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AND THE TREATMENT OF OFFENDERS
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DISCUSSION GUIDE FOR REGIONAL PREPARATORY MEETINGS FOR THE
FIFTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

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INTRODUCTION

1. This discussion guide is intended to clarify some of the issues underlying the selection of items made for the agenda of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The agenda approved by the Committee on Crime Prevention and Control at its second session (E/CN.5/494), but the content of each subject item still needs to be developed by the series of preparatory meetings which will be held before the Congress takes place at Toronto, Canada, in 1975. The present outline is therefore intended to focus discussion by the experts concerned, but not to limit the scope of each item. There may be problems (or prospects for policy discussion by the nations and the body of professionals to be gathered at Toronto) which are not contained in this outline or which are touched upon only briefly. There may be others covered here which have either no relevance or only a limited relevance for particular countries or cultures. The aim of this guide is to stimulate discussion of such areas of concern with a view to obtaining material which can be included in the working papers of the Congress.

Agenda item 1

CHANGES IN FORMS AND DIMENSIONS OF CRIMINALITY-TRANSNATIONAL AND NATIONAL

2. The intention of proposing this subject for the Congress was to invite attention to the changing shape and size of the crime problem at the beginning of the last quarter of the century and to stimulate thinking about policies for its more effective reduction and containment.

3. The rise of crime in many countries appears to be related to periods of exceptionally rapid social and technological change. These developments have affected the styles and methods as well as the extent of crime. Skyjacking is peculiarly related to the opportunities and risks of flying and to the expansion of mobility. Organized crime simulates, for illegal purposes, the methods and procedures of corporate business and the modern conditions of mass consumption provide opportunities for consumer fraud or the sale of dangerous or untried medicines and products on a scale never before conceivable. Corruption both in business and administration continues to be one of the serious issues of our time.

4. Computers have both helped to solve crime and helped to create new types of extortion, exposure and invasions of privacy for questionable motives. The motor vehicle has transformed the relationship between the police and offenders and, with aircraft, has flouted geographical boundaries or jurisdictions to such an extent that some older administrative divisions of responsibility have sometimes become less and less effective in controlling crime. The mass media have transmitted methods of crime, as well as public concern about it, across the world, thus mobilizing public opinion on the one hand but offering both technical know-how and the attraction of drama to offenders seeking knowledge and notoriety. Indeed, criminal notoriety has become a marketable commodity in some societies within which

publications or public notice bring their own obtuse rewards to candour. Inflation
provides motives for the stealing of masterpieces or questionable dealings in
property while currency speculation appears to have outgrown the control of some
national banks and to have created new opportunities for illegal enrichment at the
expense of millions.

5.   And across the world canvas, international violence, syndicated crime, drug
trafficking and drug abuse have drawn painful scars, endangering many and creating
a climate of extreme insecurity; but bringing at the same time untold profit to the
few who are able to be ruthless, implacably efficient and purely self-seeking,
regardless of law. To make the situation more complex, international violence -
whether in the form of assassinations, hijacking, the kidnapping of diplomats or
the planting of bombs, has had a threefold motivation. Apart from ordinary
criminal motives of gain or self-indulgence, one has to allow for the political
idealist engaged in the struggle for a difficult and (to him) a better system of
social control; and one needs to acknowledge the mentally unstable offender who
derives satisfaction from the moments of omnipotence which he enjoys when he holds
other lives to ransom in the world spotlight of publicity or decides (with a
firearm or bomb) whether someone else should live or die. Some forms of crime, at
first closely associated with high political ideals, have evolved into profitable
criminal operations (e.g. skyjacking, kidnapping) while the more efficacious methods
of breaking the law have sometimes been adopted by political groups to raise funds
(e.g. armed bank robberies).

6.   Crime at the end of the third quarter of the twentieth century presents
therefore a very complex and diverse problem for full discussion. While, on the
one hand, it is too varied and complex for any one Congress to handle in toto,
it would also be unrealistic for any Congress on crime at this time of history to
fail to acknowledge the great national and international issue which modern crime
in its new styles and unprecedented dimensions now presents to a world which falls
far and conspicuously behind in both prevention and control.

7.   Of course not all countries are equally affected; there are areas of the world
much less troubled by crime than others. Some developing countries have far less
crime than the industrialized nations and have more powerful informal social
control to bolster the law. Some industrial countries appear more able to control
crime and prevent it than do others. And, of course, a great deal depends upon
what is really meant by the term "crime"; upon how culturally and ethnically diverse
a society is; and upon how much individual freedom permits the amount of crime to
grow in certain societies. Nevertheless, it has been noticed that crime rates and
urban growth appear to show a certain concurrence, and even the least developed
areas are not entirely immune from violent crime or the forms of illegal behaviour
which are associated with their culture contacts with more afflicted societies.
There are at least two reasons for this. First, there is nothing particularly new
about the substance of modern crime. However expanded or however sophisticated or
advanced or well organized its techniques and procedures may have become, the basic
principles of criminal behaviour and crime control have not altered too much over
time; and in quite simple and uncomplex societies the roots of law and illegality
are not difficult to find. Organized crime had its distinguished, if not always

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distinct, forerunners, and corruption has been too well known in all times and places for it to be regarded as new or unusual, whatever its scale and whatever modern guise it might have been able to adopt. Skyjacking may be new and computers are definitely novel; but they serve old causes and some motives as ancient as man himself. By the same token the options in crime prevention methods have never been sufficiently numerous for modern techniques to change drastically the basic approaches to crime prevention by the police, courts and correctional services. Secondly, few, if any, societies today are insulated from the effects of modern civilization. By travel or mass media they are brought into cultural contact with all the detrimental, as well as the beneficial, effects of modernization.

8. In a recent course on criminal justice reform held at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (Fuchu, Tokyo, Japan), it emerged that nearly all the Asian countries represented on the course were concerned about similar national problems such as corruption, political or industrial offences, new types of organized or corporate crime, economic exploitation, the loss of national treasures, ways of dealing with national dangers that the technicalities of the older criminal justice systems had not been designed to provide, juvenile delinquency and the forms of personal and property crimes associated with rapid urban growth. There was a consensus that legislation, the police, the courts and the prison system needed reform to deal with the new forms and dimensions of crime.

9. From all this it would seem that appropriate questions for a preparatory meeting to seek to answer might include the following:

(1) To what extent do the problems discussed above affect the countries represented at the meeting?

(2) What local variations on these themes of changed styles and dimensions of crime are presently experienced in the region? Are there special types of offences reflecting the culture and peculiar to the area? Are there unusual local ways of dealing with them formally or informally?

(3) Which are the best approaches to this subject (as it affects the region) to ensure practical professional considerations at the Congress leading to policy decisions and avoiding the pitfalls of purely political debate or an over-generalized excursion into the problems of society which might be of only peripheral concern for crime prevention?

(4) Should the subject be dealt with in two parts - i.e. transnational offences and national offences - or are these two now so interrelated that separation is not possible? In this connexion the difference between the highly developed criminal and penal laws of separate nations and the customary conditions of international criminal law is very relevant.

(5) Are there any practical recommendations for improved national practice or international collaboration which are realistic and which could be implemented at the regional level to deal with these problems?

Agenda item 2

IMPROVEMENTS IN CRIMINAL LEGISLATION, LAW ENFORCEMENT, JUDICIAL ADMINISTRATION AND CORRECTIONAL SYSTEMS WITH A VIEW TO THE PREVENTION OF CRIME AND THE TREATMENT OF THE OFFENDER IN THE COMMUNITY

10. This is a very broad area for consideration by the preparatory meetings or by the Congress. However, it should be noted that it has one single aim and objective – the use of community reserves and community resources for the more effective prevention of crime and the treatment of offenders.

11. Original thinking about this subject hovered around the theme of formal and informal social controls in the sociological sense and the idea of the development of alternatives to the criminal justice system for dealing with a variety of social problems (e.g. drunkenness, prostitution, vagrancy, homosexuality, drug addiction and other victimless crimes) amenable to action administratively, by health services or by welfare or other agencies. This thinking still pervades the item as now defined, and the intention is to find ways of preventing crime being committed or, if committed, being dealt with in ways which would isolate the offender from his community or expose him to liabilities which would make it more difficult for him to return to society and assume a useful and dignified role. The item has been focused more sharply, however, on the improvements necessary to achieve this in the specific areas of criminal legislation, law enforcement, judicial administration and correctional systems.

12. Therefore the subject is perhaps best handled by taking the objective of crime prevention and the community integration of offenders and then studying this under the four headings already provided. It would seem appropriate therefore to pose the questions which a meeting would seek to answer under these separate headings.

A. Criminal legislation

13. Obviously most countries have far more laws than they really need and far more than they can usefully enforce. Indeed, if all laws were consistently enforced in every detail it is likely that societies would grind to a standstill and the courts would never be able to handle the cases even if there were enough policemen to make such rigid enforcement possible. Yet each new Government tends to enact more laws and elections are sometimes won on promises of legislation. The starting point then is to determine carefully how many laws are really operative or operable. There is no virtue in interfering with the individual in the community by unnecessary laws. Secondly, how narrowly can criminal behaviour be conceived? Here changes in customs, mores and values need to be carefully

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considered and the level of public tolerance gauged. It has been too easy in the past to stigmatize all kinds of human behaviour as crime and there may be a need for an emancipation of law from morals. This, however, depends very much on the country and on the value systems. Thirdly, there is the issue of the positive use of law to encourage education, attendance at schools, to promote family cohesion and provide for leisure, i.e., to do all those things likely to improve the process of socialization as a preventative of crime. Fourthly, there is the question of how better statutes could provide for improved means of dealing with cases without overburdening the courts or providing for measures which favour the offender's continued presence as a working and contributing member of his community whenever the circumstances allow, e.g. by admonishments, fines, probation, supervision, suspended sentences, obligatory week-end work, extramural labour, some service to the community etc. Finally, there is the need to consider the legislation on criminal procedure which governs the processing of accused persons and the treatment of offenders. This, again, can often be simplified or made more flexible. The questions to be answered here on a regional basis might then be:

(1) To what extent are improvements needed in criminal legislation with a view to encouraging more community treatment of crime and the integration of offenders?

(2) To what extent are existing legal systems (often borrowed from outside) conducive to the more effective prevention of crime by the community and the community integration of offenders?

(3) What services or institutions are appropriate for keeping legislation sensitive and relevant to opportunities for the community prevention of crime and the integration of offenders?

B. Law enforcement

14. The relationship between the police and the community is fundamental to any effective law enforcement, whether this means discouraging crime from an early age, depriving offenders of refuge when they are escaping or handling cases in such a way that the policeman is a recognized community-supported agent with status, trust and authority appropriate to his duties. Usually this basic relationship depends on historical factors and on the role which the police have played in maintaining order and preventing crime. Whether the police system was imported or built on local traditions; whether the police were regarded with fear or confidence (or both, depending upon the position of the citizen in relation to the law); whether the police were purely for the prevention of crime and maintenance of order or had other functions within the community (e.g. administrative, prison service, fire service etc.) will all affect the nature of the community-police relationship. This relationship has very special relevance to the possibilities of providing community alternatives to conviction or imprisonment since the police follow-up, suspicion, surveillance or questioning of persons with criminal records can make reintegration a very difficult process for both the community and the offender. On the other hand, the efficiency of the police in detecting and

prosecuting offenders requires some way of using the accumulated knowledge of past conduct by persons who have previously been through the criminal justice process.

15. The crime prevention role of the police in the community is a much neglected and elusive subject. The more effective it is, the less does it show: the more successful the policeman is in this respect, the less he is likely to be able to claim credit. Similarly, the police have often been instrumental in finding work for ex-offenders or promoting leisure-time activities for young people who would otherwise be in trouble with the law. Here, effectiveness will usually be without proof and easily attributable to other factors such as better training, income, friends etc. An understanding and collaborative system of law enforcement can prevent a great deal of crime and can make or break many programmes for the reintegration of offenders. The questions which the experts might like to consider are therefore:

   (1) What is the present position vis-à-vis community and police relations in the countries of the region? Is this conducive to the prevention of crime and the more effective community treatment of offenders?

   (2) What improvements suggest themselves with respect to (a) better police and law enforcement measures to prevent crime, (b) better police and law enforcement measures to promote, encourage and strengthen prospects for the treatment of the offender in the community?

C. Judicial administration

16. The offender comes before the court for adjudication, but in this procedure the function of the court has relevance to both the more effective prevention of crime and community treatment for offenders. Once action needs to be taken, there is a certain selectivity about the persons to be charged, the charges themselves and the courts in which they are likely to be heard. Sometimes the weight of work placed upon the courts makes it necessary to find ways of sifting the cases in such a way that serious cases are dealt with promptly while others are processed summarily or reduced in the time likely to be taken by a formal or informal system of plea-bargaining. Some countries make use of informal tribunals at the neighbourhood or village level to relieve courts of minor cases, while in other administrations there are public prosecutors with discretion to decide which cases will go to court and which will not. In all this the disadvantages of possible discrimination have to be weighed against the advantages, for crime prevention, of avoiding the stigma of a court appearance and especially a conviction.

17. Secondly, the technicalities of court procedure need to be considered in their relationship to crime prevention and the community treatment of the offender. The law is necessarily complex, but if the complexity is such as to veil the impartiality and fairness of the court or to give the impression that lawyers dispense justice at discretion by means of subtle and obtuse interpretations, then the role of the court in preventing crime can be affected. This is particularly

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true where the language of the courts is not always the language of the person brought before the court. Certainly courts will wish to exclude from their purview persons who are arraigned on technical offences or for cases not obviously criminal. Special traffic courts, juvenile courts and debtors' courts have been established to separate persons who are not usually regarded as being criminal in the full sense of the term - even though they have broken the law, and this procedure of separate trial could be developed to provide means of preventing more serious offences from being committed or strengthening the community controls on conduct.

18. Thirdly, courts greatly affect crime prevention and the reintegration of offenders when they move to sentencing. This is the point at which the offender can be removed from the community or subjected to some sanction within the community. Admonitions, fines, suspended sentences, probation, rustication and a variety of other measures may keep offenders out of prison and within the community: but the court is usually in difficulty with recidivists for whom the alternative measures have previously been used. Corporal punishment has sometimes been preferred to sending certain types of offenders to prison, but it is considered harsh and cruel, as well as inefficient as a crime preventative, in other areas. In general, the training of lawyers and judges does not always include instruction in sentencing or acquaint them with the physical conditions behind the court sentences.

19. Finally, the whole range of appeal facilities has to be taken into account for its effect on (a) the protection of the rights of the accused; (b) the strengthening of justice by oversight of higher tribunals; (c) the delays of justice and the bottle-necks which it can create in the disposal of cases; (d) the discriminative effect of the system where it seems to be more available to the rich than to the poor, to the educated than to the uneducated, to the urban dweller than to the rural farmer.

20. All these issues have profound effects upon the prevention of crime or the strengthening of the community treatment of offenders by the courts. Courts can be expeditious and strictly just or grossly overburdened and unfair in their operations in respect to the public as a whole. These affect the value of the court system in serving the ends of crime prevention and community treatment. Therefore, the questions which pose themselves might include:

(1) What are some of the present handicaps or defects in the court systems of the region which are likely to hamper the courts' effect on the prevention of crime and the treatment of offenders?

(2) How can these be remedied with a view to promoting better action by the courts to prevent crime and foster the use of the community in the reintegration of the offender?

(3) How can the court function be more integrally related to law enforcement and corrections with a view to encouraging community involvement in crime prevention and the reintegration of offenders?

D. Correctional systems

21. Correctional systems in this context are taken to cover all penal or related measures, i.e., whatever an offender may be awarded as a sentence from an admonition or warning to imprisonment or capital punishment. To prevent crime and reintegrate offenders into the community, it is now generally felt that prisons are not effective and should be replaced. There is often less than clarity, however, as to the replacement measures to be used. Obviously as many offenders as possible should be diverted from prisons by the more extended use of probation, suspended sentences, extramural labour and other sanctions. Also those offenders who are suitable should be released from prison to parole or other forms of external supervision as soon as possible. Half-way houses or hostels have been devised as well as special release programmes. Some prisoners are already allowed to leave the prison daily for work in industry or agriculture. If community solutions are to be found to the prison problem, more expedients of this kind are necessary: perhaps more extended forms of extramural labour, different types of institutions for small numbers within the community or forms of release which would widen the use of probation and parole without a great deal of personal supervision. These are some of the ideas to be explored.

22. This will leave a hard core of really difficult offenders in prison - the ones too dangerous to be released into society. Yet even for those it may be necessary to consider community methods, particularly if they are on fixed sentences which ensure that they must be released anyway in the future: in this case some community contact and attempt at reintegration will be necessary if only to prepare for release - however cautiously this may need to be done. It might be possible to reverse the process and consider bringing the community more effectively into the remaining prison to work with the dangerous offenders still held.

23. From all this it would seem that the following questions suggest themselves:

(1) To what extent can existing correctional systems be improved to encourage and foster more community treatment of offenders?

(2) What are the limitations, if any, of community treatment of offenders?

(3) At what points should the community structure be strengthened to provide for close prisoner-community relations?

(4) What are the alternatives to imprisonment beyond those already in use in the region?

Agenda item 3

THE EMERGING ROLES OF THE POLICE AND OTHER LAW ENFORCEMENT
AGENCIES, WITH SPECIAL REFERENCE TO CHANGING EXPECTATIONS
AND MINIMUM STANDARDS OF PERFORMANCE

24. This title emerged from a special preparatory meeting organized by Chiefs of
Police themselves to consider the most appropriate subject for the Fifth Congress
covering law enforcement interests. This meeting felt that the police or law
enforcement function was at a critical stage in a world rapidly changing and
outgrowing its older institutions. Therefore the precise role of the police in the
future should be studied, and this would inevitably derive from the balance of
public expectations of the police (which also changed) and the standards of
performance regarded as professionally basic for any police service. Relevant to
this subject, also is Economic and Social Council resolution 1794 (LIV) in which
the Council asked the Committee on Crime Prevention and Control "to consider the
possibility of including in its work programme the question of preparing an
international code of police ethics and to transmit its recommendations to the
Commission on Human Rights, at an appropriate future session, of the desirability,
scope and possible content of an international code of police ethics". It was felt
that the subject might best be approached with an historical perspective in each
region and culture showing how policing as a separate function (say, to military
duties, fire protection or other forms of general administration) arose in each
region and culture. Expectations and standards had often been historically
affected, if not always determined, by the past. This kind of historical
perspective would provide some background to the existing police-public relations
in the different regions of the world. It was considered especially important to
have as much data as might be available on the population/police ratios for each
period of growth and expansion, but particularly for the current situation.

25. In developing this theme of emerging roles of the police and related law
enforcement agencies, it was thought essential to show the extent to which the
police organization in each country reflected the educational levels of the society.
How far was a balance being (or not being) achieved - or had (or had not) been
achieved - in former periods? This should be documented and discussed as far as
possible since many public police problems could be related to respective and
comparative levels of education. The public confidence in the police was related
to the public's opinion of police standards, but these in turn depended upon the
level of the educational response to the expectations.

26. The whole question of the police responsibilities for the maintenance of
national order might be partially in conflict with the problem of decentralizing
police functions as much as possible to get more community participation. Different
"mixes" of organization, centralized and decentralized, had been experienced in
different countries at different times and this experience now needed to be shared
to obtain better results. A police too divided and locally controlled could be
gravely inefficient and, on the other hand, a completely centralized force which is
highly efficient technically could be inefficient if it became too far removed

from the people served. Relevant to this issue is the practice of some countries which separate a _gendarmerie_ from the _police judiciaire_ and the alternative of having a single, all-purpose police force. Relevant, too, are the differential levels of public toleration of crime which often decide what behaviour the police will or will not control. Connected with this same issue is that of _who_ the police should be. Should they be completely separated from the military or perform para-military functions? Should the police be drawn from among the people they serve - and if so, within what range, e.g. only from the same village or neighbourhood or from the same city, province or country? Should they live or be expected to live in the area in which they serve? To what extent does this close proximity to their public affect their impartiality? Should they be outsiders accommodated in barracks? These are not just academic questions. In countries across the world, policing is done in ways which illustrate such diverse approaches. To what extent would the increasing number of private police forces be brought into this picture, and how can it be related to vigilante groups formed by the public themselves? It is apposite that as towns have grown beyond the older limits of behaviour control the private security and private police forces have greatly increased. Is this a tendency - if not, what are the alternatives?

27. The minimal standards of performance for any police force include the provision of personal security, - the protection of life, property and the right to use streets, public places and parks. In performing these duties the police have inevitably to serve the dominant value systems in a society. To what extent is it possible and desirable therefore for law enforcement agencies to accord equal recognition to minority value systems? Where there is no basic clash of interests between the systems no real problem arises except in the selection and appointment of law enforcement officers capable of acknowledging the existing variety and handling it: training can often ensure that officiousness or authoritative intolerance is eradicated and considerate attention accorded to a wide variety of diverse and delicate circumstances where ethnic, economic, national or diverse cultural interests are involved. However, there are situations within which minority value systems or subcultures are really opposed, wholly or in part, to the dominant values which the policeman is generally employed to serve. Here the democratic principle is pinpointed in police action. Others may write books on the situation or deal with it in a variety of conciliatory ways over time. But often the policeman has neither the time for long reflection or the possibility of avoiding action. Even if he decides to take no action he is, in effect, taking a position which needs to be clearly understood and defined well in advance of the necessity arising. Again, this is a problem deeply affected by the expectations of the public ranged on both sides of the value dispute and the local levels of toleration.

28. In a modern, emancipated, educationally sophisticated, mass-communicated and diverse urban culture it appears inevitable that anyone charged with the maintenance of order is going to find himself in something of a scapegoat situation - at least with relevance to one group, whether this be the dominant or subordinate variety. He will be misunderstood either genuinely or deliberately. This inevitability and the unenviable position of the law-enforcement agent calls for understanding by the general public: but above all it demands a level of maturity

in the law enforcement agent himself. He needs to understand himself and his reactions and to maintain a balance in the most difficult conditions. Sound judgement and cool appraisals can only be safeguards of performance if the officer or agent knows himself and his feelings and is mature and sufficiently well trained to avoid hasty, unthinking and over-emotional responses. This may call for new qualities of personnel and training with economic implications for the public at large - especially where expenditures on the police are already running at a high level.

29. The administration of any criminal law necessarily involves an exercise of discretion by the law enforcement agencies. In some places and at some times this discretion of the police has been practically unlimited. In recent years efforts have been made to limit this area of discretion by means of court supervision and case-decisions which provide guidelines for police action and restrict freedom of action by the police where this might impinge upon freedom of action by citizens. Indeed, as education has widened the awareness of basic human rights and increased the capacity for articulate protest, the exercise of balancing human rights has become delicate in the extreme. The exercise of individual rights, even those of the offender, should not be restricted unnecessarily and should be constrained only in so far as such restriction is unavoidable to protect the exercise of equal rights by other individuals - or to protect potential victims. In the event, i.e. in the street or public place, it has been the policeman who has had to decide where the lines should be drawn. However, it is obvious that the exercise of this discretion has varied considerably as between different agents or officers, different district headquarters or offices and different towns or parts of a country. It seems essential, therefore, to provide that the roles of law enforcement agencies should be so drawn as to incorporate similar or comparable guidelines for the exercise of discretion, no matter where or with respect to whom. The extent to which the discretion itself should be permitted or further limited by law or the courts is a related but wider subject.

30. Finally, most countries are experiencing a problem of change in the police image and function. Extra salary does not always attract the right quality of person or prevent premature retirements. Even extra training facilities often result in a "brain drain", as the best agents or officers qualify for posts outside law enforcement or move to more academic roles. Additional staff is not necessarily an assurance of extra efficiency and traditional trust in the fairness, objectivity and dedication of the police may actually decline as the force grows - and perhaps grows away from people by intensified professionalism of the work. The public image of the police function is obviously at the root of all this. There is a need for recognition and dignity in the police function if it is not to deteriorate.

31. This may have some connexion with the structure of police services and the extent of professionalization. Should police careers be shorter, more concentrated and less committing? Is it possible that the burden is now too great for any person to bear throughout a whole working life? If so, how are other services to be related to the police to provide for career flexibility? Alternatively, are the

public expectations of minimum police standards both too high and too conflicting to be realistic? A police system is usually an authoritative structure which, like a purely military structure, may relate conveniently to democracies only in times of danger or stress. When this danger is conceived as being external because the offenders are of an out-group, then the military and the police acquire both status and job satisfaction. When the danger is within affecting all the people, even the influential - and when it may touch the citizen too closely, then the police role may be confused and it might be the more vociferous or articulate who will determine policy: those who appear to be in the way of change - like the police - may lose status, or at least be easily led into believing that they are losing status and trust. This is a matter less for the police to solve than for those more concerned with the fundamental dynamics of the social structure - but it is of concern to all those involved in the theory or practice of law enforcement. From this kind of discussion the following questions seem to present themselves for any group of experts meeting to consider this subject:

(1) What is the historic background to the police function in the region - how has this varied in different countries and cultures? How has it changed in recent times?

(2) Is there any feeling of a need for a change in existing law enforcement structures? If so, what suggestions are current in the region?

(3) What is the local situation with regard to

    (a) Population/police ratios?
    (b) General public and police education?
    (c) Centralization and decentralization of the police?
    (d) Conflicting cultures?
    (e) Crime rates and trends?
    (f) Police efficiency (detection rates)?

How are these interrelated to the police as a career? Do they provide a structure to respond to (a) public expectations of the police; (b) police expectations in career and job satisfaction; (c) the need for a formulation of minimum standards of police performance?

(4) Is it possible on a regional basis to reach any consensus on the basic standards for police performance? What recommendations would the regional meeting like to make to the Congress?

Agenda item 4

THE TREATMENT OF OFFENDERS IN CUSTODY, WITH SPECIAL REFERENCE TO THE IMPLEMENTATION OF THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS ADOPTED BY THE UNITED NATIONS

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

33. There is a half-century of history behind these Rules, which were presented to the Prague Congress of the International Penal and Penitentiary Commission in 1930. They were later amended and expanded to the 94 Rules adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and eventually adopted by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957.

34. Since then the implementation of the Rules has left a great deal to be desired. An inquiry carried out by the Secretary-General and presented to the Fourth Congress in 1970 showed that the Rules had not been embodied into any national laws, though they had influenced or probably influenced the regulations and practice in half the sample of 44 countries which reported. Five countries claimed to be already beyond the Rules in their law and practice, and some 60 per cent of all the countries replying claimed that they were applying the Rules to some extent. However, many difficulties in implementation arose from (a) the fact that there were still places in the world where the Rules were not known and perhaps not even translated into the vernacular; (b) the lack of funds or of trained or specialist personnel; (c) inadequate physical facilities; (d) the complications (especially in federal systems) of ensuring uniformity of standards throughout a country; (e) legal and administrative rigidities or inertia. More generally there were geographical transport or communication problems, and often in the developing countries a high level of local unemployment hampered the full implementation of the Rules and their application in detail even where they were fully supported in principle and generally observed.

35. In many industrialized and developed countries, concern with the way in which the Rules are implemented has been growing since 1970. Prison riots and dissatisfaction with prison conditions (both inside and outside the penal institutions) have focused attention on the Standard Minimum Rules and the conditions they seek to ensure as a right for prisoners. The realization that what looked like compliance with the Rules in policy statements, laws, regulations and in programmes or projects, but which really fell far short of them in actual practice has aroused demands for their more effective implementation - sometimes for their enactment as law. Ex-prisoner groups and organized protests within the prisons themselves, not to mention political interests and a wide variety of

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citizen organizations concerned with penal reform, have all combined to use the Rules almost as a declaration of prisoners' fundamental rights, to be implemented as a basic and inescapable obligation.

36. The Fourth Congress held at Kyoto in 1970 called for a report on the application of the Rules and the establishment of a working group to study various aspects dealing with their implementation; 1/ the Fifth United Nations Congress is to receive a report on the interim action taken. The report of the Working Group (E/AC.57/8) which met in September 1972 examined questions relating to the extent to which the Rules were applied, the need for a more effective system of reporting, the areas in which the Rules were defective or outdated, and the ways in which the scope of the Rules might be enlarged where necessary. It also endorsed the development of a commentary on the Rules for the guidance of Governments, but decided that amendment of the existing Rules would be inadvisable.

37. Consideration of this topic at the Fifth United Nations Congress could therefore serve not only to report progress since the Fourth Congress but as a forum for the discussion of wider issues connected with the correctional system in the light of modern and widespread concern over its failure in the main task of rehabilitating offenders. On the one hand it does not seem to modern specialists that prisons are reforming or rehabilitating offenders, as they should. On the other hand there are those who now question this objective on the ground that society has no right to change those sentenced. It may reintegrate them into their communities, but the commission of an offence gives the authorities no right to talk of rehabilitation or treatment - terms which, it is often claimed, did not amount to very much in practice anyway and were rather hypocritical.

38. Whatever position one may take on these deeper issues, it is clear that prisons, in some form, will be required after all those not needing this kind of sentence have been released to other forms of supervision or sanction. Moreover, it will take some time to reorder any criminal justice system (as these are at present constituted and operated) to ensure that less and less reliance is placed upon institutional remedies for crime and more attention is paid to community-based alternatives. Therefore the Standard Minimum Rules are going to be needed for a long time ahead and the question of how to implement them most effectively in relation to prison labour, vocational training, classification, segregation, family contact, furloughs etc., remains of considerable importance to the authorities in every country. This is the theme behind this subject on the agenda of the Fifth Congress. Of course there will be a report to the Congress on the work which has been done on these Rules by the Working Party which met in 1972: but this should also be the occasion for the Congress to look closely at the concern now being expressed about the implementation of the Rules and the interest now being shown in their translation into practice in some places.

1/ Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.71.IV.8).

39. Practically everywhere there is experience of overcrowding in the prisons. Institutions erected for a few hundred inmates may be accommodating a thousand or more in conditions which make it difficult, if not practically impossible, to observe the Rules in any precise way or in all respects. This is a problem which is not amenable to solution by the prisons alone, but which calls for co-ordination of effort between the police, courts, prisons, parole and probation services. It is not a problem too remote from the Rules themselves for it to be a matter for serious discussion by those charged with the implementation of the Rules. If overcrowding in prisons can be reduced, then the Rules will be more easily applied in most countries of the world.

40. Secondly (although some countries are beginning to tackle this problem), it is still generally true that one of the serious issues for most prison systems consists in finding better and more productive ways of dealing with those now sentenced to imprisonment but who do not in fact "belong" and who are being turned into recidivists by this experience. Should not the prison system rid itself of the problem social cases such as alcoholics, drug addicts, prostitutes and vagrants who are outside its scope and competence and who could often be more effectively dealt with by social service agencies where these exist? It is still not unknown for lunatics to be held in prison for want of any other suitable place to hold them and, in one country, more than half the inmate population of the prisons consists of those in the above categories. This problem is not unrelated to that of overcrowding, but it is a separate issue because, whether to reduce overcrowding or not, so many of these people have nothing to gain and a great deal to lose by being mixed with other types of offenders. And in the long run society is neither protected nor relieved by using its prisons so indiscriminately.

41. Thirdly, and still in the interest of reducing overcrowding and getting the Standard Minimum Rules more realistically applied to those in prison, there is a great need to discover and try alternatives to imprisonment. These may take the form of work camps, "restricted freedom" systems (with supervision over work and leisure), or "day-fines" (where the offender is fined not a fixed rate but according to the level of his daily earnings so that the penalty is equalized as between the rich and the poor). There are also many variations on the theme of keeping the offender at his job but making him pay for the maintenance of his dependants and to pay compensation to the victim.

42. Finally, the need for more community involvement in correctional work is widely acknowledged and has been the subject of many papers, conferences and seminars through the years. Usually practice falls short of precept, but obviously citizen participation at all levels from the determination of the sentence and qualifications for parole to the determination of prison administration policies and participation in actual community-based programmes needs to be emphasized, if not indeed accorded high priority. Not only can such participation provide alternatives, or a series of partial alternatives, or at least mitigations of imprisonment, it can also help to rationalize and make meaningful a prison sentence for those who cannot be dealt with in other ways. If the offender is to be trained and equipped to be reintegrated into society, then the problems involved in society itself being represented and playing an active role in the process has to be given the fullest and most immediate consideration.

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43.   The object of this discussion is therefore to be the more effective implementation of the Standard Minimum Rules for the Treatment of Prisoners.   To focus the exchanges of views, the questions for consideration could include:

  (1)   What are the main difficulties in the implementation of the Rules in the countries of the region?   Are these the same as those discussed above?

  (2)   What are the most immediate steps which may be taken to ensure better implementation of the Rules in the region?

  (3)   What are the longer-term measures needed to ensure the effective implementation of the Rules?

  (4)   Is it possible to identify special problems in Rule implementation e.g. concerned with prison labour, equipment, prison architecture, styles of accommodation, vocational training or leisure programmes which need more attention? What are the local issues involved?

Agenda item 5

ECONOMIC AND SOCIAL CONSEQUENCES OF CRIME: NEW CHALLENGES FOR RESEARCH AND PLANNING

44.   The agenda for the Fifth United Nations Congress has been deliberately geared to provide subjects for those with professional interests in crime prevention, whether as legislators, legal draftsmen, academics, research workers and scholars; law enforcement officials, correctional, parole and probation officers, judges and lawyers, as well as social service personnel in work related to the prevention of crime and the treatment of offenders.   However, crime is a problem for the total society, political, economic and social, and this fact is most particularly reflected in the first and last items of the agenda, which are designed more specifically for national policy-makers, economic and social planners, and for those concerned with the research necessary for providing the data and the models for better socio-economic engineering.   The Congress will be a professional Congress, touching upon political issues only very incidentally and in passing: but it could hardly afford, at this time and stage of world development, to ignore the profound and widespread economic and social consequences of the crime phenomena.

45.   Both nationally and internationally, crime is diverting billions of hard-earned pounds, dollars, francs, piastres etc. from deserving to undeserving pockets; it is distorting the quality and distribution of the benefits of development and, perhaps more significantly, crime is absorbing resources (in both the commission of crime and its prevention and control), which, without any doubt, could be better invested.   This is a serious problem for the industrialized and relatively affluent countries: it can be disastrous for those countries which are poor and which have precious little in the way of resources with which to achieve their vital economic and social objectives.   Whether one is thinking of national

subsistence, mass poverty, unemployment, the quality of the environment or the gross national product, crime in its widest sense is significant. It can draw off resources, divert the products, hamper the administration and create conditions inimical to development.

46. From a dispassionate and purely economic standpoint, of course, it can be argued that crime can actually aid development by concentrating wealth for investment in the hands of a few (no matter how) and encouraging initiative (even though criminal) and entrepreneurship (even though illegal). These are the qualities of successful business enterprise, whichever side of the law it happens to operate. However, equally dispassionate and no less pure economic arguments are available to show that any short-term advantages in this direction are likely to be outweighed by the longer-term effects on the motivation of people and organizations for production, on the insecurity of possessions and earnings and on the social consequences of growing injustice and inequalities in society attributable to crime. Moreover, the full economic costs of crime have never been adequately measured. There have been notable attempts in the United States of America, Canada, France and one or two other countries to cost the losses in crime and to estimate the expenditures to prevent and contain it: but these costs are very difficult to calculate and their significance and value depend upon some very basic decisions as to the interpretation of expenditures not directly related to crime but with unquestionable effects (e.g. in mental health, child care, remedial education or for the relief of indigents) and on decisions as to the portions of police, court and administrative man-hours which are properly chargeable to the crime-prevention account. To this must be added the complications of opportunity costs, e.g. the consequences, in the short and long terms, of not providing adequate child care, police, probation, parole, etc. And of course the difficulty of finding criteria for adequate evaluation.

47. It has been suggested, however, that the total damage ascribable to crime goes even further and, properly calculated, should embrace the loss liability or injury inflicted mentally and physically on the victims and their dependants, on the offenders and their families, on the immediate neighbourhoods and in a ripple effect on child neglect, housing, places of employment (loss of manpower or hours of work, cost of replacements and their training), on premises attacked (extra security costs, replacement of damaged doors, windows, installations, etc.), as well as more directly upon the society in terms of increased forces of law and order, extra insurance, increased taxation, effects on the education of the children of families involved and so on. If, as is often said, society makes the crime for the offender to commit, then the responsibility for crime could be argued to be as wide as society and certainly not restricted to the few offenders who are unlucky enough to be caught.

48. The number of crimes unreported, or, if reported, are still undetected, shows that offenders actually dealt with comprise but a fraction of those engaged in crime. This "dark figure" for crime is a sufficient indicator of the possibility that those caught may be carrying a burden for a much wider and more representative group of citizens. Beyond the economically-minded calculators, therefore, there are sociologically-oriented interests seeking to fix the goals for any society as:

(a) Minimizing the harm, damage and costs of crime in the widest sense of these terms - and controlling it;

(b) Equalizing within a society the distribution of responsibility for this harm and these costs; and

(c) Developing agencies to collect the necessary indicators.

49. While all this is of value in defining the tasks ahead, it is still a relative micro-perspective when compared with the macro-view of a total economy which needs to be taken by national planners or by those responsible for following their advice in making the broadest possible decisions on the directions of national development. This kind of macro-view on planning to prevent crime was taken at the Fourth United Nations Congress held at Kyoto, Japan, in 1970. Briefly it proposes that most crime has arisen from the social changes, the industrialization and urbanization (and their consequences) initiated by the direction of national investment. The shift from agriculture to industry is determined by a national decision to divert resources, the development of commerce is due in large part to the Government's policy on imports, exports, wages and prices, etc. These decisions have instigated movements of populations, created many more opportunities for crime in anonymous urban settings, fostered shanty-towns and overcrowding with all their attendant forms of physical and social deterioration from which crime emerges. And even the attempts to rehouse people have often been made without regard to street-lighting, social amenities, leisure outlets, adequate transport, so that juvenile delinquency and crime have developed almost naturally from the investments.

50. In these circumstances crime is very inadequately dealt with after the event by special education, special police units, courts, probation, prisons and parole. It needs to be prevented by better planning and a new breed of crime-prevention planners is needed to help other national planners to review their allocations (or proposed allocations) with a crime-preventive eye. To avoid creating criminogenic conditions, the national planners have to plan with crime possibilities in mind. This applies whether they are thinking of agriculture, industry, forestry, construction, housing, education, health or welfare: in all of these, opportunities for crime, even temptations to commit crime, are being built into our modern societies to an extent that no criminal justice system can later prevent.

51. From all of this it is obvious that the last quarter of the twentieth century provides challenges for both planners and research workers - for planners because they have to find ways of integrating crime prevention in their objectives and methods; for researchers because they have to identify the areas of research not only most likely to help planners and policy-makers, but also most likely to produce models which can be tried and tested in practice.

52. In this discussion therefore it might be useful to concentrate attention on the following questions:

(1) What have been the economic and social consequences of crime in the countries of the region? What areas of priority for future planning and research do these suggest?

(2) To what extent does social defence planning form part of national planning in the countries of the region? How can the situation be improved?

(3) To what extent has crime-prevention research in the region been able to make a contribution? How can this be improved?

(4) From the point of view of the region, what are the real challenges for planning and research with a view to crime prevention?