States, indicates that, although it seems desirable to extend the use of such institutions, the number of convicted offenders suitable for a system of minimum security is declining yearly as a result of the increasing employment of the population. In countries where conditional sentences are imposed (the continental European system), the use of such sentences could be reduced if the countries concerned had the necessary open institutions. The latter appear to offer a better likelihood of rehabilitation than a more or less automatic grant of conditional remission of the penalty.

(c) Public works

102. The employment of prisoners on public works provides excellent opportunities of keeping a large number of prisoners busy at a great variety of tasks, and at the same time an excellent method of integrating prison labour with the national economy. 34/

34/ See the study on Prison Labour already mentioned, published by the United Nations and giving the following partial list of the types of public works for which prisoners can be utilized: construction and maintenance of roads, railroads, bridges, dams, dikes, canals, parks, buildings and monuments; river and flood control; irrigation; land reclamation and land clearance, soil improvement; forestry works; erosion control. The study further states, in paragraph 138, that it can be concluded that public works do not play an important role in most prison labour systems, or in most of the several States' programmes of internal improvement. The information given in this document on the countries using this system of labour may be supplemented by the following: Spain: construction of public buildings, roads, railways etc. by detachments of prisoners. Portugal: construction of public buildings (prisons, court-houses, etc.) by labour brigades. A new, modern, five-storey building for the police and identification services was inaugurated at Lisbon in September 1958; apart from a few skilled workers, it was built entirely by prisoners. Brazil: State of Rio Grande do Sul: municipal works. It has been said of work in the public interest outside the prisons in this region and elsewhere that, in view of the differences obtaining in practice, public works cannot be recommended as a means of rehabilitating prisoners. See Victorio Caneppe, O trabalho penitenciário, Rio de Janeiro, 1959, page 15. United Arab Republic: fertilization of desert lands. On their release, prisoners who so desire and who possess the necessary abilities will be granted land in these areas (Siwa and Karga oasis) for cultivation. Ceylon: land improvement; malaria control in Anuradhapura. India: State of Assam: public health works and malaria control campaign. State of Orissa: on a very small scale. State of Uttar Pradesh: since 1952 extensive use has been made of prisoners in public works for dam-building, canal-digging, and bridge-building. Teams of 2,000 and 3,000 prisoners have been employed on such works. At the present time 800 prisoners are working alongside free workmen in the Government cement factory. Selected prisoners are learning to use mechanical equipment. State of Madras: municipal works, (footnote continued on following page)

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Even today, memories of the misuse of the public works system unquestionably represent a serious disadvantage. The fact is, however, that the abuses committed in the past are not inherent in the use of prisoners on various types of public works, but are attributable to the manner in which their labour was organized.

Nowadays this type of labour should be organized in accordance with the United Nations rules and recommendations on the subject. Standard Minimum Rule 73 sets forth two principles which are clearly applicable to the utilization of prisoners on public works and are intended to prevent any recurrence of the abuses in question: "Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners."

103. Whereas the employment of prisoners on public works was in the past a legal method of executing a penalty, and still appears as such in some legislative systems, 35/ the assignment of prisoners to such works nowadays must be justified by other considerations. Under a properly conceived penitentiary system, the selection of prisoners suitable for employment on public works must be made by the same procedures as is used to classify convicted offenders for posting to

(footnote 34, continued from preceding page)

34/ road-building and reservoir-construction. Federation of Malaya: construction of low-cost housing. Some released prisoners remain in employment on such works, as free men. The prisoners, in groups ranging from sixty to twenty in number, are left in the charge of a single employee who does not wear uniform. The working conditions are similar to those of free labour. Pakistan (West): construction and repair of buildings, canals and dams. Nigeria: maintenance of public property; road maintenance; drainage of swamps; construction of prison buildings. Sierra Leone: maintenance of prison buildings. Kenya: malaria control campaign; construction of airstrips. Uganda: prison buildings. Tanganyika: mobile units of recidivists are employed on the building and maintenance of roads; on hospital and school construction; and on afforestation, drainage, irrigation and water supply. Some 1,400 prisoners a day are employed on such work. Except in the case of the particulars for Spain, Portugal and Brazil, which are drawn from official publications, the data for these States are taken from reports submitted to the Social Defence Section of the United Nations.

35/ For example, the Argentine Criminal Code (1922) distinguishes a sentence of hard labour from one of imprisonment by providing that prisoners sentenced to hard labour may be employed on public works, unless private contractors are in charge.

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different types of institution. This classification, not the manpower requirements for public works, must be the decisive factor. Only prisoners suitable for minimum and medium security institutions should be used on this type of work.

104. In some countries the view is taken that prisoners should be employed on public works only when no private contractor is involved. The underlying purpose of this principle appears to be to prevent the making of a profit on low-paid work and to avoid the placing of convicts at the mercy of private individuals. This attitude was a reasonable one in the past, and would continue to be reasonable today failing faithful compliance with the principles of Standard Minimum Rule 73. If the custody, discipline, health, recreation and welfare of prisoners are efficiently safeguarded by the institution's personnel, and if the contractor pays the normal wage for the type of work being done, the only possible obstacle to enlisting the co-operation of private enterprise in finding employment for prisoners is baseless prejudice.

105. Apart from the construction or enlargement of the prison buildings themselves, most public works have to be performed outside their precincts. Consequently this type of employment is usually organized on the following lines:

- (a) The prisoners go to work outside the penal institution, and return to it, every day;
- (b) The prisoners are housed in a prison camp sited in the immediate vicinity of the public works;
- (c) A mobile camp is moved as the public works require;
- (d) A seasonal camp is set up at certain times of the year (for forestry and similar work).

106. As to the internal organization of labour camps, steps must be taken to ensure that, so far as possible, they function as genuine ad hoc penal institutions in that prisoners are guaranteed the level of living prescribed in the Standard Minimum Rules, their spiritual and educational needs can be adequately met, and essential family and social relationships can be maintained. This will obviate a situation in which work and everything connected with it become the overriding consideration, to the detriment of the other activities which the prisoner needs.^{36/} At the same time, in view of the wide variety

^{36/} The experience gained with labour brigades in Portugal proves that in many instances the need for skilled manpower has resulted in prisoners being utilized without proper selection. This in its turn has led to the formation of heterogeneous working groups without sufficient regard for penitentiary treatment. The Prison Administration is now endeavouring to correct this tendency to sacrifice penitentiary treatment, which does not consist of work alone, for the sake of increased productivity. See "1957 report" in Boletim da Administraçao Penitenciária e dos Institutos de Criminologia (Lisbon), No.4, January 1959, pages 61-62.

of public works, suitable programming will make it possible to organize a sound system of vocational apprenticeship, whether "accelerated" or not.

(d) Semi-release for work purposes

107. By this system, duly selected prisoners work unsupervised for private employers, outside the institution, under conditions and in return for wages similar to those of free workers. This system, which in Sweden is termed Frigang (literally: freedom of movement), is destined to develop on a large scale in the future as part of a pre-release programme. It provides an effective method of integrating the work of a prisoner, considered as an individual, with the national economy.

108. From the results of the experiments which have been made so far, and which have to some extent been prompted by the recommendation of the Geneva Congress, it would seem advisable that prisoners serving their sentences under this system should be suitably and discreetly separated from the rest of the institution's convict population. This will stress the special nature of this pre-release programme which, as the method develops and comes into more general use, may eventually lead to the organization of a new type of open institution. In such an institution most of the prisoners would work freely outside the establishment but would spend the night there. Under such a system the normal conditions of life outside the prison could be reproduced almost unchanged, especially as regards the division of time between work and social relationships.

(e) Possibilities for the development of prison labour

109. While the amount of prison labour will certainly be small in proportion to that of free labour, it is equally true that this fact provides no justification for underestimating the constructive role which prison labour, with its objective of rehabilitation retained, can play in the national economy. Properly organized, prison labour can be used in the activities of private undertakings engaged in the implementation of national development plans. Given sound co-ordination and co-operation between the prison authorities and the agencies specifically responsible for such plans, a virtually complete solution can be found for the problem of prison unemployment which exists in most countries. It is impossible to analyse all the possibilities here. Given proper organization and the proper guarantees for the prisoner and for the achievement of his rehabilitation, prison labour may to some extent be used to assist in solving the problem of housing construction. There are few activities in which so many different tasks and skills are simultaneously or successively involved as in building. Some of these tasks can be performed inside the walls of penal institutions, regardless of their degree of security; others can be discharged outside. Thus prison manpower could be used in the different activities which always precede building operations - the manufacture of bricks, tiles, piping and sanitary equipment, wood and metal working, etc. In addition, teams of selected prisoners could do the actual house-building, in which different trades and crafts would be involved. Prison labour could also be used in the last stage, that of making the houses fit for occupation.

III. REMUNERATION OF PRISON LABOUR

110. The problem of the remuneration of prison labour, which is being considered at this Congress, is closely bound up with the question of the integration of such labour with the national economy.

1. General considerations

111. The solution of the problem of remuneration depends to a great extent on the accepted concept of prison labour. Between the two extremes of no remuneration at all and of remuneration according to the principle of equal pay for equal work, there are a number of different intermediate solutions. These are based on a variety of considerations, some of which - like the nature of the sentence and the conduct of the prisoner - are quite extraneous to prison labour itself. Other considerations include the vocational skill of the prisoner, his output of work, the system of progressive stages adopted in the institution, and a reduction of part of the sentence on account of the work done.

112. Such systems, which may be applied combined in various forms, generally have one feature in common in all Prison Administrations, with only slight exceptions - namely, that remuneration is so small that it has sometimes been described as "token" or ludicrous. What is more, in many countries deductions from this meagre remuneration have to be made - or should, according to the law, be made - to contribute to the support of the prisoner's family, to cover the cost to the institution of maintaining the prisoner, to indemnify his victim, to pay certain legal costs and to constitute a savings fund for the prisoner against his release. Naturally, such responsibilities, in view of the vast disproportion between their volume and the insignificant amount of the remuneration, are something which it is in practice impossible for the prisoner to meet. This disproportion constitutes a further aspect of the problem of remuneration for prison labour.

2. Principles adopted at the Geneva Congress

113. At the Geneva Congress, the remuneration of prison labour was debated on two occasions - once in connexion with the question of the Standard Minimum Rules, and again when prison labour was discussed as a specific item of the agenda. From the Standard Minimum Rules, since approved by the Economic and Social Council and transmitted to Governments, two principles may be deduced: (a) that prisoners should receive remuneration for their work, and (b) that in specific cases such remuneration should be the normal wages paid for the type of work involved.

114. The principle that prison labour should be remunerated is contained in Standard Minimum Rule 76 concerning prisoners under sentence, and in Rule 89 concerning prisoners under arrest or awaiting trial. Whereas in the latter case the Rule states that such persons shall be paid for their work, Rule 76, applicable to prisoners under sentence, states that there shall be a system of equitable remuneration of the work of the prisoners.

115. The principle of equal pay for equal work is contained in Rule 73, which refers to work not controlled by the administration. The Rule states that "unless the work is for other departments of the Government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners."

116. In Rule 73, paragraph 2, there is a tentative application of the principle of equal pay for equal work. It might be deduced from study of the rules mentioned that a distinction exists, for purposes of remuneration, between work done for other departments of the Government and labour supplied to other persons - in other words, between work organized by the Prison Administration and that arranged by private enterprise. It might also be concluded - from the statement that "the full normal wages for such work shall be paid to the administration....., account being taken of the output of the prisoners" - that the administration finds it preferable to retain the wages thus paid and to credit the prisoner with a regulation payment or gratuity. Although this conclusion seems in fact to be borne out by what is actually done, there is clearly no reason why the normal wages should not be paid to the prisoner after reasonable deductions have been made from them. 1/ Briefly, it may be said that the principle of equal pay for equal work is governed by two factors: (a) that the prisoner must work for employers other than government departments, and (b) that his output of work has to be considered. With reference to the latter, it seems to be assumed that the output of the prisoner is always less than that of the free worker.

117. The recommendations adopted by the Congress repeat and enlarge upon the principle of remuneration contained in Rule 76. Thus recommendation VII stresses the point that prisoners should receive an equitable remuneration for their work and that the remuneration should be at least such as to stimulate keenness and interest in the work. It also states that such remuneration should be sufficient to enable prisoners at least in part to help their families, to indemnify their victims, to further their own interests within the prescribed limits and to set aside a part as savings. But the question remains: how is the remuneration to be fixed? The statement that remuneration must be sufficient to cover at least in part certain requirements leaves the problem unsolved. In fact there is a contradiction in terms, 2/ since either the remuneration is sufficient to cover all the requirements mentioned or, if it covers them only in part, it is insufficient.

1/ See United Nations publication Prison Labour already quoted, which contains ample information on systems of remuneration.

2/ The text of recommendation VII, as adopted by Section II of the Congress, was more definite: "It is desirable that this remuneration should be sufficient to enable prisoners to help their families, to further their own interests within the prescribed limits and to set aside a part as savings." At the plenary meeting the words "at least in part" and "to indemnify their victims" were interpolated. The debate on those amendments centred on the allocation of the compensation to be paid to victims. Little attention was therefore given to the other words interpolated, which detracted from the strength of the recommendation and changed it considerably.

For the remuneration to be sufficient to satisfy part of those requirements, as the recommendation adopted states, it should also have been specified that such "partial" satisfaction should be, not insignificant or devoid of economic, psychological or social value, but of an appreciable amount. ^{3/} As it is, the recommendation adopted is extremely vague. The dissatisfaction of the Congress with this recommendation, despite the latter's measure of value from the standpoint of general orientation, was expressed in another recommendation proposing a further survey of the possibilities and consequences of fixing rates of remuneration for prison labour on the basis of normal wages paid in the free labour market.

118. It must however be pointed out that the recommendations adopted by the Geneva Congress have produced beneficial results in certain countries where an attempt has been made to improve the existing rates of remuneration. In other cases the way has been prepared for further reforms, delayed for economic reasons, especially when the labour is organized by the Prison Administration. ^{4/}

^{3/} This principle is embodied in the recent Prison Act of Argentina, which states, in article 64, that remuneration of prisoners shall be proportionate to wages paid outside the prison. The amount of remuneration as fixed should be sufficient to fulfil effectively all the purposes for which it is intended, these being, according to article 11 of the Criminal Code, indemnification for the damages caused by the offence, if not paid from another source; aid to dependants; payment to the institution of maintenance expenses; and the constitution of a savings fund against release. The proportion between the remuneration of the prisoner and the corresponding wage for free labour is not specified in the Act, for practical reasons. It will be established by regulations of the Executive.

^{4/} Among the countries which have introduced or are considering changes are the following: Argentina (see note 3); Greece: at a symposium of prison administrators held at Tiryns, in October 1958, it was decided: (a) to increase prisoners' remuneration in order to provide assistance for their families, (b) to authorize prison governors to employ prisoners on piece-work, since for that type of work payment can be higher; United Arab Republic: Article 25 of the new Prison Act, No. 396 of 1956, states that prison regulations shall include provision for the remuneration of prisoners' work, and for means of employment; in Ceylon a new system of remuneration has been introduced which combines a flat rate, based on the prisoner's classification according to vocational aptitude, with special bonuses paid for additional work or for work of superior quality; Pakistan is trying the experiment of a system of payment for extra work over and above the allotted task performed by prisoners in one of the semi-security institutes and also in one of the Borstals. The difficulties encountered by this country regarding the remuneration of prison labour have been explained by B.H. Sayed in "The Implementation in Pakistan of the Standard Minimum Rules for the Treatment of Prisoners", in the International Review of Criminal Policy (United Nations publication, Sales No. 59.IV.3, page 41).

3. Characteristics of certain systems of remuneration

119. The fact that in some countries prisoners still receive no financial remuneration for their work is in conflict with the principle laid down in Rule 76, and it is hoped that this state of affairs will gradually and finally be brought to an end in those regions. For obvious reasons, and in order to stimulate the efforts made in various countries, it is desirable that the London Congress should recommend the abolition of practices contrary to the Standard Minimum Rules and to United Nations recommendations with regard to prison labour.

120. The study of existing conditions in many countries indicates that certain systems of remuneration, by taking into account factors extraneous to the actual work done by prisoners, become unnecessarily complex. ^{5/} Thus elaborate scales of remuneration are devised which, whatever else they may achieve, cannot bridge the gulf that their application maintains between prison and free labour. It is therefore preferable that remuneration of prisoners should be based on their vocational skills and their output of work, rather than on factors connected with other aspects of prison life.

121. As a rule, laws or regulations authorizing the remuneration of prison labour either do not attempt to establish satisfactory rates, or leave them to be fixed without guidance or control, by the prison authorities or some other administrative body. In practice, such authorities use their discretionary powers to fix very low limits both for the highest and the lowest wage payable, on the assumption that the State guarantees maintenance of the prisoner and that budgetary limitations make low, or very low, rates of remuneration necessary.

122. What is strange and also unfair is that this remuneration, already low, is then subject to a series of large deductions in respect, for instance, of maintenance costs which have already been taken into account in fixing a priori a low rate of remuneration. The method of calculating the remuneration also has a bearing on the amount. Sometimes it is fixed according to a unit system - by hours, days, weeks, fortnights or months, for example - and sometimes on a piece-work basis. In the latter case, if the work is done by a team, the remuneration may take the form of a distribution in equal parts between members of the team, or according to the labour supplied by each.

123. In general terms it may be said that under systems of remuneration studied here the amount paid to the prisoner is often insignificant and at times quite ludicrous. Contrary to what might be expected, this state of affairs does not necessarily depend on the degree of economic development reached by the countries concerned. It was made clear, at the fourth session of the European Consultative Group in 1958, that the remuneration of prisoners in a highly developed country was often worse than that paid in other much less developed countries.

^{5/} See Prison Labour, op. cit., paragraph 251.

124. There are various unfortunate consequences of a system of low or insignificant remuneration. ^{6/} It may be said that almost all the uses to which earnings might be put prove impossible in view of the insignificance of the amount earned. No adequate provision can be made either for the partial support of the prisoner's family or for the indemnification of his victim. In fact it is scarcely possible for him to acquire a few articles for his own use or to send to his family from time to time a modest sum, by no means sufficient to assist them financially. The most he can hope for is to have at his disposal, on his release, a small sum which will barely enable him to solve the problems that have to be faced on his return to society. This chronically inadequate remuneration causes increased responsibilities and demands for social assistance to fall on society, thus affecting the pocket of the taxpayer. It is this additional burden of financial responsibility and social service which, curiously and mistakenly enough, the fixing of low rates of remuneration for prison labour is intended to avoid.

4. Introduction of the principle of equal pay for equal work

125. The present unsatisfactory situation has led, by diverse ways, to the view that there should be equal pay for equal work. It was thought that, in addition to serving other purposes, application of this principle would help to solve the difficulty of competition between prison and free labour. The marked differences in remuneration for these two forms of work has been regarded as the main reason for such competition. It was therefore considered that, where a prisoner did not receive regular wages for his work, there was no proper relationship between the sum paid to him and the value of his output. Such lack of relationship is one of the prime reasons for allegations of unfair competition from prison labour. ^{7/}

^{6/} Insignificant or paltry remuneration affects the order and discipline of the institution. Thus, if the prisoner has no means of acquiring articles for his own private use, a packet of cigarettes may be the occasion for theft, physical violence, psychological compulsion and even prostitution. Any forbidden or illicit method may be adopted, at a given moment, to secure what, for lack of funds, could not be acquired legitimately.

^{7/} See Nico Gunzburg, "Le Travail pénitentiaire et le droit ouvrier" (Prison Labour and Labour Law), in Revue du Travail (Brussels), September 1939, page 1320. The author uses these words: "From the preceding statement it may be concluded that there is no reason why prisoners under sentence or awaiting trial, who have the right rather than the obligation to work, should not be paid a wage at more or less the normal rate for their work, with deductions for general and maintenance costs and with part of the sums employed for urgent social needs: fines, expenses, damages and compensation for the victims of the offences, and support, where necessary, of the prisoners' families. Such an arrangement takes into account all the requirements of penology and the interpretation of social labour legislation. It will serve, better than any sentimental considerations, to dispel all fear of unfair competition felt by industrialists and free workers." A similar economic argument is put forward in an article by A. Delierneux, "Travail des prisonniers et travail libre" (Prison Labour and Free Labour), in Revue du Travail (Brussels), November 1938, pages 1495-1497. R. Collard, in his report to the Hague Congress of 1950, takes the view that equal pay would help to lessen the complaints of free workers in times of crisis (Proceedings, Volume IV, page 424).

This fundamentally economic line of reasoning has been replaced, in recent post-war times, by another, more "legal" view - already discussed here - according to which prison labour is part of labour as a whole. Reasons of strict justice are invoked. 8/ The adoption of the principle is, in short, a logical corollary of article 23 of the Universal Declaration of Human Rights, which states conclusively that: "Everyone, without any discrimination, has the right to equal pay for equal work." It has also been said that although the prisoner's right to work is a temporarily restricted right, the restrictions imposed "do not imply that the prisoner will receive a lower remuneration. The integration of prison labour in general implies the acceptance of another principle - that of equal remuneration for work of equal value - recognized in the Preamble to the Constitution of the International Labour Organisation as amended in 1946; according to Convention 100 on equal remuneration, this principle applies equally to men and women." 9/

126. It has been argued against the principle of equal pay for equal work that, although desirable, it is impracticable, and that after a series of deductions and complicated accounting operations the prisoner would finally derive very small economic benefit. It has also been said that, as the principle is not applicable to all prisoners, it would cause discontent, inequalities, and difficulties for the Prison Administration. For example, it would not apply to aged or infirm prisoners, to prisoners incapable of normal work, or to young prisoners who are still undergoing vocational training and are employed on maintenance or domestic duties. It has also been stated that working conditions in prisons are generally less satisfactory than those for free labour, the working hours being less, because of prison requirements - a factor seriously militating against good productivity, if account be also taken of the lower yield of prison labour in itself. 10/ Other objections to equal pay, put forward as serious ones, are the adverse reaction of public opinion and the budgetary implications of equal pay.

127. Among the benefits expected from the adoption of the principle of equal pay for equal work is the receipt by the prisoner of really economic wages which will enable him to pay for his own maintenance, help his family, fulfil other obligations and accumulate personal savings. 11/ Moreover, such a system will

8/ This argument was put forward at the Middle East Seminar on the Prevention of Crime and Treatment of Offenders, in connexion with the Standard Minimum Rules. Thus it was said that there should be a system of fair remuneration for prison labour; but the accompanying statement that the industry and interest of prisoners in their work is stimulated by a system of remuneration is erroneous, because it confuses cause and effect. See the report concerned.

9/ See Manuel López-Rey y Arrojo, "Some Considerations on the Character and Organization of Prison Labour", in the Journal of Correctional Work, IV (Lucknow, India), 1957, page 24.

10/ The recent White Paper, Penal Practice in a Changing Society, Aspects of Future Development (England and Wales), H.M.S.O., London, February 1959, states on this subject that whatever conclusions may be reached on the conflicting arguments of principle, it seems clear that this conception of the "economic rate" cannot provide a general solution of the prison earnings problems until the general level of productivity and efficiency of prison industry approximates much more closely to that of outside industry.

11/ The good effects of applying the principle were clearly and conclusively affirmed by the European Consultative Group of 1958 which, while admitting that it might create difficult and awkward problems, urged that Prison Administrations should make an effort to establish wage equality.

give the prisoner greater self-confidence, enabling him to maintain contact with members of his own family and to earn a better reputation with them and with society. Again, if normal wages are paid for his labour the prisoner will work with more zeal and produce a greater output; despite deductions from his salary for various purposes, he will have the feeling of earning his own living and will know exactly what becomes of his earnings. Normal wages will enable him to enjoy social security benefits, e.g. in the form of sickness insurance or retirement pension schemes. If he can belong to a trade union - a matter of great importance in countries where membership of a union is essential if employment is to be obtained - he will have the right, on release, to claim unemployment benefits. It has also been said that the application of the principle of equal pay for equal work will reduce the cost of the prison system, as well as the responsibilities of social and after-care services.

128. In reality, what is more important than arguing for or against the principle, is to carry out experiments enabling practical conclusions to be reached. Such experiments should be made with great care, so as to avoid failures which will be due more to the methods employed than to the application of the principle itself.

129. At the Twelfth International Penal and Penitentiary Congress, held at The Hague in 1950, the application to prison labour of the principle of equal pay for equal work was discussed, apparently for the first time. The resolution adopted states, in that connexion:

"6. Prisoners should receive a wage. The Congress is aware of the practical difficulties inherent in a system of paying wages calculated according to the same norms that obtain outside the prison. Nevertheless the Congress recommends that such a system be applied to the greatest possible extent. From this wage there might be deducted a reasonable sum for the maintenance of the prisoner, the cost of maintaining his family, and if possible an indemnity payable to the victims of his offence." 12/

130. The question was discussed at length at the Latin American Seminar on the Prevention of Crime and the Treatment of Offenders, Rio de Janeiro, 1953. Although the principle was not accepted in toto, a kind of compromise was reached whereby a relationship was to be established between the economic value of the prisoner's work and that of free labour. The relationship would be achieved by the fixing of a proportion between both types of remuneration. If that were done, the prisoner would be paid for his work in proportion to the wages paid for equivalent free labour.

12/ Proceedings, Volume I, Berne, 1951, pages 629-630. The conclusions put forward by the Rapporteur, W.P.J. Pome (Netherlands), were, somewhat naturally, more positive: "5. Prisoners should receive a wage for their labour, calculated according to the same norms that govern free industry. Against this wage income one might debit a reasonable sum of the maintenance of the prisoner, the cost of maintaining his family and if possible an indemnity payable to the victims of his offence." (Proceedings, Volume IV, Berne, 1951, page 365).

131. Discussion of the question in non-European United Nations regional conferences has been limited in scope. However, it should be pointed out that at the Second United Nations Asia and the Far East Seminar on the Prevention of Crime and the Treatment of Offenders, held at Tokyo in 1957, the need for integrating prison labour with national economies was urged. On the other hand, it was there stated - and this is curious and rather difficult to understand - that remuneration of prison labour presented no special problems in the countries of the region. Does this mean that the position with regard to remuneration is satisfactory, or, if (as is probably the case) it is unsatisfactory, that the problems existing involve no difficulties? The clear impression emerging from the report of the Seminar is that integration of prison labour with the national economy is achieved in many Asiatic countries, with prison wages so small as to have little economic significance. 13/ Such integration does not seem to be that recommended by United Nations regulations and principles in the matter. Taking a more realistic view and admitting existing difficulties, the Second Seminar of Arab countries, held at Copenhagen in 1959, upheld the principle of integration and the view that remuneration for prison labour should be as equitable as possible. 14/

132. The attitude taken by the European Consultative Group in 1954 has already been discussed. It is, however, interesting to note that the Group stressed the need for adequate remuneration and added, still more significantly, that the possibility should be explored of raising the remuneration to the same rate as that received by free workmen, in which case, after a reasonable amount had been deducted for his maintenance in prison, it would be possible for the prisoner to contribute towards his obligations in maintaining his family and in compensating the victims of his offences. 15/ At its 1958 session the European Consultative Group discussed the question more in detail and suggested, in its recommendations, that the principle of equal pay be applied to certain categories of prisoners or in certain prisons. The Group considered that Governments should undertake and develop experiments in that direction, with the object of bringing the remuneration of prisoners as quickly as possible up to a level compatible with the dignity of labour and of mankind. 16/

133. It may be concluded that the principle of equal pay for equal work as applied to prison labour has generally speaking, as a principle, received support at international penitentiary conferences. There is apparently a strong current of opinion in favour of its application and the conducting, with a view to such application, of the required experiments, in the form and with the scope desirable.

13/ See pages 20-21 of the Report of the Seminar, mentioned in the United Nations citation list.

14/ The report of this Seminar has not yet been published. The information has been supplied by the United Nations Social Defence Section.

15/ See Conference of the European Regional Consultative Group, Prison Printing Shops, Melun (France), 1955, page 52.

16/ See United Nations, European Consultative Group, Prison Printing Shops, Melun (France), 1959, page 80.

(a) Ways of application

134. Two tendencies exist - one towards establishing a ratio between the price of prison labour and the price of free labour, and another, broader trend towards applying the principle of equal pay for equal work.

135. The idea of establishing a reasonable ratio between the remuneration of free labour and that of prison labour is an "intermediate" solution - preferable to the remuneration systems at present existing - and may be regarded as a step which will make it possible, in time, to apply the principle of equal pay for equal work.

136. The draft Brazilian criminal code prepared by Sá Pereira in 1928 affirmed the principle that prison labour must always be remunerated, but provided that wages paid to prisoners should be one third less than the wages of corresponding free labour. The draft criminal code for Bolivia, drawn up in 1943 by Professor Manuel López-Rey y Arrojo, also affirmed the principle that all prison labour should be remunerated, and then specified that the remuneration of all prisoners, except those whose work constituted apprenticeship or vocational re-education, "shall never be less than 80 per cent of the corresponding free wage." In Chile, today, the ratio system is applied in a more limited form to prisoners employed on public works executed by public bodies. Such prisoners receive a daily wage of not less than 30 per cent of the average wage normally paid in the local labour area, and also obtain the benefits of the social security laws. In that country, payments to prisoners working inside institutions for private interests are limited to 75 per cent of the wages earned by the same category of free worker in the same industry. It seems that this maximum limit is not often reached in practice, since the Prison Administration is attempting to establish a "floor" of 50 per cent of normal wages. In Argentina, the new Prison Act prescribes a ratio system which has not yet, however, been worked out in detail. In some States of India, apparently, prisoners are paid for their labour fixed percentages of the wages paid for similar work to free employees.

137. The principle of equal pay for equal work has been incorporated in a number of draft measures. Thus, Enrico Ferri's draft Italian criminal code of 1921 provided that: Every prisoner who is not sick or incapable of work must be given a work schedule and wages equal to those of corresponding free labour in the area where the penal institution is located. This draft was copied exactly, in 1925, by a draft measure for remuneration put forward in Argentina. The 1958 draft Regulations concerning the Execution of Sentences of Imprisonment for the Federal District of Mexico provide that: Prison Labour must be performed, so far as possible, under the conditions governing free labour in the Federal District.

The principle of equal pay has hitherto been applied, in practice, only in a few cases and on a very limited scale. According to available data, which do not always suffice to show the exact manner of its application, the principle has apparently been implemented in the cases of:

- (a) prisoners placed in special categories owing to the nature of the offences committed;
- (b) prisoners lodged in particular institutions;
- (c) prisoners generally (in certain instances);

(d) prisoners working for the private sector, though not receiving normal wages in full;

(e) prisoners in a state of semi-liberty.

138. The Netherlands has experimented with the first of these cases. After the Second World War, more than 12,000 persons convicted of collaboration with the enemy were employed in the coal mines. Other persons convicted of "economic" offences were sent to labour camps to work on land reclamation. All of them received wages equal to those of free workers. The prisoners, after deductions in respect of their board and lodging had been made, were left with a balance sufficient to enable them to make a substantial contribution to the maintenance of their dependants. 17/

139. In Finland the principle has been implemented in the case of prisoners lodged in particular institutions. It is applied in the State's Labour Colonies, where there are no restrictions on freedom save those required for the preservation of order and discipline. In 1946 prisoners were sent to such establishments if their sentence did not exceed one year of imprisonment and if they had not, during the five years preceding their conviction, been sentenced to any other term of confinement or imprisonment. At present, these Colonies receive first offenders whose sentence does not exceed two years' imprisonment. This group represents 20 per cent of the prison population. Twenty-five per cent of the normal wage is deducted for the establishment. The employers are the State, the communes and individuals. For three years now it has been possible to send other prisoners to penal colonies, where they are treated in the same way as in the Labour Colonies. These prisoners represent 5 per cent of the prison population. They receive for their work 70 per cent of the normal wage. 18/ In some countries there seems to be a tendency towards applying the principle generally. Thus, in Spain the Prison Administration Regulations provide that remuneration for workers in prison workshops and on farms shall be established in accordance with their labour classification grade. The basis for calculating the remuneration is the daily wage paid to an unskilled labourer on the land or worker in any of the industries subject to labour legislation. Remuneration for work done under the "piece" system may not be less than 75 per cent of the amount paid by free industry. 19/ In the Indian State of Bombay, all the prisoners sentenced to labour receive wages in accordance with the nature of the work performed, at the rates applicable to free labour. The cost of their maintenance is deducted from these wages. No payments are made, however, to prisoners sentenced to less than three months' imprisonment or to those working as

17/ ST/SOA/SD/EUR/5, paragraph 200 and ST/SOA/SO/EUR/6, paragraph 49.

18/ See Prison Labour, *op. cit.*, paragraph 53, and Valentin Soine, "Le système d'exécution des peines en Finlande," in Les grands systèmes pénitentiaires actuels (Paris, Huguency and Ancel, ed., 1955), II, pages 101-102.

19/ Cuello Calón criticizes these regulations because, unlike the previous ones, they make no provision for the payment of a just indemnity to the victim of the offence. See Eugenio Cuello Calón, La Moderna Penología, Barcelona, 1958, I, page 442 and note 5.

apprentices. The prisons in this State are so organized that the prisoners can support themselves by their work. 20/ According to unconfirmed reports, the wages normal for free labour are paid to prisoners in Yugoslavia and the Soviet Union. In Costa Rica, apparently, working inmates are paid at rates current in the free market, with fixed (but unstated) percentages being set aside for aid to dependants. 21/

140. When prisoners work for private undertakings, the employers may in some cases pay the full wages to the Prison Administration, the latter retaining that money and paying to the prisoner a percentage of his wages, or merely the stipulated gratuities and remunerations. According to the United Nations report on Prison Labour, this happens, for example, in the following countries: Norway. The penal institution is paid for the work performed by prisoners in camps for private forestry owners, at the same rates as for free workers. The prisoner is paid from 30 to 50 per cent of the gross earnings per day, depending on his performance and the amount of money involved. Also, in this country, normal wages are paid by the private employer for labour performed by a team outside the prison, and the prisoner receives the following percentage of these wages: 20 per cent, if the wages are not more than 20 Norwegian kroner per day; 30 per cent, if the wages are between Kr. 20 and 40 per day; 40 per cent, if the wages are between Kr. 40 and 50 per day; 50 per cent, if the wages are more than Kr. 50 per day. Austria. When the work is done under contract, the entrepreneurs pay to the Prison Administration the corresponding wages for free labour or, where this is not feasible, wages determined on the basis of the normal wages for similar types of work. A 20 per cent reduction from the normal wages is automatically granted to the employer to defray intangible expenses arising from the use of prison labour (inefficient work, breakage and destruction of materials and tools, etc.). Prisoners are remunerated according to the reward system. Denmark. When, because of shortages of free labour, farmers employ groups of prisoners for the purpose of urgent farm work, the Prison Administration is paid the full wages stipulated in collective labour-management agreements. Prisoners are paid a portion of such wages by the Administration.

141. In some countries, prisoners working under a free system receive the remuneration paid to free labourers. Such is the case in the following countries: United Kingdom. Some prisoners spend the last six months of their sentence in hostels and work alongside free workers in the neighbouring towns. They draw normal wages minus certain deductions for board and lodging and the maintenance of their families, the balance being paid into a compulsory savings account. 22/ Belgium. The inmates of the Saint-André-lez Bruges institution who enjoy a régime of semi-liberty work in the city on the same terms as free workers. All the prisoners receive normal wages, three tenths of which are deducted to meet

20/ See "Le système pénitentiaire de l'Inde," by the Indian Ministry of Home Affairs, in Les grands systèmes pénitentiaires actuels, op. cit., I, page 162.

21/ See Prison Labour, op. cit., paragraph 230.

22/ ST/SOA/SD/EUR/6, paragraph 61.

expenses of the institution. The balance belongs to the prisoner, who may spend two tenths in the canteen, the remaining five tenths going into a reserve fund. ^{23/} Sweden. Inmates selected for the pre-release programme are placed with private employers, attempts being made to find such jobs as the inmates can retain after release. Their wages equal those of free workers. Only a maximum of 4 Swedish kronor per working day is deducted for board and lodging. ^{24/}

(b) The experiment at Vångdalen, Sweden

142. As part of a plan for prison reforms, an interesting experiment was conducted at Vångdalen, near Stockholm, in order to determine the possible practical application of the principle of equal pay for equal work. The investigation covered no more than sixty inmates, employed in machine shop, forest, and institutional maintenance work. A questionnaire was used, and deductions were made from the wage that the inmate would have received for the same work - had he been paid according to the prevailing union rate - to cover expenditures such as board and lodging, maintenance of dependants, legal costs and so forth. The balance would represent savings for the inmate after his release. The average sentence was between 9 and 3 months. In general the inmates said that they were in favour of the new system. The majority were convinced that recidivism was often the result of the hopeless state of indebtedness in which the inmate found himself after his release. The system proposed might remedy this situation. Most of the inmates also agreed that reasonable wages would act as an incentive. Many of them emphasized the importance to the individual of being able wholly or partly to support his family, since the family suffers more than the inmate, despite the benefits that may accrue under social welfare legislation. The majority of the inmates stated that the success of the system would depend on the availability of jobs at all times for all inmates.

143. According to Ericsson, the advantages of paying normal wages for prison labour may be summarized as follows:

- (a) Prison work projects could be operated according to standards approximating much more closely than at present to those of civilian industry;
- (b) The work performance of the inmates would be bettered;
- (c) The earnings of the inmates would be increased;
- (d) The morale of the inmates would be improved (the inmate would feel that he was living more like an ordinary citizen - his wages would be normal, he would be supporting himself and his family, etc.);
- (e) The inmates would become accustomed to regular working conditions, fixed working hours etc.;

^{23/} See J. Gilson, "La semi-liberté," in Bulletin de l'Administration pénitentiaire (Brussels), May-June 1959, page 85.

^{24/} See Prison Labour, op. cit., paragraph 83.

(f) There would be a reduction in the cost to the State of social welfare benefits and of the operation of penal institutions;

(g) A greater respect for work would be engendered, and the "welfare mentality" would be counteracted.

On the other hand, Ericsson points out the following potential objections to the system:

(a) Higher costs of institutional treatment in the form of higher wages for inmates and higher administrative costs (special personnel to establish budgets for the inmates and handle their finances as well as personnel for the computation of wages, etc.);

(b) The difficulty of providing adequate workshops and job opportunities;

(c) Opposition from the inmates themselves if they were to decide that they would be worse off with the new system than with the old;

(d) Opposition from the general public, if the idea were to gain ground that the "crime preventive" aspect would be counteracted by unduly agreeable conditions in the penal institutions.

144. Despite the caution imposed by the limited character of the Vångdalen experiment, Ericsson concludes that the success of the new system presupposes the availability of modern, well-equipped workshops suitable for industrial production, a steady and full supply of jobs, and experienced and competent supervisors with a good understanding of human nature. He is convinced that, given these prerequisites, the experiment would have a good chance of success. 25/

25/ See Carl-Henrik Ericsson, "A Swedish project to pay prison labour according to the prevailing rates for organized labour," mimeographed report, submitted to the fourth session of the European Consultative Group in 1958. In Sweden the question of remunerating prison labour has received special attention for some time. Thus chapter VIII of the Act of 1945 Concerning the Execution of Imprisonment is devoted to this question. The Commission which drafted this Act examined the question of normal pay-rates, but felt that it was inopportune at that time to introduce the principle, because of the practical problems which would be raised by its adoption on a broad scale. Nevertheless, in order to leave open the possibility of experimenting with this principle, it inserted in this Act article 74, which provided that the King might order that work be remunerated in a manner different from that established in the Act, with respect to certain institutions or categories of inmates. This article has made it possible to carry out the experiment mentioned here. The question has been considered recently in the study: STATENS OFFENTLIGA UTREDNINGAR 1959: 18, Justitiedepartementet. Fånges Arbetservättning Detänkande av 1956 Års Eftervärdsutredning, Stockholm, 1959. After referring to the role of labour in prison treatment, its organization and economic aspects, the regulations in force and the 1954 draft, and the use of the remuneration by the inmate and his family, the Commission concludes by proposing a partial change in the 1945 Act with respect to the payment and use of remuneration. Regarding the Vångdalen investigation, the Commission recommends that experiments in normal remuneration be continued with selected
(footnote continued on following page)

5. Use of Remuneration

145. From the foregoing it is apparent that the existing situation with regard to the remuneration of prison labour is unsatisfactory. The same must be said concerning the work provided for prisoners. In quite a few countries prison labour is not remunerated or rewarded in any monetary form. Except for the very modest and limited experiments noted above, compensation for prison labour is ridiculously small and is paid for reasons unconnected with such labour. The movement towards improving that compensation, while approved in most cases in theory, cannot be said to have progressed to an encouraging degree.

146. This general state of affairs has merited the following judgement: "What is taking place in prisons is a veiled form of slavery. It is an almost cost-free monopoly of manpower. There is not even the slightest desire to give the prisoner his due. In the prisons there is no real 'right to work', and social justice is still unknown. Vespasian's famous and immortal definition, 'Justice is the constant and perpetual wish to render to everyone his due', should be quoted to those penologists who turn a deaf ear to the appeals coming from the prisons." 26/

147. Despite this discouraging situation, the question of the use of prison labour remuneration has been and continues to be debated in great detail, both at the national and at the international level - but without any appreciable practical result. Oddly enough, specialists have been concerned more with discussing how this remuneration should be employed than with fixing its amount. 27/ Yet only adequate earnings will make it possible to achieve all the stated objects of remuneration.

(footnote 25, continued from preceding page)

25/ inmates who express a desire to participate in that type of system. The idea of introducing the system of normal remuneration in open institution was examined by the Geneva Congress when it discussed these institutions. Thus draft recommendation VI, proposed by the Secretariat, read: "... The work should be organized in a rational manner, in keeping with local and regional economic conditions. The prisoners should receive remuneration and, so far as possible, should be entitled to the benefit of the rights and prerogatives to which persons employed in freedom in similar employment are entitled outside the institution;" (A/CONF.6/C.2/L.1, pages 20-21). This part of the recommendation failed to secure approval. The objection was raised that it had not been examined at the regional meetings and was highly questionable. (A/CONF/6/1, paragraphs 193-196).

26/ See Washington Luiz de Campos in O Direito do trabalho nas Prisões (Sao Paulo, 1952), page 58.

27/ The penal and Penitentiary Congresses have discussed these questions many times. The Fifth Congress in Paris, 1895, denied the right to remuneration. A more progressive but still limited criterion was set forth at the London Congress of 1925. There it was said that a modest reward - not the same thing as remuneration - should provide for the payment of indemnities to the victim, as well as for other commitments. This traditional "reward" concept was abandoned at the Hague Congress of 1950. The 1955 Geneva Congress organized by the United Nations, widened the field even more by specifically raising the question of remuneration.

148. While present remunerations stand, the only deductions possible are modest amounts for use by the prisoner himself, for assistance to his family and for the establishment of a savings fund to be handed over to him on his discharge. These three shares, not necessarily in equal amounts, are those specified in Minimum Rule 76.

149. The situation would be different if the principle of equal pay for equal work were observed. In that case - and tentatively, since experience in the application of the principle is lacking - the criterion for the apportionment of earnings would be similar to that observed by the free worker. Priorities in the use of the remuneration would be as follows:

- (a) compulsory contributions required by union and social security systems in accordance with laws in force;
- (b) prisoners' maintenance costs: board and lodging;
- (c) support of dependants;
- (d) prisoners' personal expenditures within the institution, in the amount permitted;
- (e) financial obligations under judicial decisions and other legally binding orders;
- (f) a savings fund for prisoners' use after discharge.

150. On the basis of a recommendation by the 1955 Geneva Congress, the European Consultative Group in 1958 considered in some detail the question of deductions from remuneration for indemnities payable to the victim. After references had been made to the need to reach a compromise between the interests of the injured party and the prisoner's ability to pay, it was suggested that payment of reparation should be made by instalments, and even that one of the factors to be taken into account in the decision whether to release the prisoner before his sentence had expired should be the payment he had made to the victim. It was also pointed out that the payment of normal wages did not settle the problem of indemnifying the victim. Nevertheless, it may apparently be affirmed that, with the application of the principle of equal pay for equal work, the prisoner should indemnify the victim, at least partially, since that obligation would exist if the prisoner were a free man.

151. Deductions should be as small as possible, and within certain limits the prisoner himself should, as part of his social rehabilitation, take part in the apportionment of his earnings. Another important aspect is devaluation as it affects the money set aside for the prisoner as a savings fund. In most countries such devaluations are frequent, and enter into account particularly when the prisoner has been sentenced to several years' imprisonment. In many cases the real value of the savings fund is slight, not only because of its modest amount but because of the effects of devaluation. The released prisoner receiving a pile of paper money of little value experiences a painful feeling of frustration, "of having been robbed," which should be anticipated and avoided for the sake of his rehabilitation. In countries with a devalued currency it is important for the prison system to maintain the highest possible real value for prisoners' savings funds. The Prison Administration must assume a new responsibility by seeking a solution for this admittedly difficult problem.

ANNEX

Principal United Nations publications consulted in the preparation of this paper.

1. Report of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Sales No. 1956.IV.4.

Reports of the United Nations Seminars on the prevention of crime and the treatment of offenders:

2. Latin American Seminar, Rio de Janeiro, Sales No. 1954.IV.3.
3. Middle East Seminar, Cairo, Sales No. 1954.IV.17.
4. First Asian and Far East Seminar, Rangoon, Sales No. 1955.IV.14.
5. Second Asia and Far East Seminar, Tokyo, no sales number indicated.
6. Prison Labour, Sales No. 1955.IV.7.
7. Documents of the sessions of the European Consultative Group on the Prevention of Crime and the Treatment of Offenders:

First session, document ST/SOA/SD/GEN.1;
Second session, document ST/SOA/SD/EUR.4;
Third session, document ST/SOA/SD/EUR.5;
Fourth session, document ST/SOA/SD/EUR.6.

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