



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/CONF.87/BP/2
8 August 1978

ORIGINAL: ENGLISH

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

REPORT OF THE ASIA AND PACIFIC 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 of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders which was held at Manila from 15 to 19 May 1978. 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 Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders was the second of a series of regional meetings convened to discuss the provisional agenda and to make appropriate recommendations concerning the preparation of the documentation 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 resolutions 415 (V) and 32/59. As its agenda it adopted the list of five topics that had been 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 (A/CONF.87/RM.1). These topics had been chosen for the Congress by the Committee on Crime Prevention and Control at its fourth session, held at United Nations Headquarters from 21 June to 2 July 1976. ^{1/}
2. The Preparatory Meeting was held at Manila from 15 to 19 May 1978. It was attended by representatives and experts of 13 members and two associate members of the Economic and Social Commission for Asia and the Pacific (ESCAP) region and by observers from several intergovernmental and non-governmental organizations. A list of the participants in the meeting is given in annex I to the present report.
3. The Hon. Teodulo C. Natividad, Chairman, National Police Commission and Probation Administrator of the Philippines, was elected Chairman of the meeting. Mr. Francis Mahony, Deputy Secretary, Attorney-General's Department, Australia, and Mr. Bhaskar Ghose, Joint Secretary to the Government of India, Department of Social Welfare, were elected Vice-Chairmen. Mr. Yoshio Suzuki, Assistant Vice-Minister of Justice of Japan and Director, United Nations-affiliated Asia and Far East Institute on the Prevention of Crime and the Treatment of Offenders (UNAFEI), was elected Rapporteur.
4. After the introductory remarks of Major-General Fidel V. Ramos, Chief of Constabulary, Director-General, Integrated National Police of the Philippines, and of Mr. Gerhard O. W. Mueller, Assistant Director, Crime Prevention and Criminal Justice Branch of the United Nations Secretariat, the meeting was addressed by Mr. Carlos P. Romulo, Minister for Foreign Affairs of the Philippines, who spoke on behalf of His Excellency President Ferdinand E. Marcos. He stressed that the meeting was taking place at a time when law enforcement and the maintenance of humane standards of criminal justice were being put under stress by the mounting incidence of crime and political violence in the world. While the ultimate goal of the meeting was that of attaining a world perspective on the issues before the Congress, the regional perspective was an eminently worthy object in itself in order to deal with the common problems of the Asia and Pacific region. Appropriate strategies and policies had to be devised, consonant with the needs and potentials of the region.

^{1/} See E/CN.5/536, chap. IV, sect. H.

5. The Minister, in noting that the meeting represented one further step towards advancing the scope in which law and justice would thrive and live in the continuous progress of society, extended a warm welcome to all participants and expressed the hope that the results of the Manila meeting would serve as a useful contribution to the forthcoming Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

DISCUSSION OF THE TOPICS

I. CRIME TRENDS AND CRIME PREVENTION STRATEGIES

6. In discussing this topic, participants agreed that it raised methodological and practical questions of great significance. Some of the issues required scientific skills which were not sufficiently available in any region and were rare in the Asia and Pacific region. Particular mention was made of data collection and the gathering and analysis of some statistics. The fact that the necessary level of scientific rigour had not yet been achieved should not deter consideration of the problems in themselves; indeed it increased the need for international assistance especially from the United Nations. There was support for the view that the Congress should seek to expose practical issues and suggest practical solutions in respect of which recommendations might be adopted at the Congress.

7. It was agreed also that crime prevention encompassed the strategies to discourage the commission of crime in the first instance and the appropriate rehabilitation of offenders subsequently. There was a consensus that the cost of crime to society was very high, although the art of assessing cost/benefits had not progressed very far.

8. The experiences of countries with respect to crime trends and the reason for such trends were treated jointly because in the view of the participants they proved to be conceptually linked. Some of the countries of the region were able to report a significant decrease in certain types of crime; others had experienced an increase, and the explanations for these phenomena varied considerably. The type of crime which was considered to be almost universally on the increase was that of economic and corporate crime, the explanation being the growth of sophisticated new processes which placed new technology for the commission of crime in the hands of potential perpetrators. That was considered to be a typical example of crime attributable to economic and social development.

9. There were differing reports on interpersonal violence. In some countries, violence had become more common, with no obvious or immediate explanations other than the factors of increased migration, social displacement and urbanization. In other countries, there had been an over-all decrease in violence, except for certain types of violence, which included offences against children, kidnapping, terrorism and hijacking. In some countries where violence had declined, the explanation was to be found in a reduction in the problems that had to be regarded as productive of violence, for example, illegal trafficking in drugs. Thus, when the drug problem had been alleviated, the violence associated with it had been perceptibly reduced as well. Other countries that reported a significant reduction in violence were those which had enjoyed increased social stability coupled with a more intensive law enforcement campaign.

10. There was general agreement that petty property offences were likely to increase in times of relative economic prosperity, principally because there was a greater number of consumer durables subject to potential theft. Social stability

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was generally agreed to be a major factor in the explanation of decreasing or stabilizing crime rates; and social stability had the following five most prominent characteristics: physical stability, i.e., a minimum of migration and mobility; equitable distribution of new wealth and resources; strong informal social controls maintained by, e.g., the family and neighbourhoods; the organization of local associations to react to local criminal activity, either directly or by increased contact with the police; and public confidence in the Government and national or local administrations.

11. Concerning the quantity and quality of data, there was less to report, and a considerable number of appeals were made for United Nations' and other forms of assistance. In particular, it was emphasized that greater help was needed in the development of a methodology for the collection and comparison of criminal statistics in a unified manner, both nationally and internationally. Federated countries experienced particular difficulties due to the distribution of responsibilities for data gathering among state and federal agencies. Sole reliance on police statistics, which might be collected primarily for internal police purposes, increased those difficulties. INTERPOL data supported the belief that violent crime continued to increase, but the different definitions employed made comparison very difficult. Differences of recording techniques among different societies added to the complexity. Statistics were, of course, subject to distortions attributable to changes of style in handling criminal cases, such as diversion from the criminal justice process, and changes of law enforcement methods and of criminal codes.

12. The crime problems perceived to be most serious in the countries of the region were those of economic criminality and secondary crimes associated with drug trafficking. In one country three Royal Commissions of inquiry had been appointed to examine the drug problem and related matters. It was pointed out that there seemed to have been significant changes between 1973-1974, which had been peak years for many types of crimes, and 1977-1978, in which, in so far as it could be judged, a reduction had taken place in some categories. There was some evidence of a coincident change in economic circumstances. The role of research in the evaluation of crime prevention measures to counter those new threats was one which had barely begun to be explored, and much support and assistance were needed in that area. Thus, it should not be forgotten that a strategy which was outmoded or had been unsuccessful in one country might be appropriate or successful elsewhere.

13. The difference between developed and developing countries was considered a very important one with regard to the costing of both crime and crime prevention. Indeed, even in the case of developed countries there was no complete agreement in the scientific community as to whether accurate costing was feasible, although some worthwhile attempts had been made in that regard. The possibility that developed and developing countries might require different methods of costing should not be forgotten. It should be an objective of the Sixth Congress to produce clear-cut guidelines for the implementation of well-defined crime prevention policies, which would permit both evaluation with respect to cost-benefit and effectiveness criteria and also assessment of possible cultural transferability. Such a translation of theoretical concepts into practical guidelines would be parallel to

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the development of guidelines regarding human rights already undertaken by the United Nations. A case-study approach to the most successful examples would be one way in which to generate valuable material at the practical level.

14. There was consensus that co-ordination of the various agencies charged with involvement in the general effort for crime prevention was imperative. Several specific suggestions were made. First, the formation among the public of crime prevention associations, whether at the local level of the village or block, or at the macro-social level. One of their main functions would be the organization and mobilization of public opinion, and there was consensus that public support and involvement were indispensable to successful crime prevention programmes. Large programmes might best grow out of the combination of successful small ones at the local level.

15. Different approaches to the problem of co-ordination were mentioned. A complex machinery of interdisciplinary co-ordinating bodies had been set up in one country to ensure that problems of overlap, wastage and gaps were minimized. Government supervision, however, should not be too great, particularly where voluntary agencies were involved, for fear that such supervision might have a stifling effect. The role of voluntary organizations in such work, especially in the rehabilitation of offenders, was generally considered to be high. It was agreed that the organizational and institutional arrangements were crucial and involved questions of accountability and responsibility in different areas of competence. The relationship between governmental and non-governmental organizations was thought to be one to which adequate consideration had not been given. Too much control could lead to bureaucratic over-control; too little to less than optimum use of resources. Intersectoral planning was widely thought to be desirable.

16. There was agreement that it was highly desirable for criminal justice planning to be considered part of social/economic planning. In other words, crime prevention should be built into governmental developmental programmes whether national or local. The actual extent to which that was achieved varied considerably from country to country. One country reported a major effort to raise the level of awareness and responsibility of all citizens in this respect. That had led to a healthy debate as to which bodies, groups or organizations had the responsibility of dealing specifically with particular problems, and the result had been that citizens had an increased awareness of their role. Other countries reported on programmes for stimulating citizen involvement in accordance with their national customs, including the formation of night watch groups to supplement the limited resources of the local police. Several countries, which had made efforts to incorporate crime prevention planning into planning within a wider context some years previously, but had encountered severe institutional or organizational obstacles then, were able to report considerable progress in recent years. There was consensus that fundamental questions of the quality of life were involved. Internal national questions, such as the relations between federal and state governments or between special bodies with divided responsibilities, had to be resolved. Organizational innovations, perhaps at the level of a reallocation of financial resources to facilitate co-ordination were frequently found to be desirable.

17. New strategies in crime prevention ranged from specific accounts of changes in law enforcement practices to general social development approaches including the issue of employment. Increased certainty of arrest was advocated, and a very high clearance rate was cited by one country⁹ as a major factor in bringing about a decrease in serious offences. Such operations could be reinforced by utilization of a task force approach which would focus on issues of particular concern. Thus, in order to deal with such issues as smuggling or drug trafficking, law enforcement resources had been pooled and sanctions had been made more severe in order to bring about a decrease of such criminality.

18. The reorganization of the police and all efforts to improve the quality, incorruptibility and integrity of the police force were stressed as being of prime importance. Crime prevention had to be centred around the police, and the police would gain most respect from the public when it was widely appreciated that they would show respect for the human rights of those¹⁰ apprehended. Thus, continued improvement in the training provided for criminal justice personnel was agreed to be absolutely essential, not only for those in management positions but also for officers operating at street level.

19. This discussion led to a consideration of the role of the United Nations in this respect. Overwhelmingly, the participants called for increased United Nations assistance. The following specific points were made. First, the role of the United Nations-affiliated Asia and Far East Institute (UNAFEI) at Fuchu, Tokyo, had been invaluable over the previous 15 years: the work of the Institute should, however, be expanded either through the establishment of alternative parallel institutes or through more frequent visits by UNAFEI staff to the countries of the region. Secondly, the breadth of vision and job understanding of the rank and field officers in all agencies had to be developed, so that they would not have a narrow, compartmentalized view of their job. Several countries reported the setting up of national institutes, and United Nations support for these efforts was viewed as a pressing need. That was especially so in respect of research, to enable planning and programming to be formulated on a scientific basis. That would require a greater commitment of United Nations and other resources to technical assistance, especially for the training of research workers, and support for newly formed national associations for the prevention of crime. Three particular suggestions were put forward. First, the organizational capabilities of the United Nations might be utilized for convening a series of local meetings within the region, to discuss and exchange information on relatively technical questions, such as methodologies for measuring the efficacy of programmes, and to look into the problem of possible abuses of criminal justice agencies. Alternatively, the countries in the region might convene their own regional meetings. Thirdly, permanent clearing-houses might be created to act as international centres of information on, and transmission and co-ordination of the work of different agencies. The meeting was reminded that such a proposal for both regional and interregional centres under United Nations auspices had been made some time previously, and that it would now be timely to revive it.

20. Finally, it was suggested that the Sixth Congress might consider modalities for improving the objective qualities of the information to be made available.

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The national customs of the different countries could be the only decisive factor in monitoring sentencing practices, although the adoption of techniques from other countries might be considered. However, it was worth re-emphasizing that the region must prepare itself to tackle problems for which the scientific resources were not yet available. The machinery to cope with those questions must be made available in the region, because the quality of life of the people of the region was at stake. For that reason, the responsibilities of the United Nations were clear and demanding.

II. JUVENILE JUSTICE: BEFORE AND AFTER THE ONSET OF DELINQUENCY

21. All participants welcomed the inclusion of the topic among the agenda items of the Sixth Congress. While the topic of juvenile delinquency had been dealt with at several earlier United Nations congresses on the prevention of crime and the treatment of offenders, in the many years since the matter had been last considered there had been significant changes of perspective and emphasis. At earlier congresses, the problem had been tackled from the perspective of the developed countries, but over time, as the number of Member States doubled, interest had changed and problems of delinquency were now more a concern of the developing countries which were undergoing rapid urbanization and industrialization. In the developed countries, a paternalistic concern for the juvenile had given way to a concern over the civil rights of juvenile offenders. Therefore, a discussion in depth was requested as to which strategy a country might adopt in its efforts to prevent delinquency, whether by means of social welfare, education or any other method, or whether by utilization of its legal mechanism. Again, basic questions had to be asked about the quality of life.

22. The role of the family in relation to juvenile delinquency was first discussed, and representatives pointed out that no adequate substitute for strong family ties could be found. Interventions by Governments had marked limitations, and community-based actions were often more successful, although the Governments still had to provide financial support.

23. It was stated that some countries had been concerned that an apparently non-punitive or social welfare approach to dealing with juvenile offenders might encourage in those offenders a disregard of laws and standards, but such doubts had lately been dispelled when such experiments had been undertaken. Thus, there were strong arguments for the co-ordination of social welfare services and juvenile justice.

24. Time and again representatives were concerned with the distinction between juvenile offenders and potential offenders, or endangered youth, or youth in need of some type of intervention. There was a general feeling that merely endangered youngsters had to be dealt with primarily by their families or by voluntary agencies, and not by juvenile courts. Such neglected children, nevertheless, might have to be placed with foster homes or communal facilities, public or private, in case a continued stay in their earlier environment increased the danger of delinquency.

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25. There was unanimous agreement that it was society's primary duty to preserve and strengthen the family, although there was no consensus on how to achieve that objective. Counselling for families in difficulty, when children might thus be in a delinquency-prone environment, was regarded as an obligation of both public and private agencies. That type of service was necessitated by socio-economic development, which frequently took both parents out of the home and into the labour market. Consequently, public funding of efforts to preserve families was regarded as being mandated by the socio-economic development from which the Government profited. To the extent that families broke down, and failed to guard their offspring against juvenile delinquency, the State had a more direct obligation to intervene for purposes of delinquency prevention.

26. The need to prevent juvenile delinquency from arising in the first place could not be underestimated, as most adult offenders had started their careers as juvenile delinquents, and as - even in the countries with declining crime rates - juvenile delinquency was frequently on the increase. Such an increase was frequently attributable to rising materialism, culture conflict among generations, urbanization, illiteracy and unemployment. It was, therefore, necessary to activate all public and private forces in the primary avoidance and prevention of juvenile delinquency. A variety of models had been created in the countries of the Asian region to activate and co-ordinate those forces, which included the home, the schools and the neighbourhood, but which also extended to all public and private services concerned directly or indirectly with delinquency prevention. Among such co-ordinating agencies were the following models: integrated programmes for delinquency prevention and child development at the national, regional and municipal levels, co-ordination by departments of social service or social welfare, community councils for the welfare of children (which also rendered nutritional and health services), advisory and co-ordinating committees, which included private agencies, whether on a voluntary basis or government-appointed, as well as national institutes. Those bodies would be expected to participate in all planning and evaluation activities and some periodic reports.

27. Among the most promising delinquency intervention programmes were those which provided life guidance services and personality growth programmes, especially those which reached into the public school system for the provision of school-community preventive programmes. It was only when all such programmes failed that it might become necessary to resort to placement of endangered youngsters outside their own homes into hostels operated by public and volunteer organizations. The success of the over-all efforts at delinquency prevention depended very much on public awareness and the capacity to develop community initiative. Special attention had to be given to the need to deal with the ever-increasing number of school-leavers for whom society could not provide employment and who might become embittered and socially dangerous. Many of them could instead be placed in the infrastructure for providing needed social services to vulnerable groups. This is especially worth considering in the case of young people, since the age gap between them and their clients is sufficiently narrow to make the transmission of acceptable values possible within a relatively short space of time during the life-span of training programmes.

28. To the extent that delinquency prevention failed, and all indications were that no such effort could ever be successful, then society would have to resort to post-delinquency intervention. But even if juvenile justice had to be invoked after the onset of delinquency, it was regarded as preferable to resort to intervention methods short of adjudication. Police and prosecutors in several countries had been given direction to dispose of cases of juvenile delinquency with methods short of adjudication, and courts frequently exercised the same type of discretion.

29. Where adjudication was called for, the proceedings were universally less vigorous and traumatizing than those provided for adult criminal proceedings, although the danger of compromising on due process guarantees was recognized in all countries. Thus, various efforts were made to maintain the rule of law, with its attendant rights to counsel, hearing, defence etc.

30. While all countries maintained different types of institutions for juvenile offenders (of varying ages), ranging from purely educative to punitive institutions, there was agreement that institutionalization, because of its negative side effects, could be tolerated only as a last resort. Institutional treatment could be successful only if its educational aim was to provide the juveniles with the capacity to cope with the challenges of the world outside. Some countries had experienced success with volunteer visitor programmes through which the needed contact with the community was preserved. In one country, such volunteers had received special training.

31. It was necessary that Governments exercise quality control over all persons and agencies dealing with juvenile justice, especially through training, funding, licensing and, where necessary, supervision. Guidelines were regarded as very helpful and, while national needs and concerns varied widely even between countries of the same region, the international community should be called upon to provide sets of measures and guidelines as models for potential national use.

32. The need for continued United Nations attention to the ever-present problem of delinquency was stressed. Countries were in need of data on comparable experience from other countries, as well as the results of research and experimentation in delinquency prevention. A system of distribution of literature and of national experience reports was also needed.

III. CRIME AND THE ABUSE OF POWER: OFFENCES AND OFFENDERS BEYOND THE REACH OF THE LAW?

33. The participants were agreed that there was hardly any doubt about the significance of this topic, for both the developing and the developed countries of the region, and that the topic deserved detailed discussion from the viewpoint of social defence despite its potential political implications. It was recognized that not all types of criminality encompassed by the topic were of equal significance to all countries of the region, although each country had been confronted with one or several of them. During the discussion of this agenda item the following offences by abuse of power were mentioned: bribery, corruption,

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tie-in sales, abuse of patents resulting in monopolistic practices, overpricing, transfer pricing, tax evasion, currency violations and illegal export of capital, book-keeping frauds, abuse of funds, embezzlement, loan frauds, water/air/land pollution, denudation of forests resulting in floods and droughts (causing deaths), suppression of crops resistant to disease in favour of those requiring expensive insecticides, recruiting and exploiting of domestic labourers abroad, drug abuse, smuggling, terrorist acts including interception of aircraft and taking of hostages, maltreatment of citizens by persons in high position, the establishment and maintenance of armies, and dealing in firearms. The potential range of the topic was vast and efforts should be made to delimit it and to focus on practical issues. It was also pointed out that different approaches were needed depending upon the nature and the social implications of each offence.

34. There was, at the outset, a problem of definition in that the range of misconduct to be included was by no means easily determined. For one thing, it was thought that the topic encompassed criminality attributable to abuse of power whether currently covered by penal codes or not, or whether of national, international or local dimension. Nor did the nature of the crime by itself make for its proper classification as one being committed by the abuse of power, inasmuch as nearly every offence under penal legislation could be committed by abuse of power. It was proposed, therefore, that in its first chapter the Secretariat's working paper on the topic should contain a catalogue of misconduct to be included, with appropriate definitions and explanations. The catalogue could group such misconduct into three broad categories, regardless of the distinct nature of actual penal code violation:

- (1) Offences by persons holding (abusing) public office;
- (2) Offences by corporations and other powerful trading partners;
- (3) White-collar criminality.

Within each subgroup there would need to be a differentiation between conduct already unlawful and conduct recognized as harmful but not yet covered by penal legislation. A complete catalogue could be compiled only if each nation were to relate its experiences with respect to criminality or other noxious conduct entailing the abuse of power.

35. There was agreement that criminality connected with the abuse of power was as yet an unknown quantity and that no method existed by which its dimensions and impact could be determined in quantifiable terms. Thus, while research into the phenomenon was urgently required, the lack of quantifiable data should not prevent nations from seeking protection against it. Research into the phenomenon might well exceed the capacity of any one nation of the region, so that a United Nations initiative, regionally co-ordinated, was called for. Several modalities might be envisaged, including possible research co-ordination and sponsorship by UNAFEI, the creation of a special international centre, fostering of bilateral or multilateral exchanges of information among national centres and research organizations, and utilization of the services of the United Nations Secretariat and of INTERPOL.

36. Many of the existing techniques of criminological research might be inappropriate for the study of crime connected with the abuse of power and of methods of dealing therewith, but the case study approach offered some promise. If enough case studies on the scope and extent of criminality connected with the abuse of power, of the prosecution of those responsible and of the solution of the problems could be compiled, much more would become known about the nature of the phenomenon, about the magnitude of the harm connected therewith, and about appropriate ways of dealing with the issues. A multitude of case studies, utilizing the experiences of various nations, might enable the United Nations to provide a set of model measures and guidelines for potential national use.

37. Member States had accumulated a good deal of experience in dealing with offenders who had deemed themselves virtually beyond the reach of the law. A successful approach presupposed the existence of appropriate legislation, public awareness and support, and an investigating and prosecuting force which enjoyed freedom from political interference and had the expertise to deal with complex and intricate issues ranging all the way from computer technology to scientific knowledge in pharmaceuticals or petro-chemicals, and from public administration to business practice. In several countries special departments had been created within offices of public prosecution which met those requirements and whose officers, with many years of experience, had successfully prosecuted those responsible and thus terminated the harm in question. The independence of such prosecutors from the police, on the one hand, and the political executive, on the other, was stressed. That meant that those prosecutors enjoyed virtually the independence and integrity of the judiciary.

38. The exigencies of proceeding against offenders who abused power required new approaches to the training and selection of the requisite personnel. Traditional detective training was totally inadequate for the purpose. At the same time, new challenges were posed to concepts of penal legislation, practice and procedure. Concepts of liability, including corporate and strict liability, had to be re-examined. The criminal process had to be made considerably more speedy. Rules of evidence required re-evaluation, especially those pertaining to presumptions. The structure and coverage of substantive law had to be reviewed to preclude abuses through exploitation of gaps in penal legislation, and the system of international judicial assistance, including extradition and depositions, had to be reviewed. A certain international harmonization of laws might be necessary. The law of sanctions was particularly worthy of review, to make certain that wealthy defendants could not purchase virtual immunity by paying relatively nominal fines. Restitution, and proceedings by partie civile (i.e., the adjudication of civil liability, at the insistence of the injured party, within the preview of criminal adjudication) and in the civil courts, had to be considered. Revocation of licences and imposition of day-fines had proven their value in some countries.

39. The answers should be sought not only in penal legislation. Administrative regulation and supervision also had an important role to play and had already established their effectiveness in some areas, e.g., taxation, regulation of the flow of labour, the control of environmental disruptions and regulation of the pharmaceutical industry. There would almost certainly have to be co-ordination

among all administrative agencies concerned with criminality involving the abuse of power. The ultimate protection against criminality entailing abuse of power, however, was an educated, alert citizenry, willing to make abuses public and to initiate public action by invocation of the legal process.

40. There was unanimity that all legal systems had to make it abundantly clear that no person or entity was immune to the rule of law. All persons, regardless of rank, power or position, had to answer to the injunctions of the legal process. Equality before the law had to be guaranteed, and no discrimination, whether in favour of or against any particular group, could be tolerated.

IV. DE-INSTITUTIONALIZATION OF CORRECTIONS AND ITS IMPLICATIONS FOR THE RESIDUAL PRISONERS

41. In discussing this topic, participants agreed on the basic conceptual scheme proposed in the discussion guide. They appreciated the fact that the present topic was the natural continuation of the discussions on the subject held at earlier United Nations congresses. They also agreed on the need to discuss the topic in a broad context, in which the aims and functions of imprisonment could be discussed within the full range of available policy options, consonant with the socio-legal and cultural traditions of any particular country, as well as the contemporary texture of law reform. In that regard, the importance of the decriminalization of certain offences and the depenalization of others through the development of measures alternative to detention was stressed.

42. While there was consensus that imprisonment should be used only as a last resort, and while some countries of the region reported substantive revisions of their penal laws to that end, other countries had experienced some resistance to change either because of public opposition to de-institutionalization of corrections, especially for violent crimes, or because of internal difficulties in implementing new programmes. Consequently, the institution and implementation of such new programmes necessitated the involvement of all sections of the criminal justice system and of the public at large, including public and private institutions and voluntary organizations. That had to be accomplished at both the central and the local levels.

43. Moreover, such alternative measures would have to be related to the existing sentencing principles and practices. The ongoing debate over the return to fixed-term imprisonment and the possible abandonment of indeterminate sentences, with all their human rights implications, added to the complexity. Some of the most recent evaluation research results on the individualization of treatment and the rehabilitative or therapeutic model had not been encouraging.

44. The stress on the utilization of non-institutional treatment was also attributable to the fact that in many countries of the region most of the prison population had sentences of less than one year. It was realized that, in terms of cost, both social and economic, it was much more productive and effective to use alternative measures for that type of prisoner, reserving the prisons for the most

serious offenders. In certain countries the application of probation and related measures had already reduced prison populations by as much as 60 per cent. The ratio of offenders on probation and parole to those in prison was about 2-3 to 1 in several countries.

45. The extended use of probation and parole, and the wider use of fines, of victim compensation and of restitution, disqualification from certain professions, release on bail, community service orders, work-release schemes, suspended sentences, attendance centre programmes, week-end detention schemes, open agricultural camps and open jails in which members of the family could live with prisoners, were the most common forms of non-institutional programmes. In some countries, studies on the evaluation and cost-effectiveness of those programmes had just been undertaken and the wish was expressed that the results of such studies should be presented to the Sixth Congress.

46. The need for international guidelines and standards for the treatment of offenders in the community was stressed by several participants. Recommendations on how to maximize and expedite the current process of de-institutionalization should be made available. Emphasis was placed on basing those recommendations on case studies of innovative approaches and particularly on the most successful alternatives to imprisonment.

47. It was agreed that the increasing recourse to community treatment programmes would not solve the problem of imprisonment for the most recalcitrant offenders. It would, however, facilitate that task, since it would lead to a decrease in prison populations and alleviate the crucial problem of overcrowding. In addition, it would also facilitate the designing and implementation of specific institutional programmes for residual prisoners, whose numbers would then be smaller.

48. The identification of the residual prisoners was considered to be very important. Profiles of those prisoners had to be prepared. In that regard, it was recommended that clear and precise criteria be fixed by legislative authorities in order to avoid unnecessary discretion by the judiciary at the sentencing stage, as well as by the administrators of correctional systems at the treatment level. The seriousness of the offences, the danger of the offender, his/her character, his/her previous record, and the particular circumstances in which the offence had been committed were mentioned as useful parameters on which to develop such criteria.

49. According to reports provided by the participants, the number of prisoners sentenced to more than five years' imprisonment varied from country to country, ranging from 5 per cent in some to 25 per cent in others. Capital punishment often was commuted to a life sentence and in most cases, life-term prisoners could be released or were eligible for parole after they had served a certain number of years, ranging from 12 to 25.

50. Several participants mentioned the difficulty of carrying out specific institutional programmes for this category of prisoners, especially in order to prevent physical and mental deterioration resulting from long-term incarceration. Usually, hard-core prisoners were committed to medium and maximum security

institutions, where custodial supervision was generally strict and the possibility of movement and of receiving visits was quite limited; or they were segregated in the so-called central institutions or committed to agricultural work in penal colonies. It was observed that in one country experiments had been conducted successfully to provide a phased programme of maximum security to free living conditions within the same institutional setting.

51. It was noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners needed to be applied and implemented especially for that category of prisoner as to whom the emphasis on security and strict control posed special problems. Moreover, in addition to the traditional outside control over those types of institutions exercised by boards of visitors, the judiciary should be fully involved in any decision concerning the status and the position of that category of prisoner. Moreover, prisoners should be granted the right of appeal against those decisions, especially if these had been made administratively.

52. Some doubts were expressed on the use of behavior modification techniques, because of human rights implications. It was suggested that, in any case, the consent of the prisoner would be essential. Continuous judicial review of any major decision regarding treatment programmes was necessary.

53. Finally, the involvement of the community, of voluntary organizations and of discharged prisoners aid societies and associations was emphasized, especially at the last stage of imprisonment, so as to establish the necessary links between the prison and society at large and to help the prisoners after release, when they had to cope with the difficulties of adjustment to life in free society.

V. UNITED NATIONS NORMS AND GUIDELINES IN CRIMINAL JUSTICE: FROM STANDARD-SETTING TO IMPLEMENTATION

54. Participants and observers unanimously lauded past United Nations efforts in the provision of standards, measures, guidelines and norms in the sphere of crime prevention and criminal justice. These had already had a considerable impact on the laws and practices of the countries of the region. In particular, they had been helpful to reformers and administrators in the criminal justice system in their efforts to obtain governmental support for improvement efforts. But now a crucial stage had been reached at which three issues of paramount significance had to be resolved: first, the question of review and consolidation of existing norms; second, the need to add additional norms and standards and, thus, to create a coherent system or network of United Nations norms and guidelines in criminal justice; and, third, the question of how to implement those norms and guidelines to the fullest extent compatible with national sovereignty.

55. As to the question of consolidation, it was noted that there was no single publication of the United Nations which included all existing norms and guidelines and, thus, there was no means of reviewing or studying them in a comprehensive context. The United Nations should produce a single-volume publication for widest possible distribution containing all relevant documents, including the appropriate

provisions of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, as well as the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Standard Minimum Rules for the Treatment of Prisoners as well as their implementation procedures, the Draft Code of Conduct for Law Enforcement Officials, the Draft Principles on Freedom from Arbitrary Arrest and Detention and the Draft Principles on Equality in the Administration of Justice, as well as such other standards and guidelines as might be approved by the Committee on Crime Prevention and Control or by other United Nations legislative bodies, such as the guidelines on the expeditious and equitable handling of criminal cases. It was only after such a consolidated publication of all relevant norms that Governments and their researchers could make appropriate recommendations for the revision, improvement, extension or consolidation of United Nations norms and, ultimately, for the establishment of an entire network. There could, however, be no doubt about the need for such an effort.

56. Action taken by the United Nations organs and non-governmental organizations regarding the elaboration of a convention against torture was referred to. In this connexion, it was proposed that action taken by the General Assembly and other United Nations legislative bodies and suggestions made in that context by various non-governmental organizations should be brought to the attention of the Sixth United Nations Congress under the present topic.

57. With regard to the need for additional standards, or the extension of existing ones, further norms for the protection of detainees were clearly needed, especially for persons held in custody who had not been charged with an offence, although it had to be made clear that creation of protective rules for such persons must not be regarded as an endorsement of the practice of detaining persons without charge. In particular, political detainees should never be placed in confinement together with persons charged with or convicted of common crimes.

58. There was a particular need to protect persons against undue delay in the bringing of charges, and rules should be developed which clearly entitled all persons charged to the rights of due process.

59. It was suggested that standards were called for to restrict, and ultimately to prohibit, the use of capital punishment and practices akin to capital punishment, such as the unexplained disappearance of prominent persons.

60. Particular emphasis was placed on the need for the effective implementation of existing standards. Past efforts, while valiant and having yielded some results, were not adequate. A renewed effort had to be made which might well require a new system or machinery for implementation. In this connexion the importance of the Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners ^{2/} adopted by the Committee on Crime Prevention and Control at its fourth session was emphasized. Norms and guidelines had to be more widely

^{2/} E/CN.5/536, annex VI.

distributed and publicized. Publicity campaigns, on a regional basis, were called for. The United Nations should consider devising demonstration projects for the implementation of norms within Member States, at their request. Nations should be encouraged to establish special agencies within the national governmental structure which were entrusted with the national study and dissemination of United Nations norms and guidelines and with their implementation, the collection of all relevant documents and publications, as well as the conduct of research on the most beneficial impact which those norms might have. Such agencies could be in the nature of criminal justice co-ordinating councils or "desks" within ministries of the interior, of justice or foreign affairs, and they should, internationally, form a network for co-operation with each other under United Nations auspices.

61. The best possible implementation could be achieved at the national level, after incorporation of all United Nations norms and standards in national legislation, whether verbatim or in spirit. All affected parties had to be supplied with copies of the appropriate norms. As to rules for the treatment of prisoners, it was suggested that prison sentences were in the nature of court orders, so that courts should be empowered to supervise and monitor the proper implementation of their own decrees. This mandated a system of judicial supervision. Ultimately, a free press was to be regarded as an excellent public watchdog over the proper implementation of all standards.

62. The international reporting system on the extent of implementation of United Nations norms should be improved, and a system allowing for individual complaints by aggrieved parties or by others should be perfected, consonant with national sovereignty. Consideration should be given to a system of prison inspection internationally, but on a voluntary basis, by which Member States would agree to open their correctional facilities to visitors from any other Member States that agreed to the scheme. Those international inspections were to be independent of and collateral to existing inspection procedures by national or local bodies or officials, a system which it was hoped States would enlarge spontaneously. In addition, standards should be provided which assured all aggrieved parties of adequate grievance procedures.

63. In all such efforts the traditions and cultural identity of regions, of Member States and of areas within nations had to be recognized, and it could never be the purpose of United Nations norms to eradicate such valuable differences. The norms could only attempt to protect what was inherent in all human kind, as expressed by the Universal Declaration of Human Rights. The Council of Europe, with its European Court and Commission of Human Rights, had provided a good model in that regard and might well be worth emulating.

64. The two biggest obstacles to successful implementation of norms and guidelines were public apathy and the lack of funds, issues which were closely linked, for if there were true public concern funds might well be forthcoming. The public had to be made aware of the fact not only that the adherence to humane standards in criminal justice was a matter of the right of every human being to decent treatment but also that it was good crime prevention policy which might well pay off in the long run through lower crime rates. Government leaders in power today who, during more repressive eras, had experienced inhumane prison conditions, were among the

forefront of reformers. The regional United Nations institutes had a role to play in increasing public awareness of conditions requiring United Nations norms and guidelines.

65. A number of suggestions were made for the promulgation of new or additional standards, prominent among them norms for the treatment of persons in semi- or quasi-custody or serving a sentence in the community under probation, parole and early release. That group included many more persons than those actually in confinement, yet they had been an insignificant group when the Standard Minimum Rules for the Treatment of Prisoners were drafted and they had thus been overlooked. Yet the potential of abuse for those convicts loomed as large as for prisoners. Conceivably, such a set of new rules could be related to or combined with the existing Standard Minimum Rules. Attention likewise had to be given to the drafting of norms pertaining to the involvement of the medical and legal professions in situations violating the Declaration against Torture, and to norms for the protection of children and adolescents against abuses during police custody, especially so as to protect them from the trauma of abusive questioning. There was agreement that all of the proposed standards identified by the Committee on Crime Prevention and Control, and listed in paragraph 74 of the discussion guide (A/CONF.87/RM.1), were significant and that the development of norms for inmate grievance procedures deserved priority. The suggestion was made that all measures and guidelines to be approved by the Committee on Crime Prevention and Control at its fifth session should be placed before the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Annex I

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Annex II

LIST OF DOCUMENTS

Symbol

A/CONF.87/RM.1

Discussion guide for Regional Preparatory
Meetings for the Sixth United Nations
Congress on the Prevention of Crime
and the Treatment of Offenders

A/CONF.87/BP/1

Report of the European Regional Preparatory
Meeting on the Prevention of Crime
and the Treatment of Offenders

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