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SIXTH UNITED NATIONS CONGRESS ON THE
PREVENTION OF CRIME AND THE TREATMENT
OF OFFENDERS
Sydney, 25 August-5 September 1980

REPORT ON THE EUROPEAN REGIONAL PREPARATORY
MEETING ON THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS

Note by the Secretary-General

The Secretary-General circulates herewith the report on the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders which was held at Bonn, Federal Republic of Germany, from 10 to 14 October 1977. The report is circulated to provide participants at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders with a full account of the proceedings of that preparatory meeting.

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INTRODUCTION

1. The European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders was the first of a series of regional meetings convened to discuss the provisional agenda and make appropriate recommendations concerning the preparations for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Sydney, Australia, from 25 August to 5 September 1980, in pursuance of General Assembly resolution 415 (V). As its agenda it adopted the list of five topics that were proposed in the discussion guide drawn up by the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Secretariat; 1/ the five topics were based on six topics chosen for the Congress by the Committee on Crime Prevention and Control at its fourth session, held at Headquarters from 21 June to 2 July 1976. 2/
2. The Preparatory Meeting was held at Bonn, Federal Republic of Germany, from 10 to 14 October 1977. It was attended by representatives of 29 countries - the Eastern European socialist countries as well as the countries of Western Europe plus Australia, Canada and the United States of America. The Meeting was also attended by observers from the Holy See and the host countries for future regional meetings, Costa Rica and the Philippines, as well as from intergovernmental and non-governmental organizations. Mr. Wilhelm Schneider, Ministerial Director in the Ministry of Justice of the Federal Republic of Germany, was elected Chairman of the Meeting. Dr. Wojciech Michalski, Director of the Institute of Judicial Research, Warsaw, Poland, and Professor Jean Dupréel, Secretary-General of the Ministry of Justice of Belgium, were elected Vice-Chairmen, and Mr. John B. Holliday, Under-Secretary, Department of Police and Services, New South Wales, Sydney, Australia, was elected Rapporteur.
3. His Excellency Dr. Hans-Jochen Vogel, Minister of Justice of the Federal Republic of Germany, in his opening statement, emphasized that crime was constantly taking on new shapes. The attitudes to criminal behaviour were also changing, according to the different contexts in which crime was viewed and the different conclusions drawn from practical experience.
4. The Minister noted that in the international approach to problems of crime, the United Nations assumed a particularly important role, creating a forum in which fruitful discussions were conducted and from which practical conclusions were drawn.
5. In this context, the quinquennial United Nations Congresses on the Prevention of Crime and the Treatment of Offenders took on particular importance. The topics planned for the 1980 Congress dealt with present-day problems with which policy makers, administrators and scientists of many countries were concerned. It was to be expected that the Bonn discussions would serve as a useful background for a further exchange of views at Sydney in 1980, which would lead, in turn, to conclusions and recommendations on how to cope more effectively with the threat and challenge of crime.

1/ See A/CONF.87/RM.1.

2/ See E/CN.5/536, chap. V, sect. H.

DISCUSSION OF THE TOPICS

I. Crime trends and crime prevention strategies

6. In commenting on the scope of the first topic, "Crime trends and crime prevention strategies", a number of participants expressed their agreement with the range of the problem encompassed in the title. The discussion guide made it clear that the topic comprised the question of the assessment of crime and of strategies for crime prevention and control, as well as a description of the situation in Member States, for the purpose of identifying successful models for such strategies.

7. The hope was expressed that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders would not merely repeat what had already been discussed at the Fifth United Nations Congress, namely, the question of new or changing forms of criminality. While it was desirable to have the topics of the Sixth Congress flow from the topics of the Fifth Congress, it was important to place the emphasis this time on crime prevention strategies. In particular, it would be desirable to obtain reliable information on the work in progress and its effects in order to achieve effective and humane crime control and to derive from it useful indications for future action. Thus, the Congress should focus on innovative strategies and measures as well as on ways and means of determining and evaluating their success.

8. Some participants consequently suggested that, in order to focus on topic I as well as to delimit its ambitious scope, the title should be changed. Different suggestions were made, the common element of which was the focus on "Effective strategies for crime prevention and control". This would make possible a description of the crime situation as a background for the crime prevention and control strategies of Member States as well as an analysis of methods which were applied in the existing situation. On this basis, planning methods and the impact of the activities of agencies could be discussed. Among the various crime prevention and control strategies, it was important to refer to the traditional sectors of the criminal justice system such as law enforcement agencies, the judiciary and correctional services as well as to broadly based activities involving cross-sectoral governmental and popular crime prevention efforts.

9. It was recognized that crime prevention was primarily a national task and that the experience of all nations should be commonly known, with full awareness of the cultural, economic and social differences that existed.

10. The Meeting considered the crime situation in countries with different socio-economic systems. It was agreed that crime was a complex phenomenon. Many participants were of the opinion that crime was dependent upon social conditions and, therefore, was a social phenomenon. Some delegates expressed the belief that crime was the product of certain circumstances and could be prevented by influencing those circumstances.

11. It was stated that society in many European countries had undergone considerable changes in recent years which substantially affected the crime

situation. Old standards and values had been replaced by new ones at theretofore unknown speeds, and not everyone could cope with and comprehend the new values. Industrialization, urbanization and their ethical-ideological concomitants had altered the nature and role of the family and of women in particular, of the school, of the place and type of employment and of human relations. Inconsistencies often arose between the new and the old, between traditional and progressive ideals and between basic needs and demands that it was impossible to meet. These contradictions had a temporary negative effect on some social strata as well as on individuals and sometimes gave rise to crime and other deviant behaviour.

12. Many socialist countries reported that the situation with respect to criminality in their respective countries had improved in recent years as a result of balanced political, economic and social conditions, which had favourable consequences for public order, public security and the observance of the principle of legality. The value of education and the involvement of the community in crime prevention was emphasized.

13. Some countries were concerned about rising rates for property crime, which was related to increased material wealth, including thefts, burglaries, robberies and white-collar crimes. Moreover, increases in criminality related to motorized traffic, crimes against the environment, criminality associated with drug abuse, and terrorist acts were mentioned particularly, as were increases in crime due to migration from rural areas to towns which afforded greater anonymity to offenders.

14. There was consensus that, when aiming at more effective prevention of crime, it was necessary to consider as one of the factors the difficulty of compiling comprehensive, reliable and comparable statistics and social indicators at the national and international levels. To a large extent statistics of known crime were a reflection of the crime control system and, therefore, were not meaningful without data on the size and effectiveness of the system of control, especially the police. Moreover, figures for known crime were limited, since many offences were never reported. It was, therefore, appropriate to complement crime statistics with other sources of information, including victimization surveys which could provide a more precise understanding of the harm caused by crime. Studies of public opinion, especially regarding the fear of crime, were mentioned in this regard as necessary to the construction of a complete data base. It was suggested also that the classification systems used in various countries and the improvements required within those systems constituted a useful area for special study.

15. A basic consensus appeared to exist that the analysis of crime prevention could be undertaken on several conceptual levels. At a general level it was important to consider the social structure which might decrease criminogenic tendencies within that society for each of its members. At a specific level it was important to consider appropriate techniques for reducing criminal activity in clearly defined areas. All countries were interested in both levels, but participants emphasized various points along this continuum from the very general to the very specific.

16. At the most general level, while there was agreement that macro changes in social organization affected the extent and forms of criminality, the experiences

of countries differed as to the particular way in which this became manifest. In some countries increased economic prosperity had apparently been associated with increased property crime, but a universal pattern was hard to find. Crimes of violence against the person appeared to have diminished in some societies which had experienced social stability after a period of upheaval. It was agreed that the precise measurement of such changes was very difficult because of the number of other factors possibly affecting the situation.

17. At a more specific level, there was much support for efforts towards the modernization of criminal justice agencies and legal procedures. The improved and expeditious handling of criminal cases, within the context of the maintenance of the legal guarantees of human rights according to the spirit of United Nations covenants and other instruments, would assist in this regard. For instance, decriminalizing minor acts instead of treating them as offences would diminish the conceivably adverse effects which the criminal process entailed in many cases. This might require, then, a greater emphasis on the incorporation of crime prevention policies into the broader social system and the use of social and educational agencies as appropriate channels for the reinforcement of truly social and anti-criminal values.

18. In this context the importance of developing community resources was noted. It was certain that rejection of the offender by society was a significant cause of recidivism and that support of recently convicted or released offenders or persons at risk was critically important. The involvement of much wider segments of the community in assisting with the socialization of offenders would undoubtedly become a major point of growth in the future.

19. At the most specific level, the reduction of crime through the reduction of opportunities for the perpetration of crime received much emphasis. The role of the police was seen as crucial in this regard, and the development of other kinds of personnel was seen as important both in sensitizing the public and public authorities and in decreasing the perceived likelihood of profit to the potential criminal.

20. The opinion was expressed that no universal recommendation was possible, primarily because perceptions of crime and of the appropriate reaction to it depended mainly upon the society and culture in which it occurred. Within that perspective, some observations seemed to be particularly pertinent. First, the planning of appropriate activities and projects, although difficult, was very important and should be continued, as advocated by previous United Nations congresses. In order to draw together developments to assist in more effective implementation at a practical level, a case-study approach was suggested so that tangible examples of techniques could be documented and assessed. The areas where progress was most likely were those involving serious offences, where problems of definition and reporting were less severe. It was suggested that minor offences, such as traffic violations, should be decriminalized or at least dealt with in a simplified manner, and that there should be agreement on what was to be regarded as a crime. Public perceptions and participation, as mentioned, had to be taken into account; and this, in turn, entailed a consideration of the role of the communications media.

21. Secondly, it was noted that methodological improvements in research were necessary, and scientific progress in this regard had to be supported. However, the measurement of effectiveness involved questions of societal priorities and social values, including the objectivity of input and output criteria. Thus, the clarification of the social issues involved was a matter of utmost importance.

22. It was appreciated that while the measurement of criminality was difficult, the measurement of the effectiveness of crime prevention and control strategies was even more difficult, especially in the context of international comparisons. Broadly based contrasts between the experiences of nations or the experience of a single nation at various stages of its history could be easily made, but they might not suffice for the purpose of designing new strategies, especially for other countries. For that purpose, evaluation techniques which had reached a certain stage of sophistication needed to be improved. United Nations guidelines might be needed for the establishment of impact assessment. The difficulties of evaluating the effect of broad changes in social policy upon the crime structure could not be overlooked. The experience of Member States, especially as to the techniques employed to that end, should be considered. Because of the difficulties in this area, it might be most productive to concentrate on exchanges of information about specific attempts to prevent or control the incidence of particular crimes.

23. The divergent experiences of countries with respect to the relationship between improvements in standards of living and general socio-economic conditions, on the one hand, and crime rates, on the other, became apparent. In addition, there were divergent experiences in the relationship between increased and improved police efforts, on the one hand, and crime rates, on the other. These experiences called for new methods of evaluation, including assessment of the impact of all legislation on the social structure and on the crime situation in particular. International co-operation which would take due account of the differences in socio-economic systems and work through the United Nations system was called for.

24. The head of the Canadian delegation, Mr. Ben Hofley, conveyed his Government's willingness to act as host to an interregional meeting of experts, in order to prepare topic I for discussion at the Congress.

II. Juvenile justice: before and after the onset of delinquency

25. Even though the topic of juvenile delinquency had appeared on the agenda of the first three United Nations congresses, there was consensus among the participants at the Bonn Preparatory Meeting that its inclusion on the agenda for the Sixth Congress was not only appropriate but necessary, especially since it had not been discussed at all at the past two congresses. The world had continued to find juvenile delinquency a persistent and, in some areas, an increasing phenomenon. Its forms as well as the measures found appropriate to respond to it

had both changed appreciably over the past decade. Moreover, divergent models for dealing with delinquency had been developed in the interim, including a return, in some countries, to neo-classical thinking which emphasized the idea that punishment should be proportionate to the criminal intent or recklessness manifested in the offence and should not be determined on the basis of the personality of the offender or a supposed need for treatment.

26. Different interpretations were being placed on the term "juvenile justice". The Meeting held that "juvenile justice after the onset of delinquency" referred to justice in its normal juridical sense, including the operation of the legal process of charge and trial. The phrase "juvenile justice before the onset of delinquency" referred to social justice, that is, appropriate social reactions to and provisions for all young people, especially those who seemed to be at risk as potentially delinquent. Once this distinction was made, certain points of divergence between participants ceased to exist.

27. In this context it was suggested that priority be given, in the discussion, first, to the role of youth in society, especially the connexion between the youth policy of Governments and the prevention of juvenile delinquency; secondly, to the organization of help and support to be given to endangered children and juveniles in order to prevent delinquency; and thirdly, to the objectives and characteristics of the criminal justice process in juvenile cases and measures for the prevention of recidivism.

28. There was agreement that the prevention of delinquency was increasingly being seen as important; that is, it was regarded as far more important to socialize young persons before the onset of delinquency than to try to do so afterwards. Experience with the treatment model over the past several decades, when modern evaluative scientific criminology had begun to assess impacts, had not been encouraging, on the whole. Participants expressed somewhat divergent opinions regarding the success or inappropriateness of the treatment model, especially with respect to institutional treatment. But it was noted that the problem of delinquency had proved more persistent, and the solutions less successful, than had been predicted. Moreover, by the time that a delinquent pattern of behaviour has been established, it may be too late for the most effective intervention, due to the fact that alternatives to the criminal justice process - e.g., police cautioning or family counselling - would normally have already been tried without success.

29. Participants differed as to the philosophical and theoretical premises upon which preventative techniques should be based, but the proposals made were, again, notable more for their common ground than for their differences. First of all, the family was perceived by many speakers as the most effective form of social control and deserving of every support in its role of strengthening and maintaining social stability. Since youth represented the future of any country, the role of the family was to be viewed as central. Many of the specific preventive measures described entailed, in one form or another, support for or, in less happy cases, a surrogate for the family unit. Some participants expressed the view that the State could do much to assist the family and to supplement its impact, especially through support of the educational system and a more constructive rôle for the police, with this support provided at the local, national and regional levels.

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30. Although there was a strong belief, supported by criminological research, that the school was a major source of socialization, it was pointed out that this institution could become counterproductive if it were used merely as a means of restraining adolescents. This was especially so in the case of those who did not consider themselves to be profiting from it and who would rather be working. The self-image of adolescents as a class, in which they perhaps saw themselves as placed in an educational ghetto and denied the right to work, adult status and freedom of personal decision, was suggested as being a contributory factor to delinquency. Some representatives commented upon the requirement found in certain state statutes or constitutions that organs of employment accept young delinquents. In general, many participants stressed the importance of instilling a sense of responsibility and self-worth in young people as a prerequisite to their social identification. They should be perceived as a valuable resource, a group with an appropriate wish to participate in all aspects of life, not as a problem group whose role was merely to consume what adults offered.

31. Proposed social action ranged from parental counselling to the integration of problem adolescents with other, less troubled, peers. Any steps which lessened the isolation or separation of a troublesome, potentially criminal group reduced the probability of its actually becoming criminal. Those adolescents who were thought to be at risk but against whom no criminal charges had yet been brought had to be treated in a very careful manner, as there was a danger that their human rights might be violated in juvenile court proceedings. Mandatory forms of supervision or even support, in the case of youngsters who had committed delinquent acts not amounting to crimes if committed by adults, could undermine the basic principle of legality. To overcome this difficulty a system whereby families at risk would voluntarily accept counselling and child support might be instituted. Yet this, too, could be regarded as an imposition in violation of the legality principle. Experiments with the intensive supervision of adolescents particularly at risk had proved reasonably successful in some countries, thereby demonstrating that the cost of invoking the full criminal process with its sanctions could be spared. Again, counselling on family relationships and relevant educational experience seemed to be the key factors.

32. On the question of juvenile justice after the onset of delinquency, in the sense of the institution of proceedings against delinquents, several questions of a more technical nature were raised. First, at what age should criminal responsibility be imposed? It was recognized that there had to be two categories of juveniles: those too young to be considered criminally responsible, even if they were perpetrators of quite serious acts; and those who should be considered as truly responsible for their actions. The cut-off point differed across various jurisdictions. Most legislation seemed to have placed the point somewhere between 10 and 15 years of age. Cultural factors were adduced as suggesting that the age of majority might be a local matter for different societies, and it was recognized that this question should not be overlooked in subsequent discussion. Secondly, there was conflict over theoretical perspectives concerning the appropriate form of judicial proceedings in cases involving juveniles. On the one hand, in order to obtain the full use of the various support services, it was thought that the court should be constructed on a "family tribunal" model, with diagnostic and prescriptive functions; but this might deprive the offender of legal rights of

defence. On the other hand, if the "due process" element was to be emphasized, according to which the juvenile was afforded a status analogous to that of an adult, the focus tended to change from the offender to the offence, and the sanction might become primarily punitive. This difficult dichotomy could not be easily resolved, but the need for its full discussion at the Congress was stressed. There was agreement that the discussion should extend to the role of the judge, both as a social engineer and as a guardian of legal and human rights, as well as to a precise analysis of the role of experts and the areas of competence of all the administrative bodies involved.

33. The attitude of both the public and the victim towards the offence and offender was seen as a factor which appeared sometimes to have been overlooked. Some participants mentioned the value of measures of diversion which were contingent upon the consent of both the offender and the victim. The growing use of strategies of diversion from the adjudicative process was generally welcomed. It was observed, however, that the increasing use of diversion at an early stage made it difficult to measure the "real" level of juvenile delinquency. Participants reported varying levels of recorded juvenile delinquency. Some countries, from different regions, had experienced a levelling off or even a definite decrease. However, all speakers considered juvenile crime to be a serious enough problem, both in terms of present social disturbance and of its implications for future adult criminality, to require the investment of extensive human resources for administration, research and planning. The search for solutions and ameliorative measures for what was regarded as an obstinate social problem had to proceed. Quantitatively, juvenile justice represented a large part of the activities of the criminal justice agencies.

34. Several participants suggested that the Congress discuss additional specific points. First, the experience of countries which had developed an integrated model of delinquency prevention, including educational, social and governmental organs at national, regional and local levels, should be considered as equally relevant for developed and developing countries. Shared experiences in planning and in facilitating the collaboration of agencies could be mutually beneficial. Secondly, the matter of juvenile justice required research and discussion of social and cultural differences among nations, since universally applicable statements about the interrelationship of social and demographic changes and the incidence of delinquency could not be made. Thirdly, the views of adolescents on what adult society had designed for them as improved conditions and procedures might be crucial to the construction of successful models. Fourthly, the question of the reallocation of resources needed discussion, especially since the status quo was frequently continued because of resistance to the transfer of resources to other agencies. Fifthly, the difficulty of assessing the cost/benefit ratio of resource allocation in juvenile justice should not be overlooked and research efforts should be stepped up. Sixthly, the benefits of specialization of agencies, governmental and non-governmental, designed to deal with juvenile delinquency had been demonstrated in a number of countries. Seventhly, delinquency prevention should be part of over-all social development planning, and multisectoral planning bodies should be established, as had already been done in some countries. Eighthly, special attention should be given to safeguarding the human rights of children placed in institutions, including those of welfare services as well as those of the penal system.

35. There was unanimity that children and young persons were to be regarded as the transmitters of human values to future generations. Their care required society's utmost efforts. But it would be difficult for any one society to claim to have found a panacea for delinquency suitable for all other societies and cultures. In any case, the example of adults was a decisive influence on young persons. Criminological research and experience had shown that there was no easy solution to the problem of the socialization of delinquent youngsters. This placed an inescapable responsibility upon the Congress to advance the knowledge of humankind in this regard in a collective and collaborative manner.

III. Crime and the abuse of power: offences and offenders beyond the reach of the law?

36. Participants were of the opinion that the third topic was challenging, of great practical significance and in need of clear conceptualization, so as to keep the complex issues in perspective and allow for a fruitful discussion at the Congress. Since the topic encompassed a very broad range of offences - potentially extending from tax evasion to torture - it was necessary to delineate its framework stringently and delimit its scope. Care should be taken to distinguish offences from merely unethical or undesirable conduct, although one difficulty in doing so was the fact that some acts were not illegal precisely because those with power had failed to pass laws prohibiting them or had even used their power to prevent the passing of such laws.

37. Some participants called for a wide range of criminal activity to be included, such as bribery, economic offences and white-collar criminality in general, offences committed under the category of abuse of office - whether by managers, accountants, directors, prison guards, police officers or cabinet members, torture and maltreatment of prisoners, and even abuse by manipulation of the mass communications media. The danger of such an expansive view of the range of the topic was pointed out: in a sense, all crimes could be considered as an abuse of power on the part of someone. Other delegates appeared to prefer a more narrow delimitation in terms of abuse by those possessed of special de facto powers, wielded at first to commit offences and subsequently to escape prosecution. It was also pointed out that there were major differences in various countries as to the types of power in existence and the potential for abusing it. The abuse of managerial power on the part of those directing State-owned or co-operative enterprises could occur only where such enterprises existed; the abuse of economic power on the part of those directing multinational enterprises could occur only where these were operative. However, the abuse of power of office existed wherever the social, political or juridical climate was conducive to it. Several specific suggestions were made to delimit the topic along substantive lines.

38. It was suggested that the topic be divided into the following subtopics:

(a) Economic offences, especially those committed by transnational corporations and international cartels;

(b) The abuse of political power for private gain, including bribery and corruption;

(c) The abuse of power for political gain to suppress political dissent, including torture, the abuse of police power and more subtle forms of the abuse of power by Governments, such as the abusive collection and retention of private information on citizens.

39. Concerning the abuse of economic power, the following classification was proposed:

- (a) Credit fraud and the manipulation of currencies;
- (b) Defrauding the revenue and customs system;
- (c) Transgressing economic regulations.

40. It was, however, noted that not all economic offences could be regarded as having been committed as an abuse of power. In this regard, a classification of the criminal aspects of business offences and malpractices under the following categories was suggested:

- (a) Fraud;
- (b) "Failure pathology", i.e., offences by businessmen who initially were honest but who had failed and had to "bail themselves out";
- (c) Abuse of power.

41. It was observed that, while limiting the scope of the topic to certain categories of crime through the abuse of power, it would be useful to focus attention particularly on the prevention of those aspects of such behaviour which were particularly harmful in certain countries and which were covered insufficiently or not at all by existing penal codes. Such activities would include, inter alia, the abuse of public grants, the violation of labour regulations, offences against the environment and cases of bribery in which the bribe was not offered to a person directly, but indirectly, through a political party.

42. There was much support for a delimitation or structuring of the topic primarily along procedural lines. Participants expressed the view that the Congress should focus on such issues as the measures and mechanisms by which criminality through the abuse of power could be prevented. It was also suggested that for some forms of crime, such as fiscal offences, changes in criminal procedure, especially with respect to extradition and international judicial assistance, were required in order to secure convictions.

43. The participants agreed that in examining methods and ways to combat the abuse of power, certain procedural aspects had to be highlighted. It was suggested that these include such complex questions as the criminal responsibility

of legal entities such as corporations, double criminalization and international assistance in criminal matters. There were procedures available at the national and international levels for individuals who wanted to complain about violations of human rights, and their applicability to those situations would have to be examined. It was suggested that the prosecution of offenders with high social status and/or political power was difficult, because the real offenders frequently committed their crimes by availing themselves of "figureheads" or "fronts".

44. It was pointed out that in many countries a common factor related to the offences committed through the abuse of economic, social or political power was the fact that the national penal codes and criminal justice systems were frequently inadequate to deal with those types of crime. Another common feature was the fact that in many cases the public either took little note of those forms of criminality or was unaware of their significance because there was no offender/victim relationship in the conventional sense, i.e., as in the case of street crime. At the same time, the profits for the individual who abused a position of power for criminal purposes and the damages caused by that abuse to the general public by far exceeded the financial loss caused by common crime, although it was extremely difficult to assess the costs with precision. Above all, traditional law enforcement methods were no longer capable of dealing with this type of criminality; new techniques had to be developed. Some countries already had established special bodies and committees to deal with the problem or had created special police forces, prosecutor's offices or tribunals to handle such cases. For purposes of instituting reforms, a beneficial side-effect of such specialization was the more accurate assessment of this type of criminality. The representatives of the socialist countries stated that the legislation existing in their countries eliminated the possibility that offenders who abused their power could avoid criminal responsibility and, therefore, the topic was of no practical significance for them. Similarly, it was pointed out by other participants that people in high places who might be in a position to abuse their power were, under their systems of criminal justice, amenable to the rule of law.

45. The problem of the abuse of power for criminal purposes was seen to be connected with the structure of society and the organization of the State. Criminality through the abuse of power could adversely affect large groups of people and sometimes whole nations. It constituted a definite threat to society and challenged the criminal justice system. Frequently, illegal and dubious means were used to obtain or retain political, social or economic power, although this type of criminality was of little significance in some countries. The representatives of certain countries regarded offences against their economies as particularly dangerous. Such crimes included the manipulation of foreign currencies and violations of exchange and customs regulations, as well as illegal dealings involving works of art and other cultural property. All such crimes were subject to penal sanctions irrespective of the position or social status of the person who had committed the crime; the problem was the practical difficulty of detecting the criminal.

46. In the matter of punishment and corrections, it was suggested that offenders with high social status should receive heavier prison sentences for the abuse of their status, even though ordinary imprisonment might waste the abilities of such

persons. Instead, they might be required to put their talents at the disposition of the community that they had wronged, a remedy which could be applied to corporations as well as to individuals. A particular challenge was posed by virtue of the fact that many of these offences were perpetrated collectively, i.e., by corporations, partnerships or groups of persons, involved in varying degrees and assuming varying responsibilities. Traditional judicial concepts and correctional methods would have to be adjusted to meet the new challenge, perhaps on the basis of the experiences of those countries that had traditionally imposed "corporate" criminal liability.

IV. Deinstitutionalization of corrections and its implications for the residual prisoner

47. Participants agreed that this topic represented an important change of focus from the discussions concerned with imprisonment at earlier United Nations congresses. While those discussions had concentrated on techniques of treatment and the humanization of imprisonment, in recent years emphasis had moved to consideration of the following two questions:

(a) Did prisons have a negative effect on inmates, and if so, to what extent could they be replaced?

(b) What was to be done with those offenders for whom imprisonment, as a last resort, was still considered necessary?

48. In order to delimit more clearly this vast topic, there was a suggestion that the title be changed to "Sanctions not entailing deprivation of liberty, and their impact on the methods of treatment of the residual prisoner".

49. There was consensus that imprisonment was a last resort, almost amounting to an admission of failure of other efforts. Over the past decades, the policy of countries seemed to have changed from "prosecute and imprison unless there is a good reason to do otherwise" to "prosecute and imprison only when there is a compelling reason to do so".

50. Although opinions about the rationale for the retreat from imprisonment differed, there was agreement that prison could be harmful to individuals, especially over a long period, even though the removal of a potentially dangerous individual from society might be necessary. It was also agreed that some provision for the use of imprisonment had to remain for offenders who were dangerous or persistently non-co-operative, in the worst degree, so that the abolition of imprisonment was not to be expected.

51. Moreover, the question of deterrence, though difficult and open to debate, should not be put aside. For instance, the incarceration of white-collar criminals may be necessary in order to emphasize the seriousness of the possible consequences to others inclined to commit white-collar offences.

52. There was consensus, however, that reducing the frequency of imprisonment might enhance its social impact. More pragmatically, all penal sanctions were expensive, and imprisonment the most expensive of all. Therefore, a reduction of imprisonment would reduce costs.

53. The methods of deinstitutionalization were intrinsically interwoven with the philosophy and objectives of sentencing. Undoubtedly it was desirable to resocialize the offender, if possible, but sometimes the only feasible step was to render him incapable of committing further crimes, even if only temporarily. The decision would be made by the courts, while the executive would decide where, within the system, incarceration should take place. Social and cultural differences between nations accounted for some differences of view on this point.

54. The most frequently mentioned alternative to imprisonment was the use of fines. These were becoming more frequent as a sanction, and considerable sophistication in their use had been developed. Fines that were related to income; the importance of allowing the offender time to pay in instalments, rather than sending him to prison, if he was unable to pay immediately; and deferred fines, analogous to suspended sentences, were mentioned.

55. Community service and supervision, either combined or separate, such as mandatory reporting, were the newest additions to the catalogue of alternative measures. Probation was being developed in several countries, and extended from juveniles to adults. It was even applied, with reasonable success, to recidivists. Several variations of semi-custodial care were described: in some cases convicted offenders were allowed to work outside the institution, with leave to spend the weekends at home; in others the sentence was served under even less constrained circumstances. All these measures appeared to have had no appreciable negative effect on the levels of recidivism. The nomenclature used for the different arrangements varied among countries and included such concepts as work hostels, community service, intermediate treatment or mandatory right-to-work. The more widespread use of reparations might be considered since it was a measure that applied a positive sanction to the offender and also benefited the victim. In some countries, short sentences were frequently used for offences such as property offences and violent offences. Efforts were also made to further reduce the length of medium-term sentences, replacing them with other, non-institutional sanctions.

56. The social conditions in which community-based alternatives were established were clearly important; a great deal of community support might be necessary. Indeed, the participation of the public was central to the over-all success of such schemes. Consideration of public attitudes opened up the difficult area of public opinion in general. With public opposition, alternatives to incarceration and methods of diversion were bound to fail. Several countries reported that the comparatively high average length of sentences was more the result of public pressures than of official, judicial or governmental policy. The role of the communications media in this regard was considered critical, and a historical evaluation suggested that public opinion might be slowly growing more accepting.

57. The evaluation of semi-custodial programmes, probation and other community measures had become a matter of great urgency. Most countries were in the process of setting up an evaluative programme, and some were hopeful of reporting results at the 1980 Congress. The most advanced schemes, having gone through the initial experimental stages with reasonable success, were being considered for extension to those types of offences for which imprisonment had formerly been the automatic outcome. Most studies had shown that the results were no worse than those obtained

from incarceration, sometimes better, and always less expensive. Long-term studies examining success and failures in greater detail were being undertaken. In this regard it was suggested that the trend towards less punitive responses to crime might place additional stress on the already overburdened social services in some countries, which would need, as a consequence, more resources and personnel.

58. Even if the move towards non-custodial measures continued, some severe problems would remain. Who were to be the residual prisoners? Should the criterion be the seriousness of their offences or a prognosis of their future behaviour? It was agreed that predictions of violence or dangerousness were very unreliable; and therefore it seemed that the traditional "hard core" prisoners - often amounting to only 10 per cent of the total and including those guilty of repeated offences of violence - would remain. The drawback of classifying those offenders as a separate category was the probability that the implied prophecy would become self-fulfilling; that is, the offenders would become what they were labelled. There was a danger of oversimplifying: long-term, residual prisoners had always been a group characterized by divergence; except in respect of their long-sentence status, they were not a homogeneous class.

59. The negative aspects of imprisonment were considered, and various ameliorative measures suggested. The right of consent by prisoners to treatment was especially emphasized. Work and education might be considered mandatory. This was particularly advantageous if days spent for work counted towards remission of sentence. Considerable doubts were expressed about the right to use behaviour modification techniques. Unless it could be demonstrated that the prisoner was absolutely unconstrained in his choices, a serious problem of human rights was raised whenever a prisoner was subjected to a therapeutic programme. The right of appeal in cases involving both long sentences and particular programmes should be continually respected. There was some evidence that prisoners labelled as "dangerous and difficult" were being held in increasingly restrictive - even though recently constructed - physical environments.

60. It became clear that there were vast differences in prison populations, and that this was an indicator of the extent to which it was possible for countries to learn from each other's experience. Certain countries did not have life sentences, although, among them, some retained capital punishment; some rarely imposed a sentence of more than five years, others frequently did so. In some countries, the prison population was 10 times greater in proportion to the total population than in others.

61. The relationship of the prison population to the crime rate, as distinct from sentencing policy, was considered complex. But if the prison population was not going down in some countries, at least it was quite often not going up, in spite of rising rates of recorded crime. In this regard several participants urged that the United Nations should be given the responsibility and the mandate for carrying out a more complete and continuing global survey of statistics, both of those arrested and those entering the penal system.

62. In conclusion, it was agreed that emphasis should be placed on the practical implementation of the policy of humanizing criminal justice by reducing the prison population. This need not decrease the effectiveness of the penal system but would make it easier to humanize conditions, even for those who had to be retained in prison because society did not have the capacity to deal with them in any other way.

V. United Nations norms and guidelines in criminal justice:
from standard-setting to implementation

63. After the representative of the Secretary-General introduced the subject-matter, the representative of the Division of Human Rights of the United Nations Secretariat reported on the work of the Division and its relationship to the topic under consideration. He emphasized the necessity of the continuous co-operation of different United Nations bodies and considered that the recommendations of the Congress and the expert advice of the Committee on Crime Prevention and Control would be most valuable to the Commission on Human Rights in its own work. He also referred to the diversity of United Nations instruments and implementation procedures regarding human rights and criminal justice. Those instruments had been adopted in an incremental manner, and most of them contained saving clauses which safeguarded those rights which might have been granted under other treaties or declarations or, indeed, under national laws.

64. While recognizing that international norms, guidelines and standards in the field of criminal justice and the treatment of offenders should be regarded as instruments for the maintenance of an effective and humane administration of criminal justice, it was mentioned that care should be taken so as not to attribute a status to such instruments which the international community did not give them. Careful distinctions should be drawn between conventions pertaining to criminal justice which enjoyed the status of international law and norms, guidelines and standards which were in the nature of guide-posts for nations. In many countries, actual conditions were already superior to such provisions, while in others they lagged behind. Such norms, guidelines and standards should be disseminated in all United Nations working languages, and perhaps in all languages, so that the widest possible respect for them could be secured. Participants emphasized the widespread respect in which these United Nations instruments were held in their own countries. In the preparation of new standards, unrealistic goals had to be avoided, and the prior study of each subject-matter by expert groups was regarded as an important means of ensuring a solid conceptualization of such norms.

65. Several participants regarded the task of the United Nations in setting international norms and guidelines for criminal justice as one of utmost importance. Stress was placed on the difficulties entailed in the setting of such norms, since it involved value judgements that were difficult to make on a universal level because of political, social and cultural differences. The norms should, therefore, deal with what was basic for all humankind, although it was not necessary, at this stage, to try to create an exhaustive network of them. On the procedural level, the implementation of standards could not be regarded as a purely technical matter, because of the substantive nature of the social control of deviant behaviour. Where common agreement was reached in the form of legally binding treaties, conventions or covenants, their application did not pose real problems.

66. On the other hand, the implementation of recommended norms, standards and guidelines was more difficult. It required special attention, particularly with regard to comparative research. It was stressed that the norms, standards and guidelines were of great importance because they could be regarded as preparatory

steps towards international agreements, if such agreements were desired by the international community. In accordance with the different legal characters of international norms, implementation procedures would also have to be differentiated. The following types of implementation were mentioned:

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

67. In order to keep international standards and procedures up to date and render them more effective, a suggestion was made to extend the existing international system of national reporting with regard to the Standard Minimum Rules for the Treatment of Prisoners and to initiate exchanges of experience, the dissemination of information and the development of public understanding of such rules and principles. As another possible way of improving implementation procedures, the examination of national reports by an international body was proposed, operating in accord with existing international procedures, such as those of the Committee on the Elimination of Racial Discrimination. It was suggested that, in addition to legal safeguards, a preventive approach could help to avert infringements of human rights in prison; for example, by reducing the isolation of prisons, encouraging volunteer members of the public to participate in prison programmes and improving the training of prison staff.

68. Regarding the need for the development of new international standards and guidelines in criminal justice, the following possible priority areas were identified:

- (a) Minimum rules for the treatment of offenders in the community;
- (b) Inmate grievance procedures;
- (c) A convention to facilitate the return of persons convicted of crimes abroad to their domicile to serve their sentences;
- (d) Guidelines for the expeditious and equitable handling of criminal cases;
- (e) Standards to improve the situation of persons detained by the police or in prison before trial, including safeguards against arbitrary interference with correspondence and freedom of expression;
- (f) Guidelines for the prevention of international terrorism and drug traffic and for protection against fraudulent exploitation of cultural values and national heritage.

69. Some participants were of the opinion that the Standard Minimum Rules for the Treatment of Prisoners, which were adopted 20 years ago when many States were not yet members of the United Nations, were not adequate to cover new penal methods or differing conditions, and needed revision or extension.

70. In discussing the scope and structure of this topic, a number of participants strongly supported the inclusion of the question of capital punishment, although there was some contrary opinion. In this context reference was made to various United Nations documents which attributed great importance to respect for the right to life. It would therefore be appropriate for the Congress to explore the possibilities of further restricting the use of the death penalty and of elaborating safeguards against its abuse. It was also pointed out, however, that progress in this direction might be difficult because of differences in cultures and moral values.

71. With respect to the prevention of torture and cruel, inhuman or degrading treatment or punishment, which all penal codes regarded as criminal offences, explicitly or implicitly, it was suggested that both national and international action was needed to secure its total suppression. The possibility of recognizing torture as an international crime, so that immediate redress could be obtained in case of violations, should be considered. The head of the delegation of the Netherlands, Mr. W. Breukelaar, conveyed his Government's offer to the United Nations to act as host to an interregional meeting of experts, in order to prepare this topic for discussion at the Congress.

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