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THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS IN THE LIGHT OF RECENT DEVELOPMENTS IN THE CORRECTIONAL FIELD

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INTRODUCTION

1. In the long campaign waged by penal reformers for a more enlightened and humanitarian approach to the problem of institutionalized offenders, the Standard Minimum Rules for the Treatment of Prisoners mark an important advance. In the great variety of conditions, values, customs, traditions and levels of living throughout the world, an attempt is made by means of these Rules to protect human dignity, to exclude cruelty, neglect and degradation and, in general, to minimize the effect of segregation from the community, whatever the offence.

2. There is nearly half a century of history behind the Rules as they now stand, although humanitarian concern for prisoners goes back two hundred years or more. Perhaps the first record of a concrete proposal to an international body to consider minimal "rights" for all "deprived of their liberty by a judicial decision" is the one offered to the meeting of the International Penal and Penitentiary Commission (IPPC) held at Berne on 1 July 1926.1/ Significantly, this proposal, made by a prison administrator and supported by others with responsibilities for penitentiaries, was well received by the Commission. Eventually, a set of fifty-five Rules was presented to the next IPPC Congress, held at Prague in 1930. After further studies, a first international draft was produced in 1933 and endorsed by the League of Nations the following year.2/

3. Berne was again the scene of the first IPPC meeting to take place after the Second World War. This meeting, held in 1949, was asked to consider a revision of the Rules to bring them up to date. Several years' work by subcommittees followed, leading to a revised text, which was submitted to the United Nations and circulated to Member States and specialized agencies in 1951. The culmination of these efforts was the adoption of a new set of ninety-four rules by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955. The Economic and Social Council, by its resolution 663 C (XXIV) of 31 July 1957, approved the Standard Minimum Rules for the Treatment of Prisoners and invited Governments to give favourable consideration to their adoption and application.

4. There are three reasons why the questions of revising the Rules and their implementation arise for present consideration. First and most obvious is the lapse of a period of time similar to that between the first formulation of the Rules in 1933 and the consideration of a revision in 1949. Secondly, the Council resolution cited above included a recommendation that the Secretary-General of the United Nations should be informed every five years of the progress made by Governments in the application of the Rules. Thirdly, it is generally felt that there have been developments in the field of corrections in the past fifteen years which should be reflected in the Rules.

1/ P. Cornil, "International standards for the treatment of offenders", International Review of Criminal Policy, No. 26 (United Nations publication, Sales No.: E.70.IV.1).

2/ Ibid. See also League of Nations resolution of 26 September 1934. League of Nations, Official Journal, Special Supplement No. 123, VI.4.

5. In December 1965, the United Nations Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders proposed that this topic be included on the agenda of the second session of the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders, held from 6 to 16 August 1968; and in December 1966, the Advisory Committee also recommended that the Secretariat should carry out an inquiry on the implementation of the Standard Minimum Rules.

6. Subsequently, "The Standard Minimum Rules for the Treatment of Prisoners in the light of recent developments in the correctional field" was adopted as a subject for discussion at the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. It was consequently an item on the common agenda for the three regional preparatory meetings of experts convened by the United Nations in Africa, Asia, and Latin America in 1969, in preparation for the Congress.3/

7. The purpose of this working paper is to present the salient points from these various studies and discussions of the Rules, and to outline the issues arising, in order to facilitate the work of the 1970 Congress on the relevant agenda item. It should be recalled that these Rules were intended to "stimulate a constant endeavour to overcome practical difficulties in the way of their application". This endeavour is what this item of the Congress agenda will be about.

3/ The reports on these meetings have been issued as United Nations documents in the following series: African region (Addis Ababa) A/CONF.43/RM.1; Asia (Bangkok) A/CONF.43/RM.2; Latin America and the Caribbean (Buenos Aires) A/CONF.43/RM.3. Preparatory reports were submitted to these meetings by participating experts. A regional meeting for the Arab States was also convened by the United Nations with the co-operation of the League of Arab States at Kuwait in April 1970 where this was also an item on the agenda. The report on this meeting had not been issued by the time of the publication of the present working paper.

I. IMPLEMENTATION

8. On 6 November 1967, the Secretary-General of the United Nations addressed a note verbale to all Member States of the Organization requesting a report on the implementation of the Standard Minimum Rules for the Treatment of Prisoners. He sought information on three main aspects of the implementation: the extent to which the Standard Minimum Rules had been incorporated in national legislation; a review of the implementation of the Rules and progress achieved; and difficulties encountered. Forty-four countries replied to this inquiry and the Secretariat commissioned a special analysis of the information received.

9. A summary of the results is attached as an annex to this paper. Very briefly, the Rules had not been formally embodied into national laws, though they had influenced, or probably influenced, the regulations and practice in half the countries reporting. Five countries were already beyond the Rules in their law and practice. Implementation had depended upon the extent to which the Rules accorded with existing practice, the number of experts and specialists needed and available resources. However, some 60 per cent of the countries replying claimed that they were applying the Rules to some extent.

10. Difficulties arose from the lack of funds, lack of trained or specialist personnel, inadequate physical facilities, complication of ensuring uniformity of standards throughout a country (especially in federal systems), legal and administrative rigidities or inertia. More generally, geographical obstacles and the high level of unemployment in developing countries hampered the full implementation of the Rules.

11. It will be seen that these obstacles overlap. Geographical problems militate against uniformity. The fact that the Rules are not incorporated into local law or regulations could be related to administrative problems which hamper local action. The lack of funds means fewer specialists or trained staff, and this in turn perpetuates the other problems, since personnel may be needed to show how to make the best use of available funds in order to comply with the Rules.

12. Moreover, the problems highlighted by this inquiry were foreseeable. Many of them were projected in the working paper on this subject prepared for the meeting of the United Nations Consultative Group in Geneva in 1968 (ST/SOA/SD/CG.2/WP.3., pp. 7-12). Implementation fundamentally turns on an acceptance of the philosophy upon which the Rules are based and upon the means to apply them. These, again, are related, for when the Rules are fully accepted, it is often quite possible to give effect to them despite a shortage of funds or suitable accommodation. The provision of at least a minimum staff capable and trained to understand and apply the Rules is indispensable. However, this again presupposes agreement with the basic principles which are themselves affected by the unsettled issues in penal philosophy.

II. NEW DEVELOPMENTS IN CORRECTIONAL PRACTICE

13. The "newness" in the evolution of correctional methods and procedures in the years since the Rules were adopted reflects differences of degree rather than of kind. But whether the principles of treatment have changed or not, there can be no doubt that their practice has obviously been deeply affected by the advances in medicine, the behavioural sciences and technology, and especially by the improved educational levels of both the prisoners and those responsible for their care and rehabilitation. Furthermore, changes in the conditions and pre-occupations of the world since 1955 have influenced the public attitudes towards prisoners and the approaches to correctional practice generally. Notably, with civil or human rights receiving wider recognition and publicity, the significance of a basic principle, such as that of Rule 6 (on discrimination), has been emphasized and its universal relevance underlined.

Greater use of alternatives

14. Of all the legal sanctions, imprisonment is the most easily identified with punishment. For those administering the law it is an unfortunate necessity still associated with detrimental consequences for the prisoner and society. Thus in the past fifteen years non-institutional forms of treatment have been increasingly advocated and used, with the intention of minimizing the disruption of individual and family life which imprisonment usually entails.4/ This is not covered by the Rules simply because they were drawn up for prisoners and not for people fined, placed on probation, awarded a suspended sentence or otherwise treated. They did not deal with penal philosophy or the need for greater care in sentencing offenders. At the same time it is difficult to read the Rules without inferring that most forms of institutionalization are unfortunate necessities, with dangers which might best be avoided by not sending a person to prison at all.5/ The movement to keep as many offenders as possible out of institutions had already gathered momentum when the Rules were established. The Rules acknowledge this in tone if not in terminology.

4/ For instance, the Fourth Latin American Penal Congress (Buenos Aires, 14 to 20 May 1967) recommended measures to permit families of prisoners to live with them in special institutions, and a range of correctional measures with gradations of the deprivation of liberty, emphasizing that the prison sentence should be applied only as a last resort, and then with primary focus on the reintegration of the prisoner into society. Revista de Ciencias Penales (Santiago, Chile) vol. 2, No. 2, May to August 1967, pp. 225-234 and International Review of Criminal Policy, No. 25 (United Nations publication, Sales No.: E.68.IV.7) pp. 107-110.

5/ See Rules 8(c), 17(3), 21(1), 37, 39, 61, 64, 71, 72, 76, 77, 78, 79, 81, 82, 85. Also the advocacy of open institutions by the First United Nations Congress, which adopted the Rules.

Blending and broadening of correctional treatment

15. What is more relevant to the scope and application of the Rules is the fact that the varied measures for keeping an offender within the community have blurred the demarcation line between institutional and non-institutional treatment. Intermediate measures such as work-release, half-way houses and hostels, week-end or other types of part-time imprisonment, along with different types of open, even unguarded institutions and special facilities such as furloughs, vacations, conjugal visits, special institutions for psychopaths, alcoholics and drug addicts, have all become linked together to develop a continuum of treatments. Between imprisonment and outright release, the modern treatment measures shade into each other so that imprisonment can mean anything from strict solitary confinement to conditions almost indistinguishable (apart from legal status) from those of other citizens.

16. Furthermore, the prison confine itself has become more than a place of custody. The emphasis on a range of work opportunities, education and the use of recreation and exercise, group activities or more generally the use of the institution as a therapeutic community, has made the prison in many countries a microcosm of the external world and a vehicle to change the offender's approach towards himself, towards others and towards his material circumstances. The extension of its work beyond the walls by means of open camps, parole, half-way houses and the like, has evolved new meanings for the older concepts of imprisonment.

Individual and group approaches

17. At the time when the Rules were adopted, there was no doubting the emphasis on individual treatment. In the sense of ensuring that facilities are available for adapting the treatment to the needs of the individual offender, this is still a prime objective of modern penal philosophy. On the other hand, there has been an increasing use of group methods in the treatment of offenders. It may be held that this was envisaged by the references to groups in Rule 63 (1): but at the time this Rule was drafted, there had been nothing like the current development of group dynamics, group counselling, encounter groups, T-groups and the other extensions of interpersonal techniques. These procedures may have been known, but they had not then been tested too widely or applied in such varied circumstances. For the prisoner with special personality or emotional problems, more specialized types of therapeutic groups or milieu therapy have been evolved to reach more deeply into the underlying layers of thought and motivation.

Professional declension and diffusion

18. In this general process of reaching the prisoner, varying the conditions to his advantage and educating custodians, the established professional functions have sometimes been widened and reinterpreted. Treatment tasks which might have been thought strictly the province of a specialist have been subdivided and more widely spread, or redefined in some areas so as to bring all types of custodial and other prison personnel within the vortex of treatment activity. In other words, there is a discernible movement away from professional exclusiveness in the attempt to extend professional work and to bring the whole prison population (that is inmates and staff) into the creation of a therapeutic community. The training of personnel has been correspondingly broadened to fit them for a variety of different tasks, to make them, in fact, multi-purpose workers. Thus the older division between custodial and treatment staffs has been broken down in several countries, giving all a stake in the striving to achieve the objectives of rehabilitation.

The use of ex-offenders in rehabilitation

19. A very recent change, but one which may have a significant future, is that of using ex-offenders or prisoners themselves in the treatment of other prisoners or in helping other ex-offenders. This may take place in the institution, in other places to avoid using the prison, in probation work, or in various types of parole. There have been arrangements for prisoners' committees in institutions and other forms of internal self-government; prisoners have actively participated and been involved in the life of the institution. It has been found in some countries that such participation is valuable in the re-education of prisoners and one of the most effective means of preserving a sense of values and human dignity.6/ In one or two countries, ex-prisoners, aided by others, have formed associations partly to help others in their predicament, but also to establish a power base from which to influence authority and work for the benefit of present and past offenders. Sometimes these organizations co-operate actively with prison administrations and after-care services; but occasionally they consider that these officials represent the older attitudes to imprisonment and so they seek to dissociate themselves from government authorities or from others with established interests in prison reform. Similarly, administrators welcome or disown such groups according to whether they think that they are genuinely participating in reformative work or seeking to use this new emphasis politically.

20. Rule 28 (1) prohibits the use of prisoners in the service of the institution "in any disciplinary capacity" but it probably did not envisage the use of ex-offenders or fellow prisoners in group counselling, as guided interaction leaders etc., where they serve to establish contact with the prisoners and bring greater identification and understanding to a treatment session or to the continuing programme of assistance to prisoners. The use of publicity is another feature of prisoners' moves towards self-help and the quest for identity. Whereas ex-prisoners or any other ex-offenders have usually shunned exposure or self-advertisement in the past and have been protected against it, there are now ways, especially in developed countries, in which a prisoner may court publicity, profit from his notoriety or appeal to the public against formal proceedings. It is not easy to see how the Rules could or should come into this, but it is a new development to be taken into account.

New internal restraints

21. The use of restraints, dealt with by Rules 33 and 34, has undergone a considerable change since 1955. There are now drugs and medicines, both for treatment and to ensure discipline, which obviate some of the more directly physical restraints. Recent advances in psychopharmacology offer significant potentials in both ensuring the observation of prison regulations and promoting treatment leading to more effective rehabilitation. On the other hand, these new medications and their effects on personality and privacy of thought and the circumstances in which they should or could be used raise new issues of human rights and the scope of a prisoner's reasonable objections to the treatment he is

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6/ Provision for inmate self-government as a means of fostering socialization and promoting educational, cultural, social work and material self-help has been included in the Polish prison regulations of 7 February 1966.

undergoing. This is especially so if one also considers the implications of surgical and electronic devices for reducing the antisocial effects of certain mental or emotional disorders associated with delinquency. The potential of these drugs and techniques in helping the individual to re-adapt to society is enormous. Nevertheless, the problem (never really absent from older methods) is still open and to a great extent is accentuated since it may still be asked whether it is right to seek to influence and perhaps change behaviour against the prisoner's will or without his explicit consent. It is now more feasible than it has ever been to do so, and the question of rightness is far from academic.

22. The present Rules can be interpreted to accommodate the new forms of medical or psychological treatment. For instance, Rule 33 (c) stated that a particular "instrument" could only be used if required medically, but this injunction may not be sufficient, since the issue is far more than medical and it is a strech of meaning to interpret "instrument" as including tranquillizers and other psychotropic drugs. There is a gap between "restraint", as dealt with by the Rules, and the surgical, pharmacological or psychological treatment with which we are concerned here, a gap which interpretation alone can fill only very superficially. 7/

Community involvement

23. Another tendency which needs to be taken into account is that of providing facilities outside rather than inside the prison, even for those who have to be kept in closed institutions. Religious services, educational classes, medical and dental treatment are all occasionally provided outside the prison so as to increase community contacts and reduce the feeling of segregation; work-release may fulfil much the same function. This may appear to be contrary to the Rules which specify that such services should be provided in prisons, and discourage the establishment of smaller institutions where such facilities cannot be provided efficiently. In fact, the concern of those drafting the Rules was probably to ensure minimum provisions of this type for every person in prison. The spirit of the Rules is expressed whenever they are provided for the prisoner, whether inside or outside the wall and, indeed, it may be equally acknowledged where a prison does not have such special services inside, since by bringing outsiders into the prison to provide them, the prisoner is brought again into contact with the persons who do not belong to the closed community.

Compensation as part of treatment

24. Since the Rules were adopted, greater recognition has been given by many developed countries to the principle of compensating the victims of crime. In many of the developing areas such as Africa and Asia, compensation of this kind is an old tradition in customary justice and a flexible alternative to other types of penalty, including imprisonment.8/ In so far as it is used to avoid imprisonment, it concerns this paper only very incidentally. In so far as it means that prisoners

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7/ For certain other considerations arising in this connexion, see "Human rights and scientific and technological developments" (E/CN.4/1028/Add.2), p. 28.

8/ See Alan Milner (ed.) African Penal Systems (London, Routledge and Kegan Paul, 1969).

should be expected to work to indemnify their victims, the concept is profoundly significant, not only for the treatment of the offenders sent to prison, but also for the conditions of their treatment and the programme of rehabilitation. The idea of attaching a prisoner's earnings for other purposes is gaining ground as well. It is also felt that he should work to keep himself as he would have to do outside prison. Certain systems deduct the prisoner's maintenance from his reasonable remuneration.9/

Systems analysis, programme budgeting and quantification

25. In recent years, most government services in the developed areas of the world have been affected by the trend towards systematizing the allocations of resources and the process of decision-making. Systems analysis, cost-benefit calculations and programme budgeting are terms in increasing use; and attempts are being made to apply them to imprisonment as well as to other social defence measures. While care must be taken not to confuse the terms or to use them for purposes for which they were never intended, it may be that prediction studies, the calculation of recidivist rates for different types of offenders or different types of treatment, the follow-up studies of the costs and benefits of training or the approaches to manpower studies in social defence are all leading towards a more systematic approach. One of the expressed aims of a Special Committee on Correctional Standards set up by the United States, President's Commission on Law Enforcement and Administration of Justice, in 1965 was to select from the correctional standards already published by authoritative bodies, those that "... were susceptible to measurement".10/ At least one major effort has been made to provide a systems analysis of a correctional service.11/ The possible use as well as the limitations of these methods and the related value of computers has been the subject of several recent studies.12/

9/ The van Hoeven Clinic in Utrecht offers room, board and psycho-analytic treatment to psychopaths who pay for it from their own earnings.

10/ United States, President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections. (Washington, D.C., 1967), p. 203. The effort described in the annex to this paper aimed at the quantification of compliance with the Rules is in itself an attempt to measure correctional data.

11/ Space - General Corporation: A Study of Prevention and Control of Crime and Delinquency, Final report, PCCD-7. Prepared for the Youth and Adult Corrections Agency, State of California, El Monte, California, 1965.

12/ See, for example, Harland Hill, "Information systems for decision-making and programme evaluation in the prevention and control of crime", International Review of Criminal Policy, No. 28 (United Nations publication, Sales No.: 70.IV.9); Leslie Wilkins and Thomas Gitchoff, "Trends and projections in social control systems", Annals of American Academy of Political and Social Science (Philadelphia, Pa.) January 1969, pp. 125-136; United States, President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Science and Technology (Washington, D.C., 1967); A. Blumstein, A National Program of Research Development, Test and Evaluation on Law Enforcement and Criminal Justice (U.S. Department of Justice, Law Enforcement Administration, 1968).

26. Obviously, the qualitative aspects of correctional work are so crucial to evaluation and programming that it makes the task of quantifying and measuring much more difficult than in other types of services. Experts in the field of corrections are still by no means convinced, therefore, that the systems approach has the value that some people have given it. It may be thought that cost-benefit analysis, for example, may be more useful for exposing the assumptions upon which the present penal measures are based than for assessing the respective merits of alternative prospects for the use of resources in this field.13/ Objectives must be clarified before any concepts of evaluation can be formed. Yet the biggest problem in correctional work is just this kind of clarification of objectives. The conflict of deterrence and reformation, for example, is by no means resolved, 14/ though continuous efforts are being made in this direction.15/ Shifts in emphasis from one to another are being seen in a number of countries, and their mixing in any given case is always difficult to balance or determine. While the Rules obviously favour reformation, they do not deny other aims, nor do they contain an unequivocal statement of their own underlying philosophy, perhaps because this remains undecided among or within nations.

Effects of change

27. In general, then, the world's prison systems have been surrounded and permeated by the changes in the societies they serve. They have adapted to some of these pressures and influences;others they have withstood, if not actively resisted. In a few countries, the prisons administrators and their network of institutions have moved far from traditional practice, even occasionally beyond the Rules. In the majority, however, there have been no really outstanding transformations. Rather these countries have benefited from the last fifteen years of probing, testing and experimenting with the treatment and rehabilitation of offenders with greater efforts in depth to help particular problem groups. All this may not yet have reshaped the structure of a nation's prison system or affected it equally everywhere; but it has usually resulted in a willingness to respond more positively to creative ideas and to deplore those negative features of prison work which, for various reasons, might still be difficult to change.

13/ See, for instance, Stuart Adams, "Is correction ready for cost-benefit analysis?" Revised version of paper presented at the ninety-eighth Congress of Corrections (San Francisco, Calif., August 1968).

14/ For a discussion of some of the inherent contradictions in the aims of correctional treatment, see, Adam Krukowski,"Niektòre problemy teoretyczne polityki penitencjarnej" (Some theoretical problems of penal policy) Przeglad Penitencjarny (Warsaw), vol. 6, No. 1 (17), 1968 pp. 28-46.

15/ See, for example, G. O. W. Mueller, "Punishment, Corrections and the Law", in H. S. Perlman and T. B. Allington, (eds.) The Tasks of Penology (University of Nebraska Press, Lincoln, Nebraska, 1969), pp. 47-87; and Institute for the Study of Crime and Delinquency, Design for Change: A Programme for Correctional Management (Sacramento, California, 1968), pp. 218 ff.

III. HUMAN RIGHTS AND THE PRINCIPLES OF CORRECTION

A. The balance between rights and correction

28. "The Standard Minimum Rules for the Treatment of Prisoners have a twofold purpose: to safeguard fundamental human rights in case of imprisonment, and to promote treatment based on progressive principles of correctional practice" (ST/SOA/91, para. 90). It would be convenient if the Rules lent themselves to a neat division into those dealing with the protection of rights and those dealing with correctional principles or treatment; but the two themes are extremely difficult to separate.

29. In making the above statement, the Consultative Group went on to show that the balance between human rights and corrective treatment was delicate and needed further consideration. There is no single method of treatment which does not involve the question of human rights. For instance, Rules 8 and 67 deal with similar matters: the separation of categories and classification and the individualization of treatment. Does a prisoner then have a right to insist on being included or excluded from groups formed for correctional purposes, or is he subject to the authorities' decision on the kind of grouping which will most effectively promote his rehabilitation? This is part of the wider issue of whether a prisoner has the right to object to the kind of treatment considered best or most reformative for him or, perhaps, to withhold his labour, refuse to eat or to appeal against the consequences of his imprisonment and classification. It even extends to whether he should be free to reject the inconvenience of routine testing and regular health examinations. 16/

30. Conversely, the recognition or exercise of a person's basic rights is very important for the success of his training or rehabilitation programme. This programme depends upon his active co-operation and involvement; and his willingness to co-operate or follow guidance. Where he is treated inhumanly, broken in spirit or denied the opportunities he needs for personal fulfilment, he is less likely to benefit from his prison experience and society may have created another recidivist.

31. There could be some conflict, too, if rules are too rigidly interpreted or the balance of interests is not maintained. Thus Rule 9 protects a prisoner's right to privacy and selected company, whereas Rule 66 obliges authorities to use the forces of religion, education, vocational guidance, training, social case-work and so on with a view to helping him. Between these falls a prisoner's right to decide for himself and the question of the extent to which this may have been abrogated by his conviction. Finally, the personal investigations, psychological tests and careful documentation usually considered important for effective classification can be viewed in two ways. They can be regarded as an

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16/ It is apposite that in some countries prisoners have been used for medical research with their consent. Other countries prohibit this practice. For some of the issues arising in this connexion, see "Human rights and scientific and technological development" (E/CN.4/1028/Add.2) p. 6.

as an invasion of privacy to which the individual should be able to object, and which should be restricted by a rule. Or they may be taken as a necessary part of future research and as an essential preliminary to the improvement of treatment, to be encouraged and promoted by a rule whereby the prison services would be expected to adopt such measures as a routine.

32. In jurisprudential terms, the problem is how to sift basic human rights from mere protected interests and to distinguish both of these from administrative concessions. Little thought has yet been given to the priority and relationship in prison of these different claims and expectations. Concepts of major rights and lesser privileges are usually in a process of change anyway, so that a privilege of an earlier period may become recognized as a right which can be enforced.

33. Finally, whatever the value of the Rules as guidelines for treatment, it has been held by some that, essentially, their raison d'être and justification is the protection of the rights and interests of those who, despite modern alternatives, have to be kept in prison. Others might dispute the absolute nature of this assertion, but probably no one would wish to deny the primacy of human rights in the Rules.

B. Rights in new settings

34. The considerable shift in the direction of open and non-institutional treatment, which has taken place since the Rules were first drafted, is once again relevant. More varied conditions alter the emphasis that a protective rule needs to have. With some of the modern and open conditions of treatment, the right to object to methods in use may be more important than the rights to work or education which are usually recognized and not denied. It is, therefore, important to define and clarify the rights, privileges or obligations of prisoners, not only in relation to the increasingly diverse forms of treatment which now come under the heading of imprisonment, but in relation to the matrices of investigations, tests and analyses to which offenders are often subjected in order to determine their selection for one form of treatment or another. The distinction here between legal status and physical circumstances will be important. What rights does a person relinquish when he is convicted or adjudged an "offender"? For how long does he forgo such rights and to what extent does he regain them by good conduct or when paroled? Finally, the extent to which it would be proper for authorities to provide for impartial inquiry or even legal representation for prisoners to prosecute their complaints may well be apposite on the ground that a statement of basic rights is empty if provision is not also made for the procedure to secure recognition of the right.

35. The extent to which a prison sentence affects (or is affected by) the basic human rights may need careful clarification. In many countries the effect of a conviction and sentence on basic human rights is not defined by law and, even where it is stated legally, the interpretation or implications may not be explicit. To begin with, it has been suggested that the Rules would be strengthened by a provision in the preamble to the Rules making it clear that they are in line with the Declaration of Human Rights. It is important that a general statement of this kind should be supplemented, however, by careful studies producing guidelines on the precise effects of imprisonment on a person's fundamental prerogatives. These cannot be part of a document such as the Standard Minimum Rules, but they should be available to all who may have to apply or submit to the application of the Rules.

C. Authority and divisibility of the Rules

36. The Standard Minimum Rules are, in effect, the first international attempt to declare the limits of the loss which an offender held in prison should be expected to suffer. They seek, as already seen, to protect not only his rights but his dignity, self-respect and capacity to regain his position and prestige within society in due course. They also aim to promote more progressive treatment and to keep abreast of new developments. There is a balance implied, therefore, between the essential immutability and the intrinsic adaptability of the Rules. There has to be constancy of principle at the heart of the changing nature of the treatment methods and the conditions in which they have to be applied.

37. This problem of a balance between the basic, unchangeable core of the Rules and the variable or more pliant sections of the document might be approached more effectively if the Rules were structurally divided into the two categories, fundamental and non-fundamental. The interleaving implications of the prisoner's rights for his treatment and of his treatment for his rights will make this difficult but by no means impossible; it just means that such a division would require long-term discussions and an opportunity for exchanges between all those concerned administratively, professionally, or even technically with the formulation, interpretation or application of the Rules. The task could be facilitated, according to some proposals, by the provision of yet a third category consisting of annotations, commentaries and guidelines on the Rules for the benefit of those who need to deal with them. These would not be "Rules" but rather guides to the meaning and application of the Rules.

38. No doubt there will always be some difference of view as to where the categories in any division of the Rules should begin and end. Where to draw the line in a given case between individual rights or interests and social needs or public protection is extremely complicated, and it is unlikely to be possible to do it without dissent.

39. The Consultative Group, in discussing this subject in Geneva in 1968, found itself up against this same problem. Dealing with the question of "whether it might not be expedient to divide the Standard Minimum Rules into two parts, the first containing human rights safeguards embodied in a convention, and the second, principles which would lay down guidelines for the rehabilitation of prisoners", the Group came to no firm conclusion, reserving the question for further study and for the Congress (ST/SOA/91, para. 123). It seems clear that long-term studies by working groups authorized to attempt such a division, including a period during which the results of their studies can be criticized and commented upon by experts in this field, will be necessary to achieve the structural changes now generally thought to be desirable.

IV. LEGAL STATUS OF THE RULES

40. Acceptance by the United Nations and approval by the Economic and Social Council, however important, are still not sufficient to invest the Standard Minimum Rules with the force of international law.17/ Nevertheless, the fact of this acceptance and adoption does serve to lend an international significance to the Rules superior by far to that enjoyed by international practices and standards which have not been so endorsed. The Secretary-General's request for periodic reporting, moreover, gives to the Rules an official status enjoyed by few matters under the jurisdiction of the United Nations. Through the periodic reports, the Secretary-General wishes to be kept informed about the progress of implementation, so that he will be in a position to inform the world of the status of enlightened correctional practice and the extension of the minimum conditions agreed upon by Member States. It has been widely recognized 18/ that the exercise of such a reporting power by the Secretary-General amounts, in itself, to a powerful incentive for nations to compete in improving the circumstances of those protected by the Rules.

41. There has always been a body of opinion advocating the raising of the Rules to a higher level of authority. As guidelines, the Rules depend for their effect upon their adoption by local, that is national or municipal, law. Such incorporation of the principles can be regarded either as local law embracing and giving formal authority to precepts which otherwise are not binding and have no more than a mild ethical validity or justification, or as local law recognizing standards of a higher moral and international authority which have a binding effect.

17/ "Reservations to the Convention on Genocide (Dissent)", International Court of Justice Report, vol. 49, 1951, p. 52, quoted in Krzysztof Skubiszewski, "The General Assembly of the United Nations and its power to influence national action", American Society of International Law, 58th Proceedings, (Washington, D.C., 1964), pp. 153-162.

18/ Paul W. Gormley, "The use of public opinion and reporting devices to achieve world law: adoption of ILO practices by the United Nations", Albany Law Review, vol. 32, 1968, pp. 273-302, 288ff. For an interesting tangent, see Eli V. Debevoise, "Lessons from organizations like the International Commission of Jurists in focusing public opinion", American Society of International Law, 58th Proceedings (Washington, D.C, 1964); Gabriella R. Lande, "The changing effectiveness of General Assembly resolutions", American Society of International Law, 58th Proceedings, 1964, pp. 162-173. H. Saba, "The quasi-legislative activities of specialized agencies", 111 Recueil des Cours (Paris, 1964 I) p. 604; James Marshall, Swords and Symbols, (London, Oxford University Press, 1969) p. 220; J. Fawcett, "The global implementation of human rights: recent experience and proposals"; address delivered at the International Colloquium on the European Convention of Human Rights, Vienna (18-20 October 1965), quoted in Gormley, op.cit., p. 290; Treaty Establishing the European Coal and Steel Community, European Yearbook, vol. 1, 1955, p. 353, articles 86 and 92.

42. The African regional meeting was categorical in saying that some of the Rules should be elevated above local law. There was, according to this meeting, a readiness to accept the Rules as internationally binding precepts for local law to recognize and implement (A/CONF.43/RM.1, p. 16, para. 38).

43. The propositions considered in the Rules have, in fact, found considerable acceptance in various parts of the world and this means an acceptance in far more than principle, even if formal legal-type declarations of adherence have not always been required. Therefore, although the Rules may need some modification or adaptation to changing circumstances, they are not essentially in question either as a guide for the treatment of prisoners or as a protection of their basic rights. Nevertheless, as often stated, admitted or discovered, their implementation is uneven, and there are cases where the Rules are actually being applied but where the measures available for prisoners to assert their rights are still limited in practice.

A. Rules and conventions

44. The fact that the Rules do not have the legal status of an international convention has frequently been raised and is a matter of concern to a number of organization and countries which would prefer to see them given a more formal legal status and greater international significance. The Consultative Group felt that further consideration might be given to whether it would be both appropriate and feasible to embody certain of the Rules in a convention (ST/SOA/91, para. 123). Others, too, have stressed the importance of imparting legal as well as moral force to the guidelines.

45. Over the last two decades, more than twenty international conventions in different areas of human rights have actually been concluded within the community of nations.19/ On the regional level, there is the notable example of the European

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19/ These include the International Convention on the Elimination of all Forms of Racial Discrimination; Discrimination (Employment and Occupation) Convention; Convention against Discrimination in Education; Equal Remuneration Convention; Convention on the Prevention and Punishment of the Crime of Genocide; Slavery Convention; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; Abolition of Forced Labour Convention; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Convention on the Nationality of Married Women; Convention on the Reduction of Statelessness; Convention Relating to the Status of Stateless Persons; Convention Relating to the Status of Refugees; Convention on the International Right of Correction; Freedom of Association and International Right to Organize Convention; Right to Organize and Collective Bargaining Convention; Convention Concerning Employment Policy; Convention on the Political Rights of Women; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. In addition, there are covenants on economic, social and cultural rights and on civil and political rights; see Human Rights: A Compilation of International Instruments of the United Nations (United Nations publication, Sales No.: E.68.XIV.6).

Convention on Human Rights and Fundamental Freedoms which for the first time has made it possible for an individual, regardless of nationality, to summon before an international judicial body a sovereign State for a breach of international law, and to obtain a remedy for it. This Convention gave legal existence to a European Court of Human Rights, before which cases concerning the interpretation and application of the Convention could be brought if the State accused had already signified its acceptance of the Court's jurisdiction.20/ Recently one State has withdrawn from a regional body because of pressure brought as a result of allegations about the disregard of human rights.

46. Also at the regional level, the activities of the Inter-American Commission have led to a draft Inter-American Human Rights Convention,21/ and other inter-governmental bodies have begun to think in favour of either local legislation or local enforcement of the broader international charters like the United Nations Declaration on Human Rights.

47. It is important to observe here that, quite apart from the Rules, there is the Universal Declaration of Human Rights which applies to everyone, that is, to prisoners as well as to persons who have not been convicted. The right to life, liberty, education, work and a degree of leisure are all rights which are not always wholly (nor necessarily partially) abrogated by the commission of a crime. Logically, then it should not be necessary to spell out such basic rights separately for the benefit of any one group of persons in the population.

48. This is not the whole picture, however. It has to be remembered that not all nations have endorsed the Universal Declaration and that it, too, has its problems of implementation; and finally, that conviction followed by imprisonment is a special case involving a legal loss of personal liberty. The prisoner may not only be in danger of losing recognition of his basic rights but also of not being able to protest effectively. It is often argued, therefore, that there is a special need for a convention to protect rights in the case of prisoners, and that if the Rules eventually became a convention there need be no difficulty in adjusting them to their special purpose. Such a convention or conventions could, in fact, have optional protocols dealing with additional methods of implementation and enforcement, as does the International Covenant on Civil and Political Rights.22/

20/ For an analysis of some of the developments in this respect, see also A. Luini del Russo, "The international law of human rights: a pragmatic appraisal", William and Mary Law Review, (Williamburg, Va.) vol. 9, 1968, pp. 749-769.

21/ See D. Sandifer, "Human rights in the inter-American system", Howard Law Journal, (Washington, D.C.) vol. 11, 1965, pp. 521-522 and A. Thomas and A. J. Thomas, Jr., "The Inter-American Commission on Human Rights", South West Law Journal (Dallas, Tex.) vol. 20, 1966, pp. 282-309.

22/ General Assembly resolution 220 (XXI) of 16 December 1966. Official Records of the General Assembly, Twenty-first Session, Supplement No. 16 (A/6316), pp. 59-60. See also John Carey, "Implementing human rights convention: the Soviet view", Kentucky Law Journal (Lexington, Ky.), vol. 53, 1964, p. 130.

49. The increased number of international conventions in recent years has been matched by a concern for their endorsement and implementation on a national scale. Not all countries are prepared to go through the local legislative process even when in principle they do not object to the terms of a convention. Many of the well-established conventions on human rights have not yet been accepted by some of the States which helped to draft them. Moreover, it has been pointed out at recent United Nations meetings that not all Governments which ratified a given convention necessarily implemented it fully, and obligations undertaken were being violated.23/ It might just be possible that in some parts of the world the Rules already operate as effectively as certain types of conventions. If they are indeed widely accepted, the real question is not so much the prestige or authority of a translation into a convention, but the effect this would have on actual practice. One point of view, therefore, is that the Rules as they stand can be implemented in any country without any necessary formality, whereas the formal acceptance of a convention is sometimes technically difficult because of the need to pass through the usual formal channels of legislation, and resistance is greater. The opposite argument is that for the Rules to become a convention greater governmental activity is needed to initiate this, and to take a position on endorsement. Thus the pressure to conform to international standards is greater.

50. Itiis clear that the Rules already have considerable moral force and are beginning to acquire even greater international standing especially as they become the subject of reports to the Secretary-General, the focus of a number of different studies and the occasion for the results and findings of inquiries and studies to be submitted to an international Congress, as now. To convert the Rules into a convention or a series of conventions would certainly further enhance their international status.24/ It would have the value of changing a set of moral obligations into a set of voluntarily accepted contractual obligations. Perhaps it might lead eventually to the adoption of international sanctions for non-compliance. It is difficult to escape the conclusion that this change would serve to emphasize their importance and bring them more forcibly to the attention of administrators and government officials who might not otherwise have known of their existence, and could thereby increase pressure towards conformity and implementation.

B. The effect of status on reception

51. The issue of the status of the Rules really emerges from the need to promote their recognition and implementation as effectively as possible. Clearly, they can and have inspired better prison regulations and have also improved practice but, ultimately, the Rules are effectively implemented, as indicated already,,when they are incorporated into national or municipal law.25/ It may be expected that

23/ See"Report of the Seminar onSSpecial Problems relating to Human Rights in Developing Countries, Nicosia, Cyprus, 26 June to 9 July 1969"(ST/TAO/HR/36).

24/ E. Schwelb, Human Rights and the International Community (Chicago, Quadrangle Books, 1964).

25/ Note that the term "municipal" is used of local law or national law in accordance with international legal terminology.

this process will become more extensive with the increasing support which the Rules are receiving internationally, regionally and municipally. The underlying question which has not been answered is whether the Rules, becoming a convention and therefore more formally based in international law, will encourage or discourage this process of their reception into national law. One difficulty about seeking a solution now by trying a formal convention is that this is a step it will not be easy to retrace. There is undoubtedly a great deal of impatience in professional, academic and administrative circles at the slowness of the process by which the Rules become locally effective. Acceptance of the moral rightness of a set of principles is sometimes mocked by their complete or near complete disregard in practice. The strength of the demand for the Rules to be embodied in a convention derives largely from this impatience with the shortcomings of practice. It is argued that a convention, even if no more effective than the Rules are now, is at least the next logical step to international standards which will be binding and enforceable.

52. Another aspect of the same problem is the enforcement by national tribunals of the precepts of positive international law.26/ Municipal court enforcement of international conventions in human rights, whether for prisoners or unconvicted persons, would appear to present no insurmountable problems, but it is a very delicate procedure which has yet to be developed within the family of nations. It would certainly strengthen the movement for local adoption and enforcement to have international standards formally embodied in local laws and regulations. This process too would presumably be promoted by the Rules becoming a convention and therefore having a more accepted significance in international law. On the other hand, if the Rules are already so recognized as international standards, and if, as it appears, most nations are making bona fide attempts to live up to the standards espoused by the Rules, then they may not need to become a convention to achieve informal but effective local judicial recognition. There is a well-defined area of law which has been set up by judicial interpretation, whose scope in a given country depends largely upon precedent; but it also depends upon the individual lawyer's concept of standards. It is difficult to estimate for example the extent to which the interest and preoccupation with human rights in the past twenty years has affected conditions within countries by means of judicial interpretation.27/

26/ It was the view of some countries, during discussions in United Nations bodies concerning implementation of different human rights covenants, that measures of implementation should be founded on the obligations of States to adopt appropriate international legislative, administrative, social and other measures for the maintenance and protection of human rights (A/5411/Add.1).

27/ The history of civil rights in the United States can be cited as an interpretation of an existing constitution affected, if only very remotely, by international debate on discrimination and human rights.

53. There is, therefore, much to be said for both points of view. It seems that a convention could either help or hinder, but the weight of opinion so far appears to favour a strengthening of the international status of the Rules. No doubt the issue can be resolved only by a major policy decision; it is, among other reasons, to consider whether a move towards such a decision should be made that this subject has been placed on the Congress agenda.

V. THE RELEVANCE OF THE RULES

54. With the modern emphasis on economic, social and technological change, and with the advance in public attitudes towards offenders and their treatment, any new consideration of the Standard Minimum Rules should perhaps begin with the issue of how far a document drafted in the early fifties really applies to conditions in the world nearly twenty years later. Furthermore, membership of the United Nations itself has been increased by many newly independent States with a wide variety of customs, cultures and traditions. Undeniably, the Rules were drafted with conditions in America, Australiasia and Europe largely in mind, although they did provide room for legal, social, economic and geographical variations. To what extent, then, are these guidelines relevant to conditions in Africa, Asia and Latin America?

55. It will be seen from the replies to the inquiry by the Secretary-General that the cases in which differences of cultural background actually interfered with the implementation of the Rules were very few. The problems of implementation derived principally from a lack of resources, a shortage of trained manpower or geographical difficulties. The question of accommodation in single or communal cells and the types of bedding supplied were certainly dealt with in a cultural context, but it now seems as if even the developed industrialized nations may be reconsidering the advantages of single cells in all cases; and the poorer developing countries would, if resources permitted, be happy to experiment with both sorts of cells. It seems reasonable to suppose, then, that cultural considerations may not be such an obstacle to the Rules being universally accepted and applied as has sometimes been supposed.

56. This view has now been confirmed by the regional meetings held in 1969 and 1970 in Africa, Asia, Latin America and the Middle East, at which this subject was frankly discussed. Thus the Latin American meeting agreed that the Rules "enunciated moral principles and standards that were valid everywhere" (A/CONF.43/RM.3, p. 18, para. 70). At the Asian meeting, opinion was "unanimous that the Standard Minimum Rules were relevant and needed no major changes to make them more relevant to the varied value systems and different cultures of Asia" (A/CONF.43/RM.2, p. 23, para. 64). At the meeting held in Africa, "there was general agreement that the Rules as now drafted did have direct relevance for conditions in Africa. The examples of difficulty and complications in applying the Rules were examples not specifically African but could be paralleled in other parts of the world" (A/CONF. 43/RM.1, p. 15, para. 37).

57. Strangely enough, then, the concern about relevance was something which derived from the self-critical attitudes of the people from the countries which had been represented in the drafting of the Rules, rather than from the several cultures which had been asked to consider their adoption without having had the opportunity to influence their drafting. The experts from all parts of the world do not appear to have felt that these Rules need fundamental re-orientation to take more effective account of cultural variations.

58. This does not mean that the possibility should be ruled out completely, however. These meetings were not scientific or necessarily representative of millions of people of different views and orientations and the same is true of the study of implementation. The possibility that relevance might be an issue or might become one should always be kept in mind. What the study and the regional meetings do

imply is that for all immediate practical purposes the issue of relevance can be put aside. In any revision or modification of the Rules, the troublesome question of cultural applicability can be excluded, unless there is to be any major departure from the Rules as they are now drafted.

VI. THE SCOPE AND EXTENT OF THE RULES

59. The Consultative Group recommended that the Secretary-General should consider whether the Rules should be extended to cover correctional measures other than imprisonment and "whether it would not be advisable to draw up special rules for additional categories of prisoners not covered by the special part of the Rules" (ST/SOA/91, para. 124).

60. At the African regional meeting, held in Addis Ababa in November 1969, it was felt that a case could be made for an extension of the Rules to persons held in any kind of custody, and the Asian meeting came to much the same conclusion. But at the meeting held in Buenos Aires the view was expressed that an extension of the Rules beyond prisoners for whom they were intended might well weaken their moral force. The Latin American and Caribbean experts therefore framed the careful conclusion that: "It was considered advisable to examine the possibility of extending the Rules to categories other than those covered by Rules 4(1), particularly those detained for political reasons." 28/

61. It has also been noted that modern systems of penal treatment are merging and being increasingly drawn into a continuum of different degrees of custodial care and legal restraint, so that the definition of a prisoner becomes more attenuated. He is no longer a person necessarily behind walls or subjected to physical restraint. A person on home-leave from a prison is still legally a prisoner although he may be subject to practically none of the physical or social conditions of a prison envisaged by the Standard Minimum Rules. In fact some prisoners in half-way houses or on a system of work-release might enjoy such contacts and freedom that they can hardly be said to be in need of a great many of the detailed provisions of the Standard Minimum Rules - many of which were intended to ensure community involvement in the care and treatment of prisoners. In countries where prisoners are deliberately used to promote national development by becoming involved in large industrial or agricultural projects, it is clear that a creative spirit has been introduced of which the Rules would certainly approve, even though such broad national identifications of prisoners with development needs were barely foreseeable when the Rules were drafted.

62. It is clear, therefore, that the scope of the Rules as they now stand depends very much on the definition of a prisoner. Since circumstances have blurred the demarcation lines between the prisoner and other types of offenders, the Rules may need attention. On the one hand, the fact that a prisoner has progressively increased his contact with the community and has been brought more into social activities so as to encourage his rehabilitation, could be held to mean that he needs less protection from the Rules than hitherto; and therefore the Rules, as they stand, require no extension to those who need them less. On the other hand, there is the view that prisoners released on parole or working in the community may need special consideration.29/

28/ A/CONF.43/RM.3, p. 18, para. 71; also raised at Consultative Group Meeting, Geneva, 1968.

29/ The Fourth Latin American Penal Congress (Buenos Aires, 14-to 20 May 1967) recommended that public authorities, trade unions and private enterprises allot a certain percentage of employment opportunities to released offenders.

63. There are classes of prisoners who were not covered specifically by the special parts of the Rules or who were not singled out for particular attention; it is sometimes suggested that in modern times there are groups of people detained, or in some way under restraint, who should be covered specifically by Rules simply because they are unlikely to qualify technically as "prisoners". It seems, therefore, that there are many interrelated and overlapping considerations to a discussion of the scope of the Rules. Obviously, the general part of the Rules applies to all categories of prisoners; and untried "prisoners" are also specifically mentioned in the text. To extend the Rules to all in custody would mean either extending the term "prisoner" to cover all persons under any kind of restraint, or re-phrasing the Rules to cover all persons under any kind of restraint.30/ Without regard to whether they are technically prisoners or not.

64. Whilst it may seem legally erroneous or an unwarranted extension of the term to consider all persons under any kind of restraint as "prisoners", it may be seen from the foregoing description of treatments that in many ways the term "prisoner" can already be applied to persons under practically no restraint at all apart from their legal imprisonment. They are legally imprisoned, but in fact all but free. On the other hand there are persons held in custody for civil or health reasons who may need the protection of the Rules no less than "prisoners".

A. Extension, relevance and rights

65. To mention all the different types or groups of persons who may be under restraint - that is, those arrested but not tried, those tried but not yet convicted, those convicted but not yet sentenced and those sentenced but on various kinds of parole or under suspended sanctions - would probably make it difficult for the Rules as they now stand to have relevance in all cases. This is true even if there is no question of the Rules covering the situation of persons held involuntarily for health reasons.

66. Thus, the question of the extension of the Rules is linked in general with the issue of whether the Rules should be divided into those with general application to all who may be in any kind of custody or restraint, however technical, and those Rules which have significance only where persons are kept within the walls or within the confines of penal institutions.

67. One approach might be to use the Rules as they stand but to modify them so as to allow a general part covering all persons under restraint and more particular parts covering special forms of custody and special categories of

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30/ It should not be overlooked that to cover "all persons under any kind of restraint" might involve the inclusion of certified mental patients, persons detained involuntarily but for the protection of society in hospitals or obliged to submit to certain health restrictions. Nor is this problem disposed of by limiting the concept to all placed in restraint by the processes of law or of the courts, for there are situations in which court procedure is used as an insurance; for example, to place old people in special care when they are unable to look after themselves, or children and young persons, similarly, in the care of suitable relatives or foster parents.

treatment. This could mean simply a change of title for the Rules and a change of emphasis: it might not involve any extensive textual amendments.. In fact, it is often argued in support of this approach that these Rules were the result of long hours of work by highly qualified subcommittees which dealt at some length with every word and comma. Care is needed, therefore, before changes are introduced. These subcommittees were fully conscious of the need to have Rules which could be interpreted locally and used in a variety of circumstances, so that the various adjustments for cultural or contemporary reasons now considered necessary would be well within the flexible structure of the present document, even though it might be necessary to allow by a change of title some additions and a re-shuffling to provide for some of the changes which have taken place since the Rules were drafted, such as the range of meanings now given to the term "prisoner" and the special classes of persons held in detention or arrest.

68. The opposite view is that this minimal adjustment of the Rules is totally inadequate. We are in new times, with new attitudes and priorities, so that the document needs serious and substantial revision. It is agreed that, with the changes described already in this paper, there are many held in custody or restraint who might be denied the benefit of a set of Rules if they remain so strictly drawn. This approach favours a new look at the total penal structure, and at the criminal justice structure as a whole, with the intention of recasting and redrafting the Standard Minimum Rules in such a way that their effect is heightened and diffused over larger numbers and types of persons and conditions. It would seek to cover all who may need their protection and to ensure that the identifiable special groups receive special mention and special regulations. Sometimes the argument is carried so far as to seek these or parallel Rules for persons on probation under suspended sentences, released on bail or on recognizance, that is offenders or accused persons generally and not just the relatively small group called prisoners. It would mean corresponding rules for juveniles not technically offenders but held "in care or protection" or in special reformatories.

69. This generalization of the Rules would have the advantage of recognizing the present extension of rehabilitative work with offenders and bringing into focus the special needs of some of those who might now be denied the protection accorded to a person formally convicted. It might thereby encourage many countries to develop a more dynamic correctional apparatus which must, in the final analysis, seek to be a coherent system of alternatives ranging from non-supervisory measures such as fines and a suspended sentence, through increasing the structured community programmes, to total incarceration. Finally, a new, more relevant and more comprehensive set of Rules might encourage more flexibility in judicial and penal practice by sponsoring, at least by implication, all kinds of alternatives to the present dependence in many areas on simple custody; they could help to foster a climate in which prison reform and rehabilitation could be more meaningful.

B. Problems of extension

70. There could be disadvantages, of course. This broader and wider approach might be over-ambitious and might well further complicate the problems arising now from a set of Rules which, however widely accepted, are not yet being implemented effectively in a great many parts of the world. Change might come too soon if Rules only a generation old have not had time to be digested as principles and standards. Change now, that is before countries have accustomed themselves to the idea of world standards for prisoners, could prove self-defeating. Instead of conveying the idea of basic precepts, change too early could give the idea of impermanence and a sense of uncertainty about future expectations.

71. To specify new categories of persons in custody could be particularly limiting to implementation, since selection of this kind usually means including either a large range of different age groups for whom common standards are difficult to compile, or contentious people held for health reasons (in their own interest or for the protection of society), or the politically difficult groups. This extension into socially complex or politically sensitive areas could defer full adoption of the Rules without really preventing their circumvention, since it is not difficult for those who wish to bypass these or any other non-binding Rules to create new categories of persons under restraint who would still not qualify technically for consideration or protection;

72. Simply to extend the existing Rules to all persons in custody or under restraint of any kind - without the necessary redrafting and amendments - might make large segments of the present document inapplicable and could subject the Rules to doubt about their validity even in cases in which they were clearly meant to apply. If, therefore, recasting of the Rules on this scale were to be considered, it must be done in such a way that the basic Rules covering all persons in custody would be separated from those covering persons who were only technically prisoners or were under different legally sanctioned or officially tolerated kinds of restraint.

73. The issue is a difficult one legally, socially and politically. At the same time, it is an issue which will have to be faced sooner or later, and it may be worth while exploring the extent to which Rules could be provided which would meet most of the difficulties which have been raised here.

74. Presumably, there will be equal concern for the civil rights and interests of persons who have not been in contact with the police and the courts. Some countries have already pointed out that facilities for health protection and education in prison may be exceeding those of persons outside and one nation has suggested that food and living conditions are better than those for persons of equal level in the country generally. This might also become true of protected rights and interests. Whilst the proposition is true that persons already deprived of their liberty are far more vulnerable and need their rights emphasized because they run special risks, it is obviously both pertinent and important that any change outpacing popular support could hamper the recognition and implementation of any Rules which appear to go too far.

VII. THE MODIFICATION OF THE RULES

75. The foregoing sections introduce in various ways the more general issue of a possible modification of the Rules to meet the various circumstances, old and new, which have either emerged or become more relevant since the original draft was made.

76. The only major work of this kind published so far has been that of the Benelux Penitentiary Commission which undertook a revision of the Rules between October 1959 and September 1964. The Commission found "that only some slight amendments of the original Rules were necessary".31/ New features were introduced in connexion with discipline, moral and religious welfare, public relations, prison leave, prison labour and accommodation for untried prisoners. In raising the subject for consideration here it is acknowledged that it is not possible to deal with it adequately except by a detailed study. Something of this kind is attempted in the annex to this paper.

77. There are some general principles arising from the Rules, however, which illustrate the directions that modification might take. There are also particular Rules which show the difficulties involved in trying to be over-comprehensive in drafting guidelines of this kind.

78. Recent efforts to develop more comprehensive sets of guidelines for correctional treatment have sought to lay down at the outset the standards generally applicable to various types of correctional treatment, followed by specific guidelines for different categories, for example probation, parole, after-care institutions for juvenile and adult offenders.32/ This has led to a desire to reorganize the Standard Minimum Rules and to make them more logical.

The goals

79. A number of experts in this subject have remarked that the Rules suffer considerably from the lack of any broad, formative and decisive statement of correctional policy. They are not preceded by any unmistakable commitment as, for example, to the ideal of reformation as opposed to deterrence, protection of society etc. In fact, the conditions provided in the Rules for the use of restraints, forms of custody, and so on, seem to carry undertones of an acknowledgement, if not an approval, of deterrence. The older forms of repression in prison may be greatly alleviated by these guidelines and simple unrelieved custody reduced to a minimum. But it is not expressly outlawed by the Rules as they stand.

31/ Benelux Penitentiary Commission, "Revision of the Standard Minimum Rules for the Treatment of Prisoners", International Review of Criminal Policy, No. 25 (United Nations publication, Sales No.: E.68.IV.7), pp. 93-95. It is appreciated that Sub-Committee No. VIII of the European Committee for Crime Problems is currently working on a revision of the Rules.

32/ See for example Clarence Schrag, "The correctional system: problems and prospects", Annals of the American Academy of Political and Social Sciences, (Philadelphia, Pa.) vol. 381, January 1969, pp. 19-20. Also Fourth Latin American Penal Congress, op cit., p. 234, and United States President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Corrections (Washington, D.C., U. S. Government Printing Office, 1967), pp. 205-212.

80. Whilst the criticism has some grounding, it takes less than sufficient account of the general uncertainty and confusion, if not open conflict of ideas, which sometimes still characterizes the treatment of offenders. Perhaps no country is unequivocal in its attitude to offenders and the methods of dealing with them; some countries still adhere to older expedients for the discouragement of criminal behaviour. Public executions still do take place occasionally.

81. It would have been difficult for those who drafted the Rules to have ignored the world situation. No doubt deterrence was more widely favoured when they were sitting than it is today. That they found acceptance for a document so open and constructive is a tribute to their work. Still, the basic issue of clear objectives remains. Is it now time to seek to resolve this problem on a world scale by an unambiguous statement of policy?

The development of treatment

82. Apart from this issue of basic philosophy, the most general feature of the Rules calling for modification is the fact that they have been able to treat only in embryo the broad and developing pattern of institutional and non-institutional treatment, which has been outlined in several sections above and which has been described as a range or continuum of measures which are linked and interdependent. Clearly, consideration of changes in the Rules might mean dealing specifically with the real meaning of the term "prisoner" which has been discussed above, and providing for situations and categories either not foreseen or not adequately covered by the present Rules.

83. For example, Rule 4 shows how part I of the Rules applies to all categories of persons, criminal, civil, untried or convicted, including persons subject either to security measures or corrective measures ordered by a judge. Views will conflict as to whether or not this Rule can cover all contemporary situations. It is doubtful, anyway, whether part I with its emphasis on education, personal hygiene, clothing and bedding, food, exercise and sport, discipline and punishment and instruments of restraints, has real relevance to the circumstances of those prisoners working (and perhaps living) outside institutions.

84. Again, the relevance of some Rules may change as the types of persons held in institutions changes. As more and more offenders are dealt with by different levels of community care and guidance, the prison may become increasingly a final resort for those with whom all alternative methods have failed and who cannot be dealt with in any other way. Then the character of the prison population may be transformed. The earlier exceptions to the normal may become the normal. The institutions will lodge only the less tractable recidivists or those persons considered a danger to society and quite unreachable by more liberal measures. The question then would be to what extent the Rules with their marked concern for open reformative methods would be suitable for any group with very special problems and with whom custody might need to be a strict condition for the benefit of the community.

85. Should it ever become established that imprisonment is not suitable for any criminal offenders, and that they should be dealt with either medically, educationally or by means of other types of labour settlements, then future prison inmates might be only those who are not criminal in any of the ordinary uses of the term, who fall into the "special" categories in the Rules - perhaps only those whose freedom is regarded as a political danger.

Changes of meaning

86. Another problem arises from the shifting interpretation of terminology as time passes. What exactly is it that constitutes "cruel", "inhuman" and "degrading" punishment? No doubt cruel physical punishment was mainly in mind in 1955, but today indeterminate sentences, castration (even by consent) and head-shaving could qualify for recognition. It might be necessary for the Rules to put more emphasis on the importance of avoiding the kinds of discipline which humiliate prisoners. In two countries already, Denmark and Japan, there are moves to prohibit the use of diet reduction as a punishment and the Benelux revision prohibits collective punishment.33/

87. Probably the interpretation of medical aid in times of sickness ought to be extended to incorporate recent developments in physical and psychiatric medicine, or to ensure that any general reference to medical care includes these. Similarly, "work" may need to be strictly interpreted as "constructive employment" while the provisons for prison visitors in the present Rules might be construed (or revised if necessary) to include the publication of reports made by such visitors - especially if they are official, for example, judges or magistrates.

88. It would now appear to be appropriate that the provisions for prisoners' families should include adequate financial aid where this is necessary and can be afforded.

Group treatment

89. It has already been suggested that the Rules could be modified to take into account the modern, wider emphasis on group treatment, the need for flexibility about segregation (as by age groups, sex and criminal record) and as regards the conditions in which persons may be kept with a view to facilitating their rehabilitation. Rule 63 (1) requires treatment to be individual and the system of classifying persons in groups to be flexible. But the groups envisaged were groups of persons classified according to rehabilitative needs on the basis of their age, sex, character and record. However, this is not adequate for the rationale of group treatment, which might mix persons of different records, sexes, characters and years. It may be necessary, therefore, for any new versions of the Rules to recognize specifically such techniques as group counselling, group therapy and other methods utilizing principles of group dynamics, since these not only hold special promise for rehabilitative work, but help to circumvent some of the material and personnel shortages in prisons, and thereby to foster the future implementation of other Rules. This would also make possible a wider sharing of responsibilities with inmates of institutions - and the encouragement of inmate advisory councils.

Ex-offenders in rehabilitation

90. More specifically, a stand will have to be taken on the encouragement or discouragement of the use of ex-offenders (including ex-prisoners) in the rehabilitation of persons who have been convicted, and of prisoners in the disciplining

33/ Benelux Penitentiary Commission, op. cit., p. 93.

of each other under forms of self-government. More experiments will be necessary on this subject, but sooner or later guidelines will be required by those who are involved in decisions and are likely to be politically influenced. Until now, the great issue has been how to overcome the prisoner's separation from his natural role in society. One future problem may be how to avoid the exploitation of this role where it might lead to released offenders being used to provide a foundation for power politics by selected groups not necessarily concerned with the benefits of the prisoners.

91. On the other hand, the released offender has special problems which society may not have faced squarely. For instance, his difficulty in finding work may be by implication a loss of the right to equal treatment. Should Rules protect him and other offenders against "discrimination"? Or is it accepted that an offender forfeits the right to equal treatment when he commits an offence? It has been suggested that excluding persons with criminal records from civil service appointments or from other types of state employment is a deprivation of a common right.34/

92. To what extent would a Rule protecting prisoners in this way from this and other deprivations consequent upon their conviction amount to restriction of an employer's freedom to decide whom to engage or hire? Should the Rules therefore provide an ex-prisoner with an entitlement or social security allowance like a disabled person until such time as he can establish himself? Would the limited resources of poor countries exclude any such possibility in the foreseeable future? Would abuses be too great to be controlled? Or do developing countries have indigenous institutions for the aid and after-care of prisoners, more effective than financial grants? These are just some of the issues arising when rules for prisoners outside the confines of a prison are being considered.

Professional considerations

93. Adaptation of the Rules would also have to take account of the inter-professional and subprofessional developments in correctional work. Specific mention might be made of the need to involve all persons working within the prison community in the various tasks of encouraging personal rehabilitation. Once again, the special needs of the developing countries should be considered, since to classify the types of staff too rigidly might inhibit their use. Also the professionalization of services in the developing countries has rarely reached such a stage that an institution is fully supplied with the qualified staff which has already been specified by the existing Rules; the tasks have to be shared with auxiliaries or others capable of dealing with some of the problems at a subprofessional level.

94. The Rules have been criticized in some quarters because they do not specify the kinds of training which would serve to improve the work of prison warders,

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34/ It is unlawful in the Union of Soviet Socialist Republics to refuse anyone employment because of his social origin or previous convictions or because his parents or relatives have been convicted. See R.G. Aslanyan, "Action to ensure that Soviet citizens enjoy equal rights and opportunities", International Labour Review (Geneva), Vol. 100, No. 6, December 1969, p. 566.

rehabilitation workers, specialists and volunteers. The need for in-service training was included, however; and it was also specified that a prison should have a hierarchical structure with promotion and advancement opportunities.35/ Whilst the need for training is universal and could be outlined in more detail by the Rules, it is also likely that an emphasis on career interests with any implication of special pleading could weaken their force.

Research

95. It has been suggested that, in view of the need to know more about offenders before making broad policy decisions or committing enormous amounts of resources to law and order or the control of crime or the reform of prisoners, the Rules should include a provision for research and the collection of statistical data, however rudimentary it may have to be.

96. Obviously research is extremely important not only for the development of treatment policy but also for exposing some of the myths upon which older repressive penal systems have frequently been based. Any Rule to enjoin this kind of activity upon Governments should specify to some extent the kinds of research which would be most useful for the advancement of knowledge and the improvement of policy; with resources scarce in so many parts of the world it would be misleading to imply that research is its own justification, however remotely or indirectly it might be related to the immediate or foreseeable conditions or problems. The Rules should be able to promote the most urgently needed kinds of data-gathering and analysis and development of the most promising kinds of models for experimentation and improvement. Ideas on the most useful types of research may differ from one period to another, so that provision for a review of a research Rule would seem desirable.

97. In particular, the team engaged on the study of the replies to the Secretary-General's inquiry was convinced that more scientific use could be made of the United Nations inquiry procedure. Well-designed questionnaires to elicit the specific details needed for a better understanding of the world situation could be used. The team drew attention to the United Nations "action programme" of 1953 calling for regular reports on human rights and its effectiveness and popularity over the years. The team considered that highly effective research should be a part of the international administration of the Rules, that scientific methods should be used in the inquiry procedure and a competent agency set up to analyse the replies.

Restraints and rights

98. On restraints, it will be seen that there is a need for modification of the Rules to take account of the new methods now used therapeutically. The use of modern drugs and surgical techniques and even the application of in-depth [illegible]

35/ It may be recalled that the Rules, as originally adopted and reproduced, were followed by recommendations concerning the status, selection and training of prison personnel, and might be disseminated as such in the future.

psychological treatment may be found to invade the privacy and rights of personal integrity which are provided for, if only by implication, in the Universal Declaration of Human Rights. The importance of an offender's right to privacy was stressed by at least one reply to the Secretary-General's inquiry about implementation. Public attitudes to concessions and rights may have changed, as illustrated by the suggestion of the Benelux Penitentiary Commission on the prisoner's right to take exercise.36/

99. A prisoner is particularly vulnerable to such infringements of his personal prerogatives, and a balance may have to be struck between his need as seen by society and as seen by himself. At the same time, new knowledge and its application in these various fields is changing so rapidly that any Rule devised would have to be general enough to permit broad interpretation. Moreover, the rights might need to be balanced by qualifications to ensure that a prisoner, in return for the extended protection of his fundamental prerogatives, would be expected to make the effort required to meet the standards set by society for its non-convicted citizens.

Organization

100. Generally there is a need for a reorganization of the Rules in order to deal with overlapping and to sift principles from detail.37/ The team engaged in the study of the replies to the Secretary-General considered that the Rules could be reorganized to facilitate reporting. It was recognized that reporting on the application of the Rules would be easier if duplication and overlap were avoided by keeping together, for example, references to medical services (Rules 22-26; Rule 52; Rule 62), separation of prisoners of different types (Rule 8; Rule 67), or purposes of imprisonment (Rules 58 and 65). Guidelines could be logically related. The team further suggested that the Rules could be grouped together in order to show the particular stages a prisoner goes through from arrest to release, emphasizing his interaction with correctional personnel. The structure of the Rules depends, of course, upon the purpose for which they were written and the direction they were intended to give. There can be no doubt that a restructuring is necessary and one of the considerations to be kept in mind in any reorganization of the Rules is the need to facilitate reporting and research.

Meaning of terms

101. Finally, the wording of the Rules would now sometimes be regarded as archaic for instance by Rule 67 (a): "by reason of...bad character..." This terminology needs to be amended and the Benelux proposals actually take care of it.38/

36/ Benelux Penitentiary Commission, op. cit., p. 93.

37/ It is interesting that, when the Benelux Penitentiary Commission considered revising the Rules, it did not deal with the question of reorganization and apparently did not consider the importance of reportability.

38/ Benelux Penitentiary Commission, op. cit., p. 94.

Rehabilitation and national development

102. The present Rules seem to express reservations about certain kinds of extra-institutional work and facilities for prisoners to be involved in work of a developmental nature, for example, Rules 72 (1) and 73. This was probably not the intention, and no doubt work outside the prison could be very well incorporated into the rehabilitative programme, which is the background to the Rules as they now stand. On the other hand, it is obvious that this issue needs to be clarified in the light of modern developments, and the support of the Rules for the variety of non-institutional work and activities which are now a normal part of a progressive prison system needs to be established once and for all.

103. It might be important, in view of the modern emphasis on crime as a feature of development and upon the need to take into account criminogenic factors in planning for the future, to embody within the general part of the Rules a recognition of the value of incorporating, wherever possible, the work of prisoners into a country's efforts for national development. This is being done in many places already and it seems likely that the emphasis in dealing with crime in the future will be upon re-defining it in the light of some of the behavioural consequences of economic and social investment. This being so, the creative use of imprisonment is an important part of rehabilitating and re-establishing the prisoner as a productive member of society; it is also a vehicle for national progress and change.

104. It would therefore be appropriate for the Rules to be an outflow of the basic recognition of two things (a) that life and work in prison are not made more effective by separating them from the mainstream of national activity and development; and (b) that every inducement should be provided for a prisoner to participate in planning and effecting his own treatment and rehabilitation. In this, presumably, would be included the clear statement of goals, if it were possible to obtain the full agreement on these, which has been discussed above. If all this could be done, then the Rules would be amongst the first documents to set forth for the world an enlightened, imaginative and constructive philosophy of crime prevention and correctional treatment.

VIII. FUTURE PROSPECTS FOR THE RULES

105. From the review of the present situation outlined in this paper, it appears that the Standard Minimum Rules for the Treatment of Prisoners have already established themselves as universal guidelines. Countries have accepted them, whether or not they are in a position to implement all the provisions fully. This was a main objective of the Rules which sought, in their own words: "to set out what is generally accepted as being good principles and practice in the treatment of prisoners and the management of institutions."

106. The fundamental question remaining, therefore, is not whether the Rules are suitable and acceptable or whether their ideals and standards can be raised, but how they are to become less a statement of ideals than a description of practice. If it be thought that the Rules now set too high a standard, it must be remembered that this standard has in some respects been exceeded by a number of countries, and that although they are in advance of the levels which many countries can attain, they do set goals which seem, from all the discussions which have been held, to be generally felt to be realistic whatever the country and whatever its economic and social condition. As now written, the Rules seem to provide, therefore, a fair measure which seems attainable or capable of being attained by most countries in the world, and to this extent the Rules are fulfilling a major objective.

107. As we turn to the question of how they can become not a matter of ideals or basic minima but a description of universal procedure and practice, it must be observed that when this has been attained, that is, when all countries are practising the precepts, it will become necessary to revise the Rules with a view to providing new goals for the future. For in a very essential sense the Rules must always seek to be more than a statement of present facts or standards; of their nature they should always represent an attempt to overcome the next obstacle or series of obstacles. They fulfil their purpose best when they remain a declaration of new goals to be set as high as possible and to inspire fresh endeavours.

A. The background to the implementation of the Rules

108. Implementation of the existing Rules or a country's capacity for implementing them is a complex of many factors including not only the initial acceptance of the principles on which the Rules are based, but a willingness to interpret them fairly, and sometimes with ingenuity, where the local facilities or resources might otherwise inhibit compliance. Priorities in the order of implementation of the various Rules will depend upon the basic and most deeply felt needs of different countries and on the economic and social circumstances which prevail. They will depend, too, upon the legislative, judicial and administrative framework which provides the immediate setting within which the Rules have to be applied.

109. Where the structure of criminal justice fails to keep pace with changing needs and new conditions and therefore perpetuates obsolete legislation and a reliance on inflexible judicial and administrative systems, it may be expected to impede the implementation not merely of the prison Rules, but of any modifications which may be introduced. It may not always be a question of how to make the Rules more applicable to an existing situation, but rather how to modify the institutions and practices of the local criminal justice in such a way as to allow the principles involved in the Rules to find a more direct reflection in the treatment of

offenders. Considerable changes and improvements may be expected in this direction from the articulate pressure already being applied in a number of countries to reduce the lag between the criminal law and the changing concepts of deviance, or to bring a law previously adopted from other countries into line with indigenous tradition.

110. In areas where there is a diversity of correctional measures and a more flexible judicial approach, the now discernible movement towards the treatment of certain kinds of behaviour as a medical or social rather than legal problem is likely to have a profound feedback effect upon the Rules, supplying ideas which the Rules will be expected to embody. Consequently, areas dedply involved in this effort to reorient and adapt their systems to a rapidly changing world will soon be more than ever inclined to think in terms of Rules far more progressive than any which now exist. Other areas of the world, more exercised by the need to preserve the deeper values and traditions of an older culture, may wish to ensure that modern changes do not carry the law too far away from established ideals and values; here the Rules might well be fully acceptable as they stand, but might become less attractive if they are allowed to develop out of line with prevailing and established values.

111. It is possible, therefore, to see a problem for the Rules not dissimilar to the problem which now exists for the criminal justice system. Just as the criminal justice system has to be adjustable to accommodate changes but not to evolve beyond the fundamental sentiments of the total society, so any consideration of future Rules must bear in mind that the "progressiveness" of some parts of the world may not always be acceptable in other parts of the world, and the gap in philosophical outlook and goals will always be a factor complicating new drafts of guidelines for the treatment of offenders.

112. Another preoccupation of the coming decade, and beyond, will be the importance of ensuring not only an acceleration of economic and social development in all countries, but also an equitable distribution of the benefits of that development. The increase of interest in the human environment and the quality of life may be expected to continue. The correctional system in any country will be improved to the extent that it is included in the broader planning prospectus and brought into more direct relationship with national development. After all, a great many of the problems with which a criminal justice system is dealing and for which the Rules became necessary, derive from a nation's investments of its resources and their consequences in the economic growth and national advance of the country. It is these, for example, that increase populations, encourage urban growth and extend social mobility. The need for prisons and consequently for the Rules may have arisen from inadequate or myopic planning and development in the past. Correspondingly, the observance and improvement of the present Rules may be related more closely than is sometimes appreciated to good planning and national growth. Attention given to crime prevention in the process of economic planning, might be the best way to prevent the overcrowding of prisons or to ensure the employment opportunities necessary for rehabilitation. This will frequently be the best way to implement the Rules. Necessity can also be inventive. If prisons are overcrowded, it may be as well to look at ways of reducing the flow by means of legal interpretation or changes in statutes. This is especially true in developing countries with limited resources where it may be worthwhile asking whether a prison is needed at all in its present form; and to explore the possibilities of using offenders in a variety of ways which would simultaneously promote their own rehabilitation and benefit the country, without necessarily having to consist of treatment behind walls.

113. The developing countries are in a particularly advantageous position since they have not yet evolved too rigid a system for the treatment of offenders. They have a wealth of custom and tradition from which could be derived relatively original and certainly more effective means of solving the social defence problems which beset them. Compensation was an age-old custom in most of the developing countries, whilst for a long time it played a relatively small part in the penal sanctions of the more economically advanced and wealthy nations. Lately, however, these nations have been returning to compensation as an important part of their penal systems. The developing countries have therefore an opportunity to exploit and develop for very effective use an institution which is already indigenous, well understood and very effective.

114. A paradoxical situation which occurs - and which cannot be overlooked - is that there is evidence of large sums still being devoted to the building of expensive maximum-security institutions in most developing countries in spite of the existing lack of funds, and this is happening at a time when countries with more money are attempting to break away from the confines of a rigid prison system of this type.

115. The efficacy of a number of alternative treatment measures such as probation, compensation or the suspended sentence, has been shown to be not less than that of many types of imprisonment. More recently, there have been interesting attempts to provide for diversionary systems to deal with some types of behaviour legally forbidden but not effectively inhibited by law enforcement. Homeless alcoholics or drug victims have been "spotted" by the police or social workers, or volunteers working with the police, and offered clinic or other facilities.59/ Whilst these alternatives are not suitable for all offenders and indeed may not always meet all the requirements of justice in a given case, it is generally apparent that they could be more widely and economically used to relieve the prison system of persons whose treatment and rehabilitation can only be hampered by long segregation from the community.

116. Alternative dispositions to be taken with the prisoner awaiting trial such as release on personal recognizances, bail, binding over and related methods have in themselves given impetus to the movement towards the use of other measures than imprisonment and to the development of advanced systems of treatment with community support. Week-end imprisonment or linking institutional treatment with outside supervision have all evolved as expedients for avoiding a person suffering the worst consequences of imprisonment when it happens to be a form of treatment he does not require. In some cases, this movement has had repercussions on the legislative framework, producing changes in the law and practice, procedure or interpretation in order to accommodate new measures.

59/ See, for example, the Manhattan Bowery Project operated recently by the Criminal Justice Co-ordinating Council of New York City and Vera Institute of Justice. In the Federal Republic of Germany, there are currently attempts to use arbitration as a diversion from criminal procedures. It should be noted, however, that work along such lines has been known since the first missionary organizations established the different forms of probation.

117. This quest for more viable solutions to the problems of imprisonment and the attempt to keep as many people as possible from the experience of prison life also opens the door to more viable solutions of the problems still presented by that prison population which remains after all the other expedients have been explored. It enables greater care to be given to those who have to be kept behind walls and it fosters the individualization of their treatment, whilst at the same time permitting experimentation with a wider series of group techniques. The basic right to work is recognized and made meaningful and nationally productive as well as being a rehabilitative process. It permits the prisoner to be brought into the mainstream of national life. This reduces the cost of his maintenance and can, if necessary, be related to the compensation of the victim.

118. It should not be imagined that this suggestion of greater inventiveness and an analysis of the real meaning of penal treatment involves in all cases the discarding of obsolete facilities. For many countries this would be impossible financially. Where, however, the rehabilitative role and objective of correctional work is expressed in the basic policy and practice in prisons, it is possible that functional subdivisions and imaginative innovations can be found which would facilitate treatment. For example, what is being referred to here as milieu therapy requires no added resources but rather a new outlook and a new way of approaching the problems within a prison. Its <u>modus operandi</u> depends not on the number of personnel, but on the way in which they are trained to consider their basic task and their ability to motivate inmates to change their own circumstances, so that they do indeed become a part of what has been described as a "therapeutic community" Buildings not designed specifically for prisons have been successfully adapted to become open institutions.40/ Where labour and materials are in short supply, the community can often be mobilized to help in providing new facilities, and this is especially the case where no great stigma is attached to imprisonment.41/ This last possibility, of involving the community, has the added advantage of extending the movement towards closer union between the persons inside and outside institutions.

119. Planning for the future implementation of the Rules will require some determination of prospective prison populations based on projections which might be made on the basis of estimated future population growth, the increasing rights of offenders, the prevailing approaches to the treatment of crime and the range of sanctions which the trends in society appear to suggest. This collection of statistical data can be used for the training of staff and can sometimes form a part of the work which prisoners may do. The training of staff can also be integrated with the routine application of the Rules and the conducting of research. This suggests ample scope for experiment and versatility in attempting to achieve not only better standards in accordance with the basic Rules, but more efficient and imaginative methods of treatment.

40/ In the state of São Paulo, Brazil, for instance, a number of practical agricultural schools, which had not achieved the expected results, were converted into open institutions.

41/ J. Carlos García Basalo, "Obstacles to the implementation of the Standard Minimum Rules for the Treatment of Prisoners in Latin America", <u>International Review of Criminal Policy</u>, No. 26 (United Nations publication, Sales No.: 70.IV.1).

B. Education, publicity and information

120. Whatever moral or international pressures are invested in the Standard Minimum Rules, this paper has found it necessary to return frequently to the fact that the practical effect of the Rules depends to a great extent upon the way in which they eventually permeate national and local lawmaking, administrative regulations or correctional practice. The possibility of incorporating them into national and local law and practice depends, in turn, upon the extent to which they are publicized, propagated and understood by everyone likely to be concerned with or interested in their subject matter. This implies that they should be known and understood by a wide range of professionals and non-professionals throughout the world, from national policy-makers to correctional officers,42/ prisoners and their families and a host of interested voluntary bodies, organizations and individuals concerned with the many different aspects of penal reform. This sugests the need for an international campaign designed to disseminate the provisions of the Rules, which has not yet been undertaken on any considerable scale.

121. The further dissemination of the Standard Minimum Rules among the general public and the "special publics" implies increased resources and closer collaboration between the United Nations and its Member States. In many parts of the world, the general public remains ignorant of the existence of the Rules and even where they are known, their significance is not always appreciated. The Rules have not yet been translated into all languages and there is an obvious need for more publicity in the form of leaflets, films, radio and television programmes. Everywhere the specialist aspects of the Rules need emphasis and interpretation according to local conditions.43/

122. Attention needs to be accorded to the importance of having the Rules posted prominently in all correctional and detention facilities where this is not already being done. At least in those countries scrupulously observing the Rules there should be no embarrassment in exhibiting them; and in other countries the good intentions of the authorities would be manifested by such internal publicity. Obviously, there is a danger that such an exhibition of certain Rules which it might be difficult for the country to implement to the letter could produce a rash of appeals or complaints against existing conditions. This problem might be mitigated, however, by extra notices showing the precise status of the international rules in relation to local law and local regulations.

123. It may be noted here, for example, that there is a requirement that the Geneva Convention on prisoners of war should be posted in all prisoner-of-war camps.44/ Although the Standard Minimum Rules do not have the force of a convention between nations, posting them for prisoners to see would nevertheless be a gesture of good faith which most countries could well afford.

42/ In some countries, for instance, Finland, Poland and Yugoslavia, the Standard Minimum Rules are used as training material for correctional personnel.

43/ See discussion of the limitations of publicity in the summary prepared by United Nations Secretariat on the "Implementation of the Standard Minimum Rules", International Review of Criminal Policy, No. 26, 1969 (United Nations publication, Sales No.: 70.IV.1).

44/ Article 84 of the 1929 Convention and article 41 of the 1949 Convention.

124. Because education and propagation are the forms of implementation least offensive to traditional notions of sovereignty, they are the most likely avenues of action for the immediate future. The funds available for these projects could be increased and might appropriately be channelled through the United Nations Social Defence Trust Fund45/ since, in the view of the Secretary-General, "a purposeful and universal programme of public information is, in fact, a programme of implementation - an essential counterpart of the substantive activities of the Organization" (A/6301/Add.1).

125. It should be recognized, however, that: (a) the Secretary-General's requests for reports; (b) the placing of this item on the agenda for the meeting of the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders in Geneva, 1968; (c) the discussion of the Standard Minimum Rules at the preparatory regional meetings in Africa, Asia and Latin America in 1969; and (d) the Congress for which this paper is a preparation - are all part of a new initiative to bring the Rules into prominence and to stimulate interest in their wider application.

C. Technical assistance

126. One of the most effective ways of disseminating United Nations policy guidelines in the field of social defence, as in other fields, is through experts advising Governments under the technical co-operation programme. There has, however, been a marked decline in the level of technical assistance tendered to developing countries in the different aspects of social defence, including the area of corrections. It is startling to find that the number of United Nations social defence experts in the field dropped from nine in 1967 to only two in 1969.

127. There are many reasons for this serious decline in technical co-operation in social defence, but the main problem is not the lack of funds for technical assistance. Fundamentally, it is a question of Government priorities. It is a matter of concern that both international agencies and national Governments seem to give such a low priority in their development programmes to the specific area of social defence that either requests are not made, or if made, are given too low a priority to stand a chance of implementation. The funds and the interests are going in other directions more conspicuously developmental.

D. The issues outstanding

128. Given that the Rules now represent a commonly acceptable moral frontier for humanity in dealing with prisoners, there are still questions which this paper has discussed without attempting to resolve conclusively. The answers to these questions will largely determine the role, function and effect of the Standard Minimum Rules in the decade ahead. These are:

(a) Should the Rules remain substantially unchanged, but be adjusted slightly to meet the needs which have emerged since they were adopted? Or could this be done by studies of their interpretation only?

45/ Established by the Economic and Social Council in its resolution 1086 B (XXXIX).

(b) Should the Rules be rewritten completely to bring them into line with modern forms and variations of treatment? Do they represent, as they stand, the most effective approach to modern correctional and rehabilitative methods?

(c) Should the Rules be extended to other groups of persons in custody, or to other types of offenders under the several types of treatment or sanction apart from imprisonment?

(d) Should the Rules be in two parts, one related to human rights and the other to treatment? If these cannot be wholly separated, should there be two divisions according to emphasis, or even three, to include guidelines for the two types of Rules?

(e) Should work be concentrated upon securing the adoption and implementation of the Rules throughout the world? How should this be done? By more regular requests for reporting? By more sophisticated questionnaires? By making the Rules into a convention? By seeking endorsement of the United Nations General Assembly?

(f) Should more attention be devoted to obtaining a clearer legal status for the Rules, such as converting them into a universal declaration or a convention? Might the machinery for enforcement be improved?

(g) In what way should or can the Rules be used to promote new ideas and concepts in the treatment and rehabilitation of prisoners? For example, should they not seek to promote an approach to penal reform more consistent with national development policy in each country?

129. Some of these necessarily overlap. Answers to some depend upon the answers to others. What to do about the Rules in the future is really a question of many sides, and the aspects of a single issue rather than a string of related but independent problems have been listed for consideration here.

130. It is clear that no single congress could hope to resolve these involved problems in a few days of discussion. What is possible, however, is that this opportunity to consider the Rules internationally could set the pattern for future work on applying them better, revising them, or improving their legal status. After all, it is fifteen years since they were submitted to this kind of scrutiny and it may be another fifteen years before a comparable occasion presents itself.

ANNEX

A. Implementation

1. On 6 November 1967, the Secretary-General of the United Nations addressed an inquiry to all Member States on the implementation of the Standard Minimum Rules for the Treatment of Prisoners. The details of the inquiry were in an annex to the latter, which read as follows:

Annex to the Secretary-General's note
on implementation of the Standard Minimum Rules

Inquiry concerning the implementation of the Standard Minimum Rules for the Treatment of Prisoners.

(1) Extent to which the Standard Minimum Rules have been incorporated in national legislation

(a) Please give a list of all new laws, decrees, rules and regulations concerning the treatment of prisoners and the management of penal and correctional institutions, which have been issued within the last ten years. Indicate, wherever possible, the relevant sections which have been influenced by the appropriate Standard Minimum Rules;

(b) List any amendments, made within the last ten years, to existing laws, regulations etc., which govern the treatment of prisoners and the management of penal and correctional institutions. Indicate, wherever possible, whether the amendment was a response to a specific provision of the Rules.

(2) Over-all review of the implementation of the Rules and progress achieved

(a) The purpose of this section is to provide an assessment of the extent to which the Standard Minimum Rules are being implemented. The emphasis is on actual practice. It is suggested, therefore, that in providing this assessment, each Rule, if possible, be considered separately, and a brief answer given as to its implementation;

(b) Please give a brief general report on prevailing practices in the treatment of prisoners in your country. Compare such practices against the corresponding provisions in the Rules. Under this section, emphasis should be placed on actual practices rather than legislative provisions. For example, Rule 40 recommends: "every institution shall have a library for the use of all categories of prisoners..." This provision should be checked against the actual practice in your country;

(c) Please give a general report on the progress made in promulgating and implementing laws, regulations etc., concerning the treatment of prisoners and the management of correctional institutions within the last ten years. If necessary, indicate specific areas where notable progress has been made.

(5) Difficulties and impediments encountered

(a) Please report on any special problem or essential difficulties encountered in the implementation of the Rules or impediments which have prevented their application;

(b) Please give any information on measures taken or planned in your country for the implementation of the Rules;

(c) In this connexion, it would also be helpful to receive supplemental data on experimental or planned deviations from the Standard Minimum Rules not formalized at the legislative stage, but which might provide the basis for further discussions and perhaps refinement or modification of the Standard Minimum Rules.

2. Forty-four countries replied to this inquiry and, for the purpose of the Congress, the Secretariat commissioned a special analysis of the information received. The results of this study may be summarized as follows:

The extent to which the Standard Minimum Rules had been incorporated into national legislation

(1) Eleven countries noted the influence of the Rules in enacting their prison laws.

(2) Twelve countries noted that the Rules are taken into account in administrative procedure.

(3) Five countries noted that there was no need to act according to the Rules because their systems had already gone beyond the minimum requirements. They were now using measures which the Rules consider experimental.

(4) Three countries specifically noted that they had not amended their laws in the past ten years.

(5) The remainder usually had not based their systems on the Rules, but followed them to the extent that the Rules were consistent with their laws.

3. Five countries also noted that they had translated the Rules into their respective languages.

4. One of the best possible means of securing national compliance with the Rules without requiring international supervision is, of course, their enactment into law among Member States. At the regional preparatory meeting held in Africa in November 1969, reference was made to a case in West Africa where a prisoner's appeal against the conditions of his imprisonment, on the grounds that they did not comply with the Rules, was dismissed because these Rules were not the law of the land. The correctness of this decision is indisputable - the Rules did not have the force of local law - but the judgement underlines the fact that these Rules intended for international guidance ultimately depend for their local validity and force upon the legislative and administrative action which they inspire in the countries concerned.

5. The Standard Minimum Rules were never intended to constitute a formal document like a model penal code or a permanent encyclical to be followed without regard; the idea was to provide broad humanitarian principles as guidelines for correctional systems and, incidentally, to put forward a dynamic, continuing type of document reviewable in the light of "contemporary thought". At the same time, acceptance of such guidance usually implies internal legislation or statutory rule-making, or administrative action of a similar nature. Perhaps one of the questions for discussion now is whether the Rules should not be revised in such a way as to provide a basic document capable of being incorporated in part, if not _in toto_, into the legal or administrative system of the different countries.

Over-all review of the implementation of the Rules

6. The study sought a format for the presentation of the information from so many countries with reference to each of the ninety-four Rules. It was decided to set out the replies in the following categories:

(a) Implemented (according to response);
(b) Implemented (by reference);
(c) Partial implementation;
(d) Recognition of principle;
(e) No comment;
(f) Non-implementation;
(g) Not applicable.

(a) Implemented (according to response) indicated that the response of the Government expressly stated that this Rule was implemented. This "label" was used, for example, when a Government reported that a Rule was implemented, observed or applied, or that practice conformed to the Rule, or when it described its practice in regard to a Rule and that description basically comported with the Rule.

(b) Implemented (by reference) was used to show that in the opinion of the researchers a Rule was fully implemented by the reporting country, but that the national report had not expressly contained a statement to that effect in its response. Such inferences could be drawn from the governmental responses, and in cases where a Government did not directly state its practice in regard to a Rule, particularly after studying accompanying pamphlets, texts of law, regulations, and the like explaining its system.

(c) Partial implementation was a broad and subjective category used in three situations: first, when a Government expressly reported that it did not fully implement a Rule; second, when a Government reported that it did implement part of a Rule, but made no comment regarding another part of that same Rule; and third, when a Government's response to a Rule gave no express indication as to whether or not it was implemented, and it could only be inferred that part of the Rule was implemented, either because that was the implication of the statement or because no inference could be drawn regarding a whole Rule, but only regarding part thereof.

(d) Recognition of principle, in contrast to "partial implementation", was used when a Government's response reported (or the researcher inferred) that a Rule was not being implemented in any manner, but that it would like to be able to do so. This category was used, for example, when a Government reported (or it was

inferred) that its prisons were overcrowded and that it could not accommodate each prisoner in his own cell at night, but that it was planning or building more prison accommodation to correct this situation.

(e) No comment was used when no statement could be found in a Government's report which related to the Rule.

(f) Non-implementation was used when a Government expressly reported (or it was inferred) that it consciously or intentionally did not implement a Rule.

(g) Not applicable was used to indicate that the reporting Government did not believe that a Rule was applicable to it. This standard was used (for example) for Rule 94 if a Government reported that it had neither imprisonment for debt nor civil prisoners.

7. The categories of the responses suffer from two problems of invalidity. First, the categorizations were devised by the researchers, not by the Governments replying. Consequently, to obtain validity in this respect, governments should in any future inquiries be permitted to verify the categorizations used. Second, this study had no way of allowing for cultural variations in the implementation of the Standard Minimum Rules. What is deemed suitable treatment of prisoners in one culture may be totally unacceptable in another. Thus, if the culture of the country considers isolation from others as one of the most cruel and inhumane punishments it could impose, there is at present no way of comparing the extent of its implementation of the Rules with another country which considers it ideal to accommodate all its prisoners individually in their own cells.

8. Using these categories and showing both the frequencies with which they occurred in relation to the ninety-four Rules, the following picture emerged of the situation in the sample of countries considered:

Summary of frequency of responses

9. Total number of responses: 5,487

	Responses	Frequency	Percentage
(a)	Implemented (according to response)	3321	60.52
(b)	Implemented (by inference)	222	4.05
(c)	Partial implementation	533	9.71
(d)	Recognition of principle	142	2.58
(e)	No comment	1211	22.07
(f)	Non-implementation	33	0.60
(g)	Not applicable	25	0.46

10. A number of questions can be raised concerning the representativeness of the sample and reliability and validity of the results obtained. Obviously, the sample was biased in the sense that only forty-four countries replied. It might be argued that it was primarily the countries implementing the Rules in a lesser or greater degree which were interested in sending a reply. Furthermore, there is the question of the extent to which the replies reflect actual practice or, perhaps, rather the opinions and wishes of the respondents. It is also difficult to determine the range of variations in the application of the Rules in particular

countries, especially those with a federal system and/or considerable local administrative autonomy, and in different types of institutions. Limitations of time and those inherent in the procedure have also not permitted any thorough socio-economic evaluation of the sample. For example, it would have been valuable to have tried to show the levels of economic and social development in the countries responding and in those failing to respond; and to have studied the replies against such a thematic background of the levels of growth or development. a/

B. Detailed observations on the Rules

11. Rule 6 Discrimination is not practised in most of the countries, although many of the prison regulations acknowledge that treatment should be individualized. One country referred to the abolition of caste divisions in prison. Religious beliefs and moral precepts are generally respected.

12. Rule 7 Most countries have registers as shown above. Several countries record the earliest date of release with remission as well as listing punishments and rewards.

13. Rule 8 Efforts are made to provide segregation according to age, sex, criminal record and the legal reason for detention in prison, but overcrowding and unavailable provisions for accommodation still greatly interfere with this. A partial solution, allowing prisoners who consent to be placed with carefully selected inmates from other categories (for example, young persons with adult first offenders), was suggested by two European countries and one African country. Inmates are sometimes allowed to associate for therapy sessions. Several countries agree that alcoholics, addicted persons and the mentally abnormal should not be dealt with in prisons but elsewhere and perhaps by civil rather than criminal procedure. Ten countries reported separate reformatory or Borstal laws; two industrialized countries reported that they had community child welfare procedures for young people rather than juvenile courts.

14. Rules 9-14 At least seventeen countries noted that their prisons are antiquated, unsatisfactorily designed and below the minimum acceptable standard of accommodation. Even newly-built prisons often do not have closed toilet facilities or sufficient provisions for privacy. There was a clear division between countries preferring individual cell punishment and those having communal cells. Several of the Asian countries specifically mentioned that dormitories are more suited to the Asian prisoner. Dormitories in one European country are subdivided into alcoves, each having a small locker to increase privacy. In another European country, communal cells may have a common living room, while yet another has been

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a/ An independent pilot study of the implementation of the Standard Minimum Rules conducted by the International Prisoners' Aid Association, has attempted a categorization of the levels of development of the countries included in the sample of that study. See International Review of Criminal Policy, No. 26. (United Nations publication, Sales No.: E.70.IV.1). It was recognized, however, that, at best, such categorization is approximate, subjective and based on inadequate data. It could not reflect the variations, overlap and complexities involved. Furthermore, it has been said that in the area of criminal behaviour and its treatment no country is really "developed."

successful in placing two inmates in one cell. A country which tolerates homosexual relations more than most other nations will not place a known homosexual with a non-homosexual.

15. Rule 17 (1) One country noted that its institutional clothing does not differ from street attire; another distinguishes prisoners by differently coloured clothing; some Asian countries reported the provision of both work and leisure outfits.

16. Rules 20 and 21 These Rules evoked the comment from one country, which could probably be echoed by several others, that its provision of food for prisoners is more wholesome than that which free persons of low income ordinarily obtain. Another country said that its recreational facilities for prisoners were comparable with those of some locally exclusive clubs. This poses the whole problem of less eligibility in many of the developing, and perhaps some of the developed countries that the basic necessities of life are supplied at a higher level to prisoners than to many poor people outside. The reply has always been, of course, that it is impossible to seek standards lower than the worst outside and that it is the deprivation of freedom which is the punishment, not the conditions of living. In connexion with Rule 21 (1) on the facilities for suitable exercise, several countries noted that confinement sometimes deprives prisoners of their right to exercise.

17. Rule 23 (2) Cultural variation was most obvious in the responses to this question. Some countries allow pregnant women to have their sentences postponed. Others restrict to a period (varying from six months to seven years) the time from birth that children can remain with their imprisoned mothers. One country in Europe does not allow women to take children to prison with them, while in one African country it is contrary to custom to remove a young child from its mother.

18. Rule 25 (1) The replies showed that this was perhaps the least effectively implemented Rule. It was only partially implemented in most countries because the present level of medical services is quite low not only for prisoners but also for entire populations. However, the spirit of the Rules is implemented by sick prisoners being seen by a doctor, as "necessary" or "regularly", even if this sometimes means only in emergencies.

19. Rule 28 (2) In implementing this Rule on the desirability of systems of self-government, a number of States reported on the use of inmate advisory councils.

20. Rule 29 (c) In response to this Rule, two countries recognized disciplinary councils composed in part of the prisoners themselves.

21. Rule 30 While this Rule was generally complied with, it seems that in emergencies prisoners may be kept in disciplinary quarters awaiting decisions on their offences.

22. Rule 31 This Rule opposes corporal punishment and the use of dark cells for punishment. Four countries reported that corporal punishment is still used, and three noted the existence of dark cells. However, most of the countries have abandoned these methods entirely; and even the non-observing countries usually note that this kind of punishment is only rarely used.

23. Rule 32 Five countries reported that they no longer allow a reduction of diet as a sanction.

24. Rule 33 Contrary to Rule 33, several countries still use irons on prisoners. It seems that prison laws or regulations often do not distinguish between handcuffs and the other more restrictive types of fetters. It might be noted in passing that if up-dating of this particular Rule were being considered, it might be appropriate to consider the recent use of chemical restraints and to decide whether the use of drugs or tear-gas to tranquillize or prevent disturbances should be under the supervision of a medical officer.

25. Rule 36 In accordance with the intention of, but going beyond Rule 36, several Scandinavian countries allow uncensored letters to be mailed to ombudsmen. In other parts of the world, however, the execution of punishment is not suspended by a complaint and collective petitions may be prohibited entirely.

26. Rule 37 Letters and visits are usually regulated according to the stage of imprisonment and usually vary from once a month to twice a week. The spirit of the Rules would require a minimum of at least one letter and one visit per month. Postage should be granted to prisoners without any funds. Some of the Scandinavian countries reported that they had experimented with not censoring the prisoners' mail but other countries still restrict letters in a foreign language. Several countries still prohibit newspapers in prison, which is contrary to Rule 39.

27. Rule 39 Some countries have initiated a system of voluntary visitors who advise prisoners or give lectures in varied subjects. A potential source of volunteers exists in the universities. Private organizations and citizens' groups can also help to lessen the isolation of the prisoner from the community.

28. Rule 40 An interesting development of the situation envisaged by Rule 40 (which concerns libraries and books) is that the Scandinavian countries have integrated their prison libraries into the city systems, so that only a small reference library remains in the prison. Book exchanges and mobile library buses serve institutions in some African and Asian areas.

29. Rule 43 Regarding possessions that prisoners may retain, several Asian and European countries allow prisoners to keep their wedding rings and family portraits.

30. Rule 44 While this Rule, dealing with emergency leave, is generally respected, several countries indicated that such emergency leave appears to be still more of a concession than a right.

31. Rule 47 More than twenty countries, mainly in Europe and Latin America, have created their own training schools on either a central or regional level. Some African countries reported that numbers of personnel were sent abroad for training. In Asia there have been courses offered at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, as well as bursaries for training in America, Australia and Europe. In two countries, there exist journals which contain translations of major articles about corrections. In one Scandinavian country, the Standard Minimum Rules themselves are distributed to prison officials and are used to train new personnel. Several Latin American countries encourage officials to recommend solutions of the problems of implementing prison regulations.

32. Rule 49 At least twenty countries specifically noted that they required a larger staff than presently available. Some countries have suggested training custodial staff to take the place of specialists. One Scandinavian country has appointed a special officer to co-ordinate the activities of specialized staff in three selected institutions.

33. Rule 55 More than eight of the reporting countries (mainly European and Latin American) noted some form of judicial inspection of correctional institutions (as recommended by this Rule). In several of these the judge supervises the entire treatment process and must approve of every change in the prisoner's régime, including rewards or punishments. In addition, several countries have some type of department or committee that suggests amendments to the prison laws in order to modernize their rules and help implement the laws.

34. Rule 60 The problem of sentencing affects the implementation of the rehabilitative model. The law may mandate either a long or short term without regard to the individual needs of the prisoner. Several countries have established indeterminate sentences with the proper authority having discretion to reward prisoners according to the actual stage of their progress. In order to comply with this Rule, short-term sentences were being avoided by alternatives such as the week-end sentence or deferred sentences combined with community service or non-residential treatment, according to reports from North America, Oceania and Scandinavia. Several countries reported experiments with vacations for selected long-term prisoners, who are allowed to stay with their families under conditions as closely resembling normal as possible. In some countries prisoners are allowed to marry while in prison and to interrupt their sentence. In more than twenty of the countries reporting, parole is granted with conditional release being required by law or at the discretion of the penal administrator. Often such parolees are supervised by the police because there are not enough social workers. It should be noted here that probation, imprisonment and parole imposed in any one of the Scandinavian countries can be served in any of the other countries of this area, due to agreements between themselves. Furloughs (home release) for periods varying from one day to seven weeks, and release for church attendance or study, are permitted in fourteen of the reporting countries.

35. Several countries conduct research into criminal behaviour in order to suggest possible rehabilitative measures, discover causes of criminality and help plan new facilities. Statistical information is often difficult to collect in federal systems which note lower standards on the regional level than those followed by the central government. One Latin American prison statute recommends that regional seminars and co-ordination between States be encouraged.

36. Rule 61 This Rule includes the protection of prisoners' civil rights. Several countries have recently recognized the deleterious effects of the collateral consequences of imprisonment on rehabilitation. The largest problem in this area is the prohibition of ex-prisoners from certain sorts of employment. A few countries also allow inmates to have legal services in prison.

37. In the context of Rule 61, several countries said that they made extensive use of community resources to supplement prison services. In fact, following Rule 63 (2), more than twenty countries had initiated open or semi-open institutions.

Some of these are devoted to farming or forestry, while others operate as training camps. Even those governments which do not have such institutions at present reported that they intended to develop them as soon as national budgets permit.

38. Rule 63 (4) A few countries in Africa and Scandinavia have reported that communication is often difficult between widely scattered prisons. Geographical problems such as these in large countries result in having small prisons in remote areas.

39. Rule 66 It seems that this Rule is widely observed since group therapy and milieu (environmental) therapy are fully accredited procedures in several of the reporting countries. Individual dossiers vary greatly, however. Adverse public opinion often prevents modern treatment and classification schemes being fully carried out. In two countries, prison guards are still part of the military or para-military organization. Thirteen countries reported that they either have separate institutions or a treatment board in each institution to determine the treatment of incoming prisoners. Offenders are divided on the basis of security risk, as well as by such factors as seriousness of crime, recidivism, medical and mental history, background, work and education. Several countries in Asia and Europe recognize that basic privileges granted to a prisoner should not be subject to withdrawal as part of the treatment process.

40. Work in prison in most of the reporting countries signifies constructive employment and goes beyond mere maintenance by the prisoner of his cell.

41. Rule 71 (2) One Scandinavian country observed that when establishing new prisons a factory is built first and the institution later. Two countries recognize by law the right of all prisoners to work. One country in Africa has increased its revenue from prison work 300 per cent over the past five years; and it also noted a ready demand for skilled prison workers upon their release.

42. Rule 73 (2) Work release is permitted in at least ten of the reporting countries. One difficulty is that the job is often temporary, since the prison is not near the home of the offender.

43. Rule 76 (1) With respect to this Rule, several countries in Eruope and Latin America maintain funds to indemnify the victims of crime. Usually such funds are financed from the earnings of prisoners working in the course of their sentences. This procedure seems to be getting more popular. Remuneration is granted to prisoners in many countries, but the scale of payment varies greatly. Payment of prisoners should not be considered as a revocable gratuity.

44. Rule 77 Most countries are trying to educate prisoners in some way. The use of specialized techniques, such as teaching machines and seminars sponsored by university students, are encouraged in several areas. One country has a study centre for twenty intellectually gifted prisoners and is also experimenting with combining correspondence study with periodic classroom instruction. Most encourage correspondence courses. The age up to which education is compulsory varies and is often directly related to a country's ability to employ institutional teachers. One Asian country noted that the high percentage of its illiteracy in its multiracial, multilingual society makes formal education impossible, and, instead, the institutions concentrate upon ethics, social training and language courses.

45. Rule 77 (2) Only one country reported that diplomas granted in prison mention the fact that the student was an inmate. In general, the fact of imprisonment should not be noted, so that an ex-prisoner will not face discrimination when required to present his degree to an employer.

46. Rule 79 The reports of countries to the Secretary-General varied concerning the degree of flexibility in sustaining family relationships. Only one country actually forbids the placing of offenders far from home. All permit letters and visits of varied duration and frequent furloughs or home-leaves, but only a few permit conjugal visits. Many countries permit prisoners to send home part of their wages.

47. Rule 81 After-care seems to be novel in many countries and provisions are very uneven. Several countries have publicly and privately owned hostels, half-way houses and residential homes for released prisoners, and many provide money and clothing to prisoners on release. One country reported that it has a pre-release orientation programme, in addition to notifying prisoners of places where they can receive aid upon release. Many countries employ social workers to help prisoners after release. Compulsory after-care is distinguished from voluntary after-care in a few countries. One Scandinavian country operates labour camps for released prisoners who have neither lodging nor employment, while one Asian country has an open penal colony which acts as a permanent land settlement for selected released prisoners and their families.

48. Rule 82 (1) Countries appear to have the greatest difficulty in implementing this Rule. As already shown, this standard of care would often exceed that psssible for large sections of the total population of a country, and often psychiatrists are available rarely or only for emergency cases. There are usually facilities, however, for a prisoner's transfer to public institutions, where such treatment as is required can be obtained. Industrialized countries have sometimes been able to make special psychiatric services available to prisons for the treatment of abnormal or emotionally disturbed offenders.

49. Rule 82 (2) Most countries have to accept alcoholics and drug addicts within the general prison population, but two countries have experimented with the practice of treating alcoholics and drug addicts as sick persons rather than as criminals. Charges may be reduced to civil offences and treatment is either in a hospital or special correctional facility.

50. Rule 86 (3) The situation revealed on the length of time that untried prisoners are kept before trial is important for this study. It can sometimes be quite long - one Latin American country has a waiting period of two years. The problem is apparently acute in Latin America, though it is also reported in Africa and Asia. Some countries allow the time spent in prison before trial to be deducted from the prison sentence, but it appears that facilities for untried prisoners are often overcrowded, so that both work and education are restricted. Even segregation from persons undergoing sentence is not always possible. Some partial solutions have included allowing untried prisoners to be kept with other untried or tried prisoners only if they consent in writing.

51. Rule 94 Several countries have abolished civil imprisonment, and many others treat civil prisoners in the same type of regime as untried prisoners. In general this is an unworkable category and may encourage countries to retain civil imprisonment because of its apparent acceptability in the Rules.

C. Structural reorganization of the rules to facilitate reporting

52. While the implementation of the Standard Minimum Rules was being evaluated, the lack of correlation between the various countries' reports was noted. The existing structure of the Rules may unintentionally lead to confusion and incoherent responses. To improve the situation, it is suggested that consideration be given to the possibility of reorganizing the Rules specifically for purposes of aiding reportability. Short of revision, a differently organized questionnaire might be developed so as to aid the task of response analysis. In such a reorganization, whether of the Rules or of the questionnaire, the experience of this study, as well as contemporary knowledge in the field of sociology, should be drawn upon so that future researchers will be better able to evaluate implementation reports.

53. In particular, the following matters warrant attention: the location or sequence of the Rules, in their present form, is potentially capable of improvement. There is a certain amount of duplication and unnecessary overlap, thus increasing the possibility of confusion, as well as the difficulty of reporting.

54. Alternatively, the Rules could be organized, in terms of the areas of current correctional trends, in line with the organization of the Secretariat paper. Such a reorganization would tighten the structure of the Rules while helping with their reporting.

55. Another possible way of restructuring the Standard Minimum Rules involves dividing them into three categories:

(a) The first basic category would contain principles of universal application, in the nature of constitutional standards;

(b) The second category would consist of the Rules of statutory nature. This would comprise the bulk of the Rules;

(c) The Advisory Committee of Experts considered the feasibility of putting into a third category all Rules of merely local or regional application which would require a cultutral sliding scale for their applicability. The Committee did not find it expedient or necessary to recommend such a division firmly, although its judgement was not regarded as final. b/ As regards the third type of Rules, it has been suggested that a number of experts in the field be appointed, and assigned one or several Rules for which they would write commentaries, or annotations, in which local practices and deviations would be referred to, and the feasibility of recognizing cultural differences discussed. Such a commentary or annotation would be in the nature of the usual annotations appended customarily by national legislators, and sometimes by annotators, to statutory Rules in bodies of national law. The annotations would not be regarded as precedents with binding effects, but merely as guidelines. Their significance, however, should

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b/ "Report of the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders, Rome, 24 to 30 June 1969" (E/CN.5/443*).

not be underestimated; through them it might be possible to give a more definite meaning to the various Standard Minimum Rules, and particularly to guide the personnel responsible for local enforcement in accordance with cultural, regional and geographical differences.

56. At the same time, such annotations could be useful in pointing to the need for differentiation of practices in the context of national development, and in providing the elasticity and flexibility of uniform implementation resting on the basis of human equality. Behavioural and social scientists are only now beginning to investigate variations in the concepts of norms of compliance and deviance due to cultural and developmental differences. It is therefore necessary that experts with the highest qualifications should be assigned the difficult task of drafting the international, cross-cultural annotations and guidelines, if the decision to do so is made at this time.

This archiving project is a collaborative effort between United Nations Office on Drugs and Crime and American Society of Criminology, Division of International Criminology. Any comments or questions should be directed to Cindy J. Smith at CJSmithphd@comcast.net or Emil Wandzilak at emil.wandzilak@unodc.org.