

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/CONF.144/RPM.2
14 June 1989

ORIGINAL: ENGLISH

EIGHTH UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS
Havana, Cuba, 27 August-7 September 1990

EUROPEAN REGIONAL PREPARATORY MEETING
FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE
PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS
Helsinki, 24-28 April 1989

Report

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RECOMMENDATIONS

1. The European Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, after extensive discussion of the various substantive issues related to the five topics of the provisional agenda of the Eighth Congress, as outlined in the discussion guide (A/CONF.144/PM.1) and in the reports of the five interregional preparatory meetings held at Vienna in 1988 (A/CONF.144/IPM.1-5) recommended the following draft resolution for adoption by the Eighth Congress:

The role of criminal law in the protection of nature and the environment

The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recognizing that the environment must be protected per se in its entirety and in its various component parts and their interrelations, as the foundation and basis for life,

Deeply concerned about the increasing damage to the environment caused by detrimental influences,

Fearing an occurrence of environmental disasters brought about by additional disturbances of the ecological system,

Realizing that intensified international efforts are necessary to save the environment or at least to protect it from further deterioration,

Considering the fact that effective measures to protect the environment can only be implemented if awareness of the problems and willingness to act accordingly are developed,

Recognizing that the United Nations should continue to play a substantial role in promoting protection of the environment, particularly through the United Nations Environment Programme,

Recognizing also that the United Nations Environment Programme is the lead agency in handling environmental matters,

Convinced further that besides measures provided by administrative law and liability under civil law, measures should also be taken as a last resort in the field of criminal law,

1. Calls upon Member States:

(a) To recognize the need to enact, where necessary, and to enforce national criminal laws designed to protect persons threatened by the deterioration of the environment, and to preserve the ecosystem and natural resources such as water, air and soil;

(b) To envisage the protection, under national criminal laws, of nature and the environment against the dumping of hazardous waste or other, similar materials and against the operation of dangerous technical installations that they consider to involve unacceptable margins of risk;

(c) To provide for the modification, wherever necessary, of national criminal laws for the purpose of protecting nature and the environment;

(d) To implement effectively their national criminal law concerning environmental protection;

2. Asks Member States:

(a) To take measures to encourage public awareness concerning environmental protection and to stimulate the readiness to act accordingly;

(b) To consider becoming parties to the conventions on environmental protection and the conservation of nature;

3. Requests the Secretary-General:

(a) To encourage the incorporation, in future international conventions for the protection of the environment, of provisions under which States would be expected to enact sanctions under national criminal law;

(b) To examine the possibilities of further harmonization of the provisions of existing international instruments entailing penal sanctions under national criminal law;

(c) To prepare a report every five years on developments in the field of environmental criminal law;

(d) To assess the priority to be given to the topic at future United Nations crime prevention congresses.

2. The Meeting unanimously adopted the following resolution for consideration and appropriate action by the Eighth Congress:

Resolution

Improvement of international co-operation in crime prevention and criminal justice

The European Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Calling attention to the Charter of the United Nations, which proclaims, inter alia, that Member States should achieve international co-operation in solving international problems of an economic, social, cultural and humanitarian character,

Bearing in mind the Final Act adopted in 1975 at Helsinki by the participating States of the Conference on Security and Co-operation in Europe and the Concluding Document adopted by those States in 1989 at the Vienna Follow-up Meeting, in which European States expressed their intention to strengthen co-operation, inter alia, in the areas of crime prevention, criminal justice and the observance of human rights,

Convinced of the important role of the United Nations in the field of crime prevention and criminal justice, as reaffirmed by the General Assembly in its resolution 43/99 of 8 December 1988,

Expressing its gratitude to the Government of Finland and the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), for the solid preparation and for the hosting of this Meeting,

Concerned by the growth and seriousness of crime in many parts of the world, particularly as regards all forms of organized crime and terrorist activities, and economic and environmental crimes,

Aware that the growing internationalization of crime requires cross-boundary co-operation and countermeasures, including improved data collection, decision-making and management systems for criminal justice services and institutions through computerization and the establishment of effective information networks and linkages to other national and international data sources,

Acknowledging the valuable regional and interregional research work accomplished in these and other areas by the United Nations Interregional Crime and Justice Research Institute,

Recalling the value of the Milan Plan of Action, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling also Economic and Social Council resolution 1986/10 of 21 May 1986 on the implementation of the recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and other resolutions calling for preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Expressing its concern about the resource constraints that affect the United Nations crime prevention and criminal justice programme, and that could hamper the preparations for the Eighth Congress,

Taking note of the five reports of the interregional preparatory meetings for the Eighth Congress a/ and the report of the tenth session of the Committee on Crime Prevention and Control, b/

1. Takes note with appreciation of the progress achieved so far in the preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

2. Recognizes the special efforts undertaken by the Crime Prevention and Criminal Justice Branch in the preparatory work of the Eighth Congress, in spite of limited staff and resources;

3. Acknowledges the outstanding contribution of the Helsinki Institute for Crime Prevention and Control to crime prevention and criminal justice and, in particular, its leading role as a bridge between the countries of Eastern and Western Europe in the area of crime prevention and criminal justice;

4. Calls upon the Eighth Congress to accord priority to effective measures to combat all serious forms of criminality of international dimensions, as identified in the Milan Plan of Action, and to develop to that effect appropriate model agreements and other forms of international co-operation in criminal justice matters, giving utmost attention to the strengthening of all programmes recommended by the Committee on Crime Prevention and Control and by the five regional preparatory meetings;

5. Further calls upon the Eighth Congress to pay special attention to questions relating to the observance of human rights in the administration of justice, the independence of the judiciary, the role of defence lawyers, prosecutors and law enforcement officials, the protection of the rights of juveniles, the strengthening of the rights of victims and the enhancement of

the status of offenders and their humane treatment, including appropriate reduction of the prison population and the increased use of alternatives to imprisonment;

6. Draws the attention of the Eighth Congress to the progress made by the Commission on Human Rights during its forty-fifth session on the elaboration of a Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;

7. Further calls upon the Eighth Congress to give due consideration to criminal justice management problems, the solution of which would contribute to better co-ordination of crime control activities nationally and by inter-governmental and non-governmental agencies;

8. Encourages the continuing development of strategies for translating United Nations policies in crime prevention and criminal justice into concrete reality and for promoting ways and means of assisting interested Governments in the implementation process, using, inter alia, the advisory services of the Department of Technical Co-operation for Development and of the Centre for Human Rights, as well as the relevant funding agencies such as the United Nations Development Programme, the United Nations Fund for Drug Abuse Control or the World Bank;

9. Requests the Committee on Crime Prevention and Control, at its eleventh session in 1990, to give special consideration to these matters and to make concrete proposals designed to enable the Eighth Congress to cope smoothly and effectively with its numerous tasks;

10. Invites all specialized agencies, the regional commissions and inter-governmental organizations, such as the Council of Europe and the International Criminal Police Organization, to continue to be actively involved in preparations for the Eighth Congress;

11. Also invites relevant non-governmental organizations and the scientific community to pursue their valuable endeavours in support of the United Nations crime prevention and criminal justice programme;

12. Appeals to the Secretary-General to give special attention to strengthening the role of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna, and to allocate within existing resources sufficient budgetary or extra-budgetary means to enable it to cope with its increased work-load;

13. Calls upon Governments able to do so to consider pledging to the United Nations Trust Fund for Social Defence to help prepare for the Eighth Congress;

14. Reaffirms the strong commitment of all countries participating in the European Regional Preparatory Meeting to, and their common interest in, effective and timely preparations as a basis for ensuring the success of the Eighth Congress.

a/ A/CONF.144/IPM.1-5.

b/ E/AC.57/1988/20.

INTRODUCTION

3. The European Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was the second of a series of regional preparatory meetings convened to discuss the five substantive items included in the provisional agenda of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to be held in 1990, in pursuance of Economic and Social Council resolution 1987/49 of 28 May 1987 and General Assembly resolution 42/59 of 30 November 1987.

I. ORGANIZATION OF THE MEETING

Date and venue of the Meeting

4. The Meeting was organized by the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna, at the invitation of, and in co-operation with, the Government of Finland and the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). It was held at Helsinki, Finland, from 24 to 28 April 1989.

Attendance

5. The Meeting was attended by representatives and experts from 29 Member States, by observers from HEUNI and intergovernmental and non-governmental organizations, and by a representative of the Committee on Crime Prevention and Control. The list of participants is given in annex I.

Opening of the Meeting

6. The Minister of Justice of Finland, in an opening statement, noted that his country had long recognized the importance of a global and regional approach to crime prevention and control. The commitment of Finland to such an approach could be seen in its role as the host country of HEUNI. Since its establishment in 1982, HEUNI had promoted the exchange of information on crime-related issues in Europe and contributed to developments in specific areas. Nevertheless, despite the work of such bodies and action taken at both national and international levels, criminality had reached critical dimensions in many countries, straining their capacity to respond effectively and humanely. A balance therefore needed to be struck between the consequences of crime and the potential effects of control measures, with international co-operation playing a central role in combating the threat of transboundary criminality.

7. The Director of HEUNI commended the Crime Prevention and Criminal Justice Branch on its ability to maintain a high level of expertise and efficiency despite considerable resource constraints. While the Branch currently had a much smaller staff than had been the case five years earlier, its mandate had been considerably extended by the Member States, thereby underlining the importance of the Secretariat. He therefore hoped that the meeting would devote its attention both to the preparations for the Eighth Congress and to suggestions aimed at increasing the resources available to the Branch.

8. The representative of the Council of Europe, the fortieth anniversary of which coincided with Finland's accession to that regional body, noted that, in crime prevention and criminal justice, the Council of Europe and the United Nations pursued the same goal of defending society against criminality, while respecting the human rights of offenders and promoting their social reintegration. Many activities undertaken by the United Nations in preparation for

the Eighth Congress, in such areas as assistance to victims, the prevention of juvenile delinquency and the promulgation of the European Prison Rules, were paralleled and firmly supported by activities of the Council of Europe.

9. The Director of the Social Development Division of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna noted the special symbolism of meeting in Finlandia Hall, where the Final Act of the Conference on Security and Co-operation in Europe had been signed in 1975. The signatories had adopted yet another important document in 1989 at the Vienna Follow-up Meeting, reaffirming their commitment to the principles of the Helsinki Act and giving particular emphasis to crime prevention, criminal justice and human rights. In those areas Europe continued to have an important and unique contribution to make to the realization of global objectives.

10. The Director further expressed the hope that the Eighth Congress would concentrate not only on standard-setting and new international model agreements, but also, and above all, on monitoring the implementation of existing instruments. He also noted that the preparations for the Eighth Congress had involved considerable pioneering work by States participating in the current Meeting and by European intergovernmental and non-governmental organizations. Of particular interest was the work done in the following areas: applications of computer technology to law enforcement and investigative techniques; the elaboration of comprehensive draft model agreements in criminal justice matters; the humanization of criminal justice; and the increasing use of alternatives to imprisonment.

Election of Officers

11. The Meeting elected the following officers by acclamation:

Chairman:	Matti Louekoski, Minister of Justice (Finland)
Vice-Chairmen:	N. I. Demidov (Union of Soviet Socialist Republics) David Faulkner (United Kingdom of Great Britain and Northern Ireland)
Rapporteur:	Gioacchino Polimeni (Italy)

Adoption of the agenda and organization of work

12. The Meeting adopted the following agenda:

1. Opening of the Meeting.
2. Election of officers.
3. Adoption of the agenda.
4. Crime prevention and criminal justice in the context of development: realities and perspectives of international co-operation.

5. Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures.
6. Effective national and international action against:
 - (a) organized crime;
 - (b) terrorist criminal activities.
7. Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions.
8. United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard-setting.
9. Consideration of the conclusions and recommendations and adoption of the report of the Meeting.

List of documents

13. The documents before the Meeting are listed in annex II.

II. REPORT OF THE DISCUSSION

Topic 1: Crime prevention and criminal justice in the context of development: realities and perspectives of international co-operation

14. The Executive Secretary of the Congress suggested that the conclusions of the Interregional Preparatory Meeting on topic 1 (A/CONF.144/IPM.1), held at Vienna in February 1988, might be used as the basis for discussion. Topic 1 was intended to ensure continuity between the Seventh Congress and the Eighth Congress, providing the basis for a substantive and constructive dialogue between Member States as they reviewed current trends and exchanged useful experiences. That would facilitate not only the formulation of realistic guidelines for strengthened international co-operation in crime prevention and criminal justice, but also the elaboration of global action programmes. Special emphasis was placed on the implementation of the Milan Plan of Action 1/ and the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ as well as on the need for reinforcing the technical, operational and field-oriented functions of the United Nations. Topic 1 was also closely related to the general theme of the Eighth Congress, namely international co-operation in crime prevention and criminal justice for the twenty-first century. New ideas and concrete proposals would enable the world community to identify and implement effective measures for the prevention of crime and to respond to the challenges of the 1990s and the third millennium.

15. The work so far accomplished by the Committee on Crime Prevention and Control and by the Secretariat was commended by the Meeting, which noted the major advances made in focusing on measures of practical utility to Member States and criminal justice administrators. The importance of the co-ordinating role of the United Nations was underlined, as was the necessity for more incisive action and more effective international co-operation to curb the growing internationalization of crime.

16. The transnational dimensions of contemporary crime required a collective response; thinking about crime and appropriate countermeasures could not continue to be based on national borders. An international strategy with clear goals and well-defined targets was imperative. But another aspect of

international co-operation was equally relevant: countries were increasingly assisting each other in facing common criminal justice problems. Exchanges of experience and information were essential in order to evaluate current policies and programmes and to adopt less costly and more effective and humane measures.

17. Protection against crime, violence, lawlessness and other predatory acts was, together with shelter, food and health, among the most important of human needs. Without such protection, without justice or the rule of law, the quality of life would be undermined, social progress threatened and development hindered. Several representatives noted that those points had been recognized by the participating States of the Conference on Security and Co-operation in Europe in the Concluding Document of their Vienna Follow-up Meeting, which had emphasized the role of international co-operation in crime prevention, criminal justice and human rights.

18. The relevance and timeliness of topic 1 was recognized by all participants, and the diversity and complexity of the issues did not prevent the Meeting from agreeing on a number of practical recommendations. For example, the urgent need to strengthen legal protection against pollution of the air, water and soil was duly acknowledged. While it was true that environmental protection could not be guaranteed solely by means of criminal law, and that administrative regulations had a proper role to play, it was essential to strengthen international awareness and, as a last resort, to punish those committing crimes against precious natural resources. Traditional concepts of responsibility, including negligence, had to be reassessed. The task of the Eighth Congress would be to provide the basis for a body of proposals on the subject, including the creation of an international criminal law for the protection of the environment.

19. Deliberations on the topic by the Eighth Congress should cover two complementary perspectives, one general, the other specific. In terms of the general perspective, the European region had accumulated considerable experience with regard to crime prevention and criminal justice in the context of development. That experience, together with the different types of co-operation so far undertaken, might serve as a model for action between the countries of Eastern and Western Europe, as well as in other regions of the world.

20. In order for the United Nations crime prevention and criminal justice programme to be an effective channel for communication between countries, it was essential to provide for the exchange of reliable information, including data on the relationship between socio-economic structures and crime trends. Several speakers explained the relationship, describing recent improvements in criminal justice systems, including the restructuring of criminal law and procedures and political and legal reforms. Those developments were essentially concerned with the humanization of the legal system and with legal provisions opening up new channels for the expression of citizens' interests, in line with new government initiatives and plans to upgrade the quality of life for all.

21. Other participants described crime prevention plans and criminal justice programmes that were currently being evaluated, and the hope was expressed that the results of the process could be brought to the attention of the Eighth Congress. One plan was based on three main policy objectives: development of prevention programmes at the technical, functional and social levels; improvement of the criminal justice system and its interaction with other branches; and expansion of the capacity of the prison system. Improved town planning and better education were cited as examples of functional programmes.

22. With reference to transnational environmental problems in Europe, one participant said that, in view of their serious consequences, the United Nations should consider defining crimes against the environment as offences against humanity. New forms of subregional co-operation, for example in the Balkans, were also needed to combat the internationalization of various forms of crime. It was noted that the removal of barriers between the countries of the European Economic Community in 1992 would pose new problems with respect to border control, the movement of people, information and the transport of various objects, including those of an illegal nature. A computerized information system would thus be needed to enable members of the European Communities to co-ordinate their action in crime prevention and control.

23. Recent advances in technology and in computerization made it easier for criminals to commit various crimes and more difficult for the authorities to detect them or to seize their illegal proceeds. In 1988, however, the Basel Committee on Banking Regulations and Supervisory Practices of the Bank for International Settlements had introduced new procedures for verifying the identity of owners of bank accounts, including those who used safe custody facilities, thus making it more difficult for offenders to continue to launder money with impunity.

24. Several proposals were made regarding possible action before and during the Eighth Congress, including the following:

(a) A pronouncement on the role of criminal law in the protection of the environment;

(b) The identification of specific measures against political corruption, which drained off public funds and undermined government credibility;

(c) The encouragement of international action against computer crime, a topic for future consideration by the Ninth Congress;

(d) The establishment of computerized information networks open to Member States and other interested parties.

25. The Meeting stressed that any viable United Nations action should be backed by a considerable increase in resources, including adequate staffing of the Crime Prevention and Justice Branch. Organizational and financial difficulties had been encountered in the work of the Branch. To be effective, its financing should correspond to the level of budget expenditures on crime prevention and control in Member States. Regrettably, while an average of from 2 to 3 per cent of gross national product was spent on crime prevention and criminal justice programmes, in the United Nations Secretariat only 0.1 per cent of the overall budget was devoted to that task. The internationalization of crime required a restructuring of United Nations crime prevention and criminal justice work to enable the Organization to meet the pressing need for more effective international co-operation. To that end, it was necessary to strengthen the collective capacity to counteract crime, by providing concrete and efficient services to Governments and promoting practical action at the national level.

26. The support required would be most productive if it did not remain on a general level but was followed by concrete action, including the provision of resources for well-defined projects focused on the needs of developed and developing countries. The Interregional Adviser in Crime Prevention and Criminal Justice stressed that point on the basis of the growing number of

requests for technical co-operation from developing countries. The outcome of such co-operation should be evaluated in terms of both the determined needs of the requesting countries and the capacity of the Organization to meet those needs.

27. It was noted that the staff of the Branch had been considerably reduced, although the number of its assignments had greatly increased. Whereas in the past the United Nations crime prevention programme had been involved in monitoring the implementation of only one international instrument, the Standard Minimum Rules for the Treatment of Prisoners, it was now mandated to follow up the implementation of 10 international instruments, and, should the Eighth Congress adopt the proposed new standards, it would be monitoring 20 such instruments. In view of the existing crisis, the capacity of the Branch to meet the needs of member countries had been very much crippled. Hence the effectiveness of its work was put in jeopardy. If those difficult realities and constraints on international co-operation persisted, the Branch might fall even further behind in meeting the expectations of member countries.

28. To reverse that trend, the United Nations had to give crime prevention and criminal justice the same high priority those matters received on national agendas. Accordingly, not only should calls for the strengthening of international co-operation be matched by corresponding resources, but the Eighth Congress should plan for a system and a structure capable of fulfilling the leadership role, also in terms of central co-ordination, assigned to the United Nations by Governments.

29. The Meeting reviewed the recommendations of the Interregional Preparatory Meeting on topic 1 and provided specific comments on the text. One representative proposed the addition of a new recommendation calling for the elaboration of guiding principles on the prevention of ecological crime and the assignment of criminal responsibility to its perpetrators.

Topic 2: Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures

30. The Executive Secretary of the Eighth Congress drew the attention of the meeting to the report of the Interregional Preparatory Meeting on topic 2 (A/CONF.144/IPM.4) and to the discussion guide (A/CONF.144/PM.1).

31. He noted the key issues raised during the Interregional Preparatory Meeting, including the need for improved management of the criminal justice system, the problem of the deterioration of the situation of those held in prison and the need for reduction of the prison population and of recourse to pretrial custody. The Interregional Meeting had stressed the following three basic principles: minimum intervention in the life of the offender; priority of reparative measures where danger to the public was not involved; and non-reliance on imprisonment as the dominant sanction in the penal system.

32. The Executive Secretary introduced the two draft resolutions considered at the interregional meeting, one on the management of criminal justice and the development of sentencing policies, and the other on standard minimum rules for non-custodial measures ("The Tokyo Rules"). Among the contributions of various bodies he noted a set of rules dealing with the implementation of non-custodial sanctions and measures involving the restriction of liberty. He suggested that the Meeting should focus its attention on those texts, noting that the final drafts to be submitted to the Eighth Congress would take into account the input from all five regional meetings.

33. He also stressed the relevance of problems relating to the treatment of drug addicts and of prisoners infected by the human immunodeficiency virus (HIV) or suffering from the acquired immunodeficiency syndrome (AIDS).

34. Several speakers reported a consistent trend in the reduction of the prison population in their countries, as a result of policies designed to limit the use of imprisonment to those convicted of more serious crimes, to reduce the severity of penal measures (for example the more extensive use of fines), and to expand the use of both traditional and innovative non-custodial measures and sanctions. That positive process could be encouraged through the careful assessment and utilization of the results achieved.

35. The work of the United Nations on topic 2 was strongly endorsed. Specific reference was made to the impact of various United Nations standards and norms on criminal justice reform. While adherence to those standards and norms had not always been easy to achieve, especially in respect of prisoners' rights, some participants reported plans to provide fuller information on United Nations standards and norms to practitioners and decision makers in the criminal justice system, including prison staff.

36. Several participants gave examples of the benefits of integrating programmes for non-custodial measures and for the reduction of the prison population within an overall crime strategy. That would help to combine the effects and increase the impact of measures for general and individual prevention, for the social reintegration of offenders and for the observance of basic human rights in the administration of criminal justice.

37. The Meeting heard reports from several countries on different rates of success in the reintegration of offenders into society. They were of the opinion that fulfilment of that objective would break the cycle of recidivism. The function of non-custodial measures as individual tools of crime prevention was also emphasized. Their success would require more emphasis on community policing, involving close and constant contacts between the police and the community, as well as a shift from reactive to proactive policing. Community-based correction was also essential.

38. One participant noted that the opportunity principle was being applied in a greater number of minor offences, if no public interest in prosecution was found. The cases could then be left for direct resolution between the victim and the offender.

39. It was reported that as a result of the reforms carried out in one country, the prison population had decreased from 337,700 in 1980 to 231,700 in 1988, with only 34.1 per cent of those sentenced in 1988 serving prison sentences. The proportion of offenders sentenced to community service orders (labour) had increased from 18 per cent in 1982 to approximately 25 per cent in 1988. The proportion of offenders sentenced to fines had also increased, from 5 to over 13 per cent. In another country, a decrease of about 55,000 prisoners was reported for 1988.

40. In one country the entire approach to imprisonment based on the so-called progressive model had been questioned. As a result, prisons were being partly replaced by institutions of semi-liberty. The possibility of serving only part of the sentence had been extended and a new after-care system implemented. Community work had been introduced as an alternative sentence, and new judicial institutions, including a "court of execution of sentences" and a "judge of execution of sentences", established.

41. The representative of the World Health Organization reported on HIV and AIDS in prison, and on current co-operation in that connection between WHO and the Crime Prevention and Criminal Justice Branch. WHO had established procedures for the collection of information on the incidence of prisoners who tested HIV-positive and AIDS-related deaths in prison. Although it had been difficult, for a variety of reasons, to collect data on the subject, the available data suggested that a high proportion of the prison population in some countries was sero-positive. He noted that prison as such was not a risk factor. However, the prison population included a large number of vulnerable young persons who exhibited such risky behaviour as drug addiction, homosexuality and social aggressiveness. He outlined a number of proposals for dealing with the problem, including the distribution of information to all detainees on precautions against infection and the provision of health and mental health services to detainees on request. There was a need for both effective action against drug abuse in prisons and the development of new treatment methods. Current medical knowledge did not warrant a policy of isolation and discrimination against HIV-positive prisoners. It was essential to ensure that prison staff received up-to-date information on the control and treatment of the disease.

42. The representative of the International Centre for Penal, Sociological and Penitentiary Studies and Research informed the meeting of plans for a European regional seminar for heads of prison administrations, to be held at Messina, Italy, from 6 to 12 November 1989, as part of the preparations for the Eighth Congress. The seminar would bring together high prison officials from Eastern and Western Europe for in-depth discussions of management and legal issues related to prisons. The seminar would be held in co-operation with the Henry Dunant Institute of the International Red Cross at Geneva and HEUNI, with the support of the Ministry of Justice of Italy and United Nations criminal justice and human rights programmes.

43. With regard to the Tokyo Rules, it was suggested that a distinction should be made between those elements that encouraged the expanded use of non-custodial measures and those that established guarantees for human rights and adequate professional standards in their implementation. Some representatives noted that the Tokyo Rules included measures to be applied before trial and penal sanctions. They therefore questioned the need to retain chapters II and IV of the Rules, referring to pre-trial and post-trial measures, respectively. It was added that in Nordic countries, non-custodial measures did not include pre-trial measures, and the post-sentencing stage dealt with execution of the sentence of imprisonment and not with alternatives to it.

44. Some concern was expressed that the Tokyo Rules might be understood as an encouragement to "net-widening", in other words, the unnecessary imposition of an alternative when no other sanction, in particular no custodial sanction, would have been imposed.

45. It was also pointed out that the Tokyo Rules provided for the establishment of guidelines for the application of alternatives to imprisonment. However, they should not be interpreted so as to affect sentencing policies and the independence of the judiciary.

46. A working group was established to review the draft Tokyo Rules. Comments were provided on specific draft provisions for consideration in preparing a consolidated draft text. The text would take into account comments and observations from the other regional meetings and would be presented to the eleventh session of the Committee on Crime Prevention and Control, as the preparatory body for the Eighth Congress.

47. In introducing the proposals the chairman of the working group said that, to facilitate the deliberations, the provisions dealing with the promotion of the more extensive use of non-custodial measures should be grouped together in a first part, and the provisions concerning safeguards during the implementation phase should be grouped in a second part.

48. The question of reducing pre-trial detention by an increased use of non-custodial measures was one of great importance and complexity. The working group thought that the matter would need to be dealt in the draft Tokyo Rules.

49. It was also felt that some provisions of a general nature, such as part VIII on research, planning, policy formulation and the evaluation of non-custodial measures, should be included in the first part, which dealt in general terms with the use of non-custodial measures.

50. A number of specific comments were made concerning the formulation of the following draft provisions of the Tokyo Rules: part I, "General principles", rules 1.1 to 3.9; part II, "Pre-trial stage", rules 4.1 to 5.3; part IV, "Trial and sentencing stage", rules 6.1 to 7.2; part V, "Post-sentence stage", rules 8.1 to 8.3; part VI, "Implementation of non-custodial measures", rules 9.2, 10, 11, 12, 13.1, 13.3 and 13.5; part VII, "Staff", rules 14.2, 14.3 and 15.1; and part VIII, "Volunteers and other community resources", rules 17.1, 18.2 and 18.3.

51. The working group concluded that it would be most desirable to convene a group of experts to consider the comments of the various regional meetings and the preparation of a consolidated draft text prior to the eleventh session of the Committee on Crime Prevention and Control. The expert group should be able not only to restructure and modify draft rules, but also to take into account the work of other organizations, including the Council of Europe.

Topic 3: Effective national and international action against:
(a) organized crime; (b) terrorist criminal activities

52. In introducing topic 3, the Executive Secretary of the Eighth Congress referred to Economic and Social Council resolution 1986/10 of 21 May 1986. In that resolution the Council had urged the Secretary-General to accord priority to the development of specific proposals to co-ordinate international action against the forms of crime identified in the Milan Plan of Action, namely most serious crimes of international dimensions, such as terrorism and organized crime, including illicit drug-trafficking, as also called for in resolutions 1 and 23 of the Seventh Congress. 3/ The Interregional Preparatory Meeting on topic 3 (A/CONF.144/IPM.2) had reviewed and adopted a number of proposals, formulated guidelines and recommended action, including model agreements on extradition and mutual assistance, for consideration by the Committee on Crime Prevention and Control and the regional preparatory meetings. Revised versions of the models had been submitted to the Meeting. With reference to international terrorism, he drew attention to General Assembly resolutions 40/61 of 9 December 1985 and 42/159 of 7 December 1987.

53. The Meeting highlighted the importance of incisive common action against transboundary criminality, which had increased considerably in recent years and become a matter of serious concern in many countries of Europe as well as in other regions. The internationalization of organized crime had been reflected in the exchange of a large variety of illicit goods and services, and in the victimization of countless innocent persons by the indiscriminate

violence of terrorists. In fact, organized crime and terrorism, with all their interlinkages, violated the sovereignty of States, reduced their economic and political stability and had an adverse effect on socio-economic progress and on the physical and mental well-being of large sections of the population.

54. It was agreed that the considerable growth of organized crime in recent decades was a corollary of the increasing internationalization of crime. The unlawful activities of organized syndicates, involving widespread bribery and corruption as well as the use of violence, were often interwoven with the activities of legitimate businesses that had been infiltrated by the substantial profits of illegal operations, including illicit trafficking in drugs, weapons and other commodities. Thus, regular commercial enterprises often served as a convenient cover-up for large-scale criminal practices.

55. According to some participants, the situation was exacerbated by banking practices in several countries, which provided secrecy that went beyond what would be considered reasonable protection of the identity of clients. It was reported, however, that efforts had recently been made to introduce legislation that would allow authorities to overturn confidentiality if they suspected criminal involvement. One participant pointed out that under his country's laws, bank secrecy was protected, and that information could not be disclosed and used to prosecute transboundary criminal activities.

56. The specific recommendations made by the Interregional Preparatory Meeting on topic 3 were regarded as a useful tool for dealing more effectively with transnational criminality, including organized crime. In particular, strong support was given to the widespread use at the international level of extradition and mutual assistance treaties, to arrangements for the exchange of information between agencies, and to the training of magistrates and law enforcement officials, who were required not only to face the increasing threat of organized crime, but also to implement complex international agreements.

57. In order to combat organized crime more effectively at the national level, a broad range of measures should be adopted, including the following:

(a) Preventive strategies, such as fraud control programmes, anti-corruption agencies, crime impact statements, and an improvement in the efficiency of existing procedures and programmes designed to increase public awareness and mobilize public opinion;

(b) Criminal legislation, if necessary providing for:

- (i) Creation of new offences with respect to computer crime, money-laundering, organized fraud and the opening of accounts in a false name;
- (ii) Freezing, confiscation and forfeiture of the proceeds of crime;
- (iii) Pecuniary penalties amounting to the monetary value of benefits derived from the commission of crime;

(c) New methods of criminal investigation, in particular, innovative techniques for following the "money trail", and court orders for the production and seizure of documents and for monitoring and reporting on large-scale financial transactions, particularly if carried out in cash;

(d) Strengthening of law enforcement, including the provision of adequate powers to the police, subject to proper human rights safeguards, and the creation of specialized agencies with interdisciplinary teams and adequate technological resources.

58. There was general agreement that terrorist violence in all forms and manifestations, irrespective of its reasons, goals or motivation, was of a criminal nature because of its lethal consequences and should, as such, be universally condemned and subject to prosecution.

59. The intensified co-operation of all States in devising effective measures for preventing terrorism was considered to be one of the fundamentals of a comprehensive approach to problems of peace and security. While the key to the complete eradication of international terrorism was the elimination of the causes that had brought it about and the general recovery of the international situation, urgent international action and concrete measures were needed to curb the phenomenon.

60. Reference was made to the activities undertaken by the International Law Commission for the elaboration of a Code of Crimes Against Peace and the Security of Mankind. The inclusion of offences under international law such as aggression, the first use of nuclear arms, apartheid and colonialism, as well as their classification as international crimes in the Code, would represent considerable progress in the prevention of most cruel forms of criminality threatening the existence of entire peoples and even mankind as a whole. Some participants expressed strong support for the proposal of the President of the Union of Soviet Socialist Republics to establish a United Nations tribunal to deal with international terrorism. Other participants, however, expressed reservations about the idea of defining international crime and creating an international jurisdiction.

61. To assist Governments in more effectively combating international terrorism and transboundary criminality in general, other specific proposals were made, including the following:

(a) Ratification of or accession to the relevant international agreements, as well as strict compliance with the obligations arising therefrom;

(b) Strict compliance with existing obligations under international law, including the full application of all measures provided by national legislation, in order to prevent crime from spreading to other countries;

(c) Consolidation of contractual relations between States on a mutually acceptable basis and without detriment to the rights of third States;

(d) Improvement of mutual assistance for criminal prosecution, including new modalities for extraditing of offenders and for ensuring adequate punishment.

62. Most Governments reaffirmed their commitment to the fight against terrorism through their adherence to relevant international instruments, including: the conventions of the International Civil Aviation Organization on the suppression of hijacking, adopted at Tokyo, the Hague and Montreal; the International Convention against the Taking of Hostages and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; the European Convention on the Suppression of Terrorism; and the Dublin Agreement on the Application of the European Convention on the Suppression of Terrorism.

63. It was stressed that on the basis of national experiences, the recommendations suggested by the Interregional Preparatory Meeting on topic 3 were sensible and practical; that in a crime congress it was appropriate to discuss a serious and dangerous criminal activity such as terrorism; that the long previous debates on definitions and causes had so far been sterile; and that it would be more fruitful to focus on specific unacceptable conduct in order to identify suitable preventive measures.

64. The view was also expressed that the increasing threat of terrorist violence required additional practical measures in the shortest possible time. It might therefore be wise to concentrate on achieving progress in the formulation of the model treaty on extradition, so as to make it available to the international community at the earliest possible date.

65. Some participants underlined the central function of the principle "aut detere aut judicare" in the establishment of an effective system of international co-operation. One participant pointed out, however, that the principle was of doubtful practical value as it was unlikely that suspects would be prosecuted by States that had refused their extradition. To avoid unnecessary legal conflict between States, it was important not to over-extend territorial jurisdiction in combating transboundary criminality. Instead, many participants considered it essential to intensify and improve international co-operation in crime prevention and criminal justice by way of extradition, mutual assistance, transfer of proceedings and other measures.

66. It was observed that the effective protection of witnesses and potential witnesses from threats and intimidation in cases of organized crime and terrorism was one of the most difficult problems the criminal justice system had to solve in order to maintain equality between prosecution and defence and to ensure a fair and unbiased trial. One means of achieving that goal might be by preserving the anonymity of the witness during trial and pre-trial proceedings. Different views were expressed on whether the preservation of anonymity should be so extreme as to require giving the witness a new name or identity, as such a drastic measure might infringe fundamental human rights.

67. The participants stressed the role of the United Nations in assisting countries in the prevention of new and dangerous forms of criminality, and one speaker expressed the hope that a comprehensive convention for international co-operation in criminal justice matters would be envisaged.

68. In the working group there was an extensive exchange of views on the two draft model agreements. While both drafts were considered a useful basis for further work, there was a consensus that the model agreement on mutual assistance was in a far more advanced stage of preparation than the model agreement on extradition. The latter was important in its own right and required urgent attention to prepare it for consideration and follow-up by the Committee on Crime Prevention and Control.

69. With regard to the model agreement on mutual assistance, specific observations were made concerning the title, the rule of specialty, the optional protocol and articles 1, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14 and 17. Comments were also made concerning articles 1 to 4 of the draft model on extradition. It was felt that the two draft models had a very useful role to play in international co-operation to combat all forms of crime, and that recourse to those instruments should not therefore be limited to cases of organized crime and terrorism.

Topic 4: Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions

70. The Executive Secretary of the Eighth Congress noted the widespread concern in many countries with the plight of young people in conflict with the criminal law. In addition to their socio-economic deprivation, they might also be stigmatized and victimized by the justice system. "Street children", delinquents and young offenders, whose protection by international instruments left much to be desired, had been at the centre of attention of the international community in 1985 on the occasion of the International Youth Year and at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Seventh Congress had made major advances by establishing a set of universally accepted principles for the protection of the rights of juveniles in conflict with the law (Beijing Rules). 4/

71. Summarizing the two draft instruments to be considered under topic 3, namely the draft Guidelines for the Prevention of Juvenile Delinquency (Guidelines of Riyadh) and the draft Rules for the Protection of Juveniles Deprived of their Liberty, the Executive Secretary said that, with regard to the latter, two approaches could be discerned. According to the first, which was reflected in the draft before the meeting, the rules should seek to deal with all the issues relating to the situation faced by juveniles deprived of their liberty. According to the second approach, the Rules should be concise, focusing on the key areas of concern, in particular those not already covered by existing United Nations standards and norms, such as the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted at the Seventh Congress and endorsed by the General Assembly at its forty-second session. The latest version of the draft Convention on the Rights of the Child took into account recent developments and further elaborated issues of concern.

72. Many participants expressed their strong interest in questions raised in the discussion guide (paragraphs 76-95) and in the report of the Interregional Preparatory Meeting on topic 4 (A/CONF.144/IPM.3).

73. A number of participants informed the Meeting of the approaches and directions taken in their countries with regard to the prevention of delinquency, juvenile justice and the protection of the young. They expressed genuine concern about the well-being of juveniles and strong support for the work of the United Nations in that connection, with several references being made to the Beijing Rules.

74. Some participants drew attention to the negative effects of socio-economic deprivation on the well-being of young persons. For that reason, the importance of an integrated approach to the prevention and control of juvenile delinquency was emphasized. Some participants reported on the establishment of co-ordinating bodies in their juvenile delinquency prevention systems. Others emphasized that account should be taken of the need for specialized personnel and the consequent need for an effective training system.

75. Other participants pointed out that bringing young people to court and imposing penal responsibility on them was to be considered a last resort. In some countries up to half of the minor cases involving young people, for which they could be legally classified as criminal offenders, were being dealt with by social courts. In such cases many courts sought to rely on measures of social education and reparation. The importance of mediation was also underlined. Even when it was deemed necessary to bring criminal charges and when the relevant penal provisions stipulated imprisonment, the laws of those countries provided for shorter prison sentences for young offenders.

76. Some participants stated that in their countries the involvement of young persons in total criminality, as reflected in the statistics, was rather limited. In one country about 10 per cent (184,000 cases) of the crime reported during a one-year period had been committed by young people. At the same time, there was an increase in the percentage of those young offenders who were not charged for their criminal offences, but to whom measures of a social nature were applied.

77. With respect to the two draft instruments submitted to the Meeting, it was observed that work should be continued on the enhancement of conceptual clarity. For example, a clearer distinction might be made between "juveniles", "children", "young people" and similar terms.

78. Some participants proposed that the first part of the draft Guidelines of Riyadh should be strengthened by emphasizing the priority of crime prevention among juveniles as an important part of all crime prevention efforts; by warning that the imposition of a work obligation on young offenders should be done in a manner that precluded their exposure to criminogenic influences from the social milieu; and by stressing that the primary purpose of all measures applied to young people should be the positive development of personality.

79. With regard to part IV, section A ("Family"), increased emphasis was placed on stronger interrelationships between the family and school in the educational process, and on the role of legal education in personality development.

80. In discussing the draft Rules for the Protection of Juveniles Deprived of their Liberty, many participants strongly suggested that the impact of the Rules would be enhanced if the instrument were relatively concise. It was noted that some of the provisions of the new instrument dealt with matters already covered by existing United Nations standards and norms, such as the Beijing Rules and the Standard Minimum Rules on the Treatment of Prisoners. It was further noted that in more developed regions, the degree of detail in the current draft would be considered excessive. However, other speakers pointed out that details would be necessary in order to guide practice in the various countries.

81. The proposals of the working group set up to consider the two draft instruments related to the following provisions:

(a) In the Guidelines of Riyadh: part I, rules 1, 3(c) and 9; part III, rule 6; part IV, rules 7, 9, 11 and 18(a), 24, 26, 27 and 38; part V, rules 44 and 48; and part VI, rules 50, 53, 54 and 56;

(b) In the draft Rules for the Protection of Juveniles Deprived of their Liberty: preambular paragraphs addressing the question of differentiation of treatment of juveniles and adults in detention; part I, rules 3 to 5; part II, rules 7, 8, 10 and 14; part III, rules 15, 17(e), 20, 25, 26, 29, 31, 32, 35, 37, 42, 50, 51 and 55; part IV, rules 64, 70(d) and 72; part V, rules 77, 78, 79 and 80; part VI, rules 81 and 82; and part VII, rule 88(c).

82. Representatives of four Nordic countries presented a shorter draft text of standards for the protection of juveniles deprived of their liberty, to be considered to the extent possible when elaborating the revised draft of the rules (see annex III). The representative of the Council of Europe informed the Meeting of recent recommendations of the Council on social reactions to juvenile delinquency in general, and to that among young persons from immigrant families in particular. She also explained the basic policy ideas, which were consistent with the approach followed by the United Nations.

Topic 5: United Nations norms and guidelines in crime prevention
and criminal justice: implementation and priorities
for further standard-setting

83. The Executive Secretary of the Eighth Congress noted that the humanization of criminal justice was a long-standing concern of the United Nations, starting with the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1953. The task had been extended in particular by the Seventh Congress, which had not only adopted numerous new instruments, but had also provided various mandates for the elaboration of additional ones. However, in addition to exploring fresh policy options in response to changing needs, it was equally important to direct the energies of the international community to reviewing the implementation of instruments adopted at previous congresses.

84. The representative of the Centre for Human Rights of the United Nations informed participants about aspects of the Centre's work that were closely related to the activities of the crime prevention and criminal justice programme. Those aspects were reflected in General Assembly resolutions 40/146 of 13 December 1985, 41/149 of 4 December 1986, 42/143 of 7 December 1987 and 43/153 of 8 December 1988 on human rights in the administration of justice; 40/143 of 13 December 1985, 41/144 of 4 December 1986 and 42/141 of 7 December 1987 on summary or arbitrary executions; and 43/173 of 9 December 1988 on the adoption of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. She also reported on results of the 1988 session of the Commission on Human Rights, especially with regard to the independence of the judiciary and lawyers, and on the following draft instruments: the draft Convention on the Rights of the Child; the draft second Optional Protocol to the International Covenant on Civil and Political Rights, dealing with the abolition of the death penalty; the draft Declaration on the Protection of Persons from Enforced or Involuntary Disappearances; and draft international standards on adequate investigations into suspicious deaths in detention and on adequate autopsy.

85. In those and other areas of mutual interest, close co-operation between the human rights programme of the United Nations and the crime prevention and criminal justice programme was not only continuing but intensifying, with the emphasis on preparations for the Eighth Congress. Focal points had been established within both programmes to co-ordinate activities relating to human rights in the administration of justice, in accordance with resolution 1987/33 of the Commission on Human Rights. That had facilitated joint activities undertaken by the Centre and the Crime Prevention and Criminal Justice Branch, in the context of the United Nations Voluntary Fund for Advisory Services and Technical Assistance and of the Voluntary Fund for Victims of Torture. In accordance with the world public information campaign launched by the General Assembly in December of 1988, greater emphasis was being placed by the Centre on practical approaches, especially in the field of information and education of public opinion, with the aim of building up a universal concept of human rights.

86. Several participants observed that the countries taking part in the Meeting had accomplished a considerable amount of innovative work in the areas covered by topic 5, and had provided new impetus for United Nations initiative, for example regarding the model agreements on international co-operation in criminal justice matters or legal safeguards for the protection of victims and offenders. It was noted, however, that the topic dealt with a considerable number of divergent issues, the consideration of which would require special

expertise. It would be useful if the Committee on Crime Prevention and Control would consider the topic with a view to structuring it somewhat differently, according to related subject matters, in the future.

87. Some participants noted the risk of duplication and overlapping of the various standards and guidelines that had been or were going to be elaborated by the United Nations. Others emphasized that close contact should be maintained with the Centre for Human Rights. It was also strongly recommended that United Nations crime prevention and criminal justice instruments should be compiled, published and disseminated as soon as possible, at the latest by the time of the convention of the Eighth Congress.

88. Several participants observed that the considerable number of documents that had emerged within the framework of United Nations crime prevention and criminal justice activities clearly showed the remarkable work that had been accomplished through international co-operation, notwithstanding the different views on various issues. The instruments explicitly mentioned in paragraphs 96 to 98 of the discussion guide were mentioned as an example.

89. It was clear, however, that essential improvements in crime prevention and criminal justice could not be achieved merely through the adoption of international instruments and the universal recognition of the principles contained therein. In many parts of the world a lack of financial and human resources made it difficult or impossible to translate the goals and objectives proclaimed in those instruments into day-to-day practice.

90. The following specific measures were therefore proposed for more effective implementation of the adopted instruments:

(a) Strengthening technical co-operation and advisory services by increased contributions to the United Nations Trust Fund for Social Defence, to other United Nations funds and programmes and to national and international funding agencies, such as the United Nations Development Programme or the World Bank;

(b) Increasing the influence of the United Nations on the implementation of existing instruments. To that end the Secretariat should improve the exchange of expertise and experience as well as the dissemination of information;

(c) Systematization and, if necessary, harmonization and consolidation of existing standards;

(d) Elaboration of guiding principles to improve the democratic participation of all citizens in crime prevention and criminal justice.

91. Some thought should also be given to methods of encouraging criminal justice practitioners to take into account the implementation procedures that had been elaborated in connection with adopted standards. To that end it was suggested that the procedures would be better received if they were simplified and accompanied by manuals.

92. Several participants called upon the United Nations to intensify its efforts aimed at the reduction and eventual abolition of capital punishment world-wide, a goal that had been proclaimed by the General Assembly on several occasions in the past. Special attention should be given to the effective implementation of the United Nations Safeguards Guaranteeing Protection of the

Rights of Those Facing the Death Penalty, in particular in the course of the forthcoming United Nations survey on the question of capital punishment; to the draft Second Optional Protocol to the International Covenant on Civil and Political Rights; and to the possibility of a moratorium on the imposition of capital punishment.

93. The participants further expressed their grave concern about the continuing practice of extra-legal, arbitrary and summary executions in some parts of the world. The draft Principles on the Effective Prevention and Investigation of Such Acts, formulated by the Committee on Crime Prevention and Control at its tenth session, were considered to be a valuable instrument, that usefully complemented the relevant work in progress within the United Nations human rights programme and the work of its Special Rapporteur on the issue.

94. With regard to the draft Basic Principles on the Role of Lawyers, many participants stressed the importance of a precise set of international principles on the subject, given the significant functions performed by lawyers in the justice system, and recognizing that those Principles could essentially complement the Principles on the independence of the judiciary. However, it was observed that relevant parts of the Principles should be further reviewed, in order to bring terminological and conceptual clarity into the text and better reflect the differences between various legal systems.

95. The draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were also referred to by many participants. Various amendments were proposed and forwarded to the Secretariat. Some points of the draft text were deemed to require clarification, including the distinction between the "use of firearms" and the "use of force", the qualification of the illegal use of firearms, and the need to avoid an overlap or inconsistency with the Code of Conduct for Law Enforcement Officials.

96. Specific comments made on the various draft instruments included the following:

Draft Basic Principles on the Role of Lawyers

Preamble. The eighth paragraph should be redrafted along the following lines:

"Whereas the public interest requires that professional standards and ethics of lawyers be upheld, that they be protected from improper restrictions and infringements, that legal services be provided to all in need of them, that lawyers co-operate with governmental and other institutions in furthering the ends of justice and that professional associations of lawyers, their governing bodies and lawyers individually have a vital role to play in supporting such objectives,"

Principle 1. The words "economic status" should be added after "property". It would also be appropriate to add, before the existing principle 1, a new principle 1 that would read:

"All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights. It is the duty of Governments to ensure that all persons charged with criminal offences, or arrested, detained or imprisoned, are promptly informed by the competent authority of this right."

Principle 3. The following sentence should be added at the end:

"For this purpose, special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and, where necessary, call upon the assistance of lawyers."

Principle 4. The words "represented and" should be deleted.

Principle 5. The phrase: "of experience and competence commensurate with the nature of the offence" should be added between the words "lawyers" and "assigned".

Principle 6. The word "qualified" should be inserted before "lawyer".

Principle 8. Principle 8 should be amended to conform to article 4 of the International Covenant on Civil and Political Rights ("In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed"). If the wording were left as it was, the term "and periodic" between the words "prompt" and "judicial" should be added to the last phrase.

Principle 9. The words "educational institutions" should be placed after "professional association" instead of the contrary. The words "educational institutions" should also be inserted after the words "professional associations of lawyers" in articles 10 and 11.

Principle 12. Principle 12 should be reworded to read:

"Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall at all times have an awareness of human rights and fundamental freedoms recognized by national and international law, and shall at all times act in accordance with the law and recognized standards and ethics."

Principle 14. The last words "... beginning of the trial stage" should be replaced by "conclusion of investigation or pre-trial proceedings".

Principle 15. Principle 15 should be modified to read:

"Governments shall ensure that all communications and consultations between lawyers and their clients within the professional relationship are confidential. When not acting as defenders, lawyers may, however, be compelled to testify in connection with a continuing, contemplated or committed crime of a serious nature. This protection of the confidentiality of lawyer-client communications shall be extended to lawyers' partners, employees, assistants and agents, as well as files and documents."

Principle 17. The qualification implied in the phrase "... to their prejudice ..." should be deleted as unnecessary. It was important that the purely professional aspect of the lawyer's role should remain unalloyed.

Principle 18. In the first sentence, the word "free" should be replaced by "entitled" and after the words "professional associations" the words "to regulate their profession" should be inserted.

Principle 20. The words "and represent" should be deleted.

New principle. The insertion of the following new principle 18, between existing principles 17 and 18 under the heading Freedom of Expression and Association, was proposed:

"In accordance with the Universal Declaration of Human Rights, lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law and the administration of justice and to join or form local, national or international organizations, without suffering professional restrictions by reason of their beliefs or their membership in a lawful organization. In exercising that right, however, lawyers shall always conduct themselves in accordance with the law and the established standards and ethics of the legal professions."

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Principle 1. The first sentence should be preceded by the words "Where this still has not been done".....

Principle 2. In the last sentence the phrase "increasing restraint" should be used instead of "eventual exclusion".

Principle 3. Principle 3 should be restricted to the absolute avoidance of endangering uninvolved persons. The term "suspected offender" should not be used, as it did not cover all situations involving justified use of force and firearms provided for in the Basic Principles such as assaults on the life of persons or escape from detention or custody.

Principle 4. Principle 4 should be worded in a more comprehensive way. It could read as follows:

"Force and firearms may be used by law enforcement officials only if other means remained unsuccessful or obviously would not promise success. The use of firearms against persons is then only admissible if the purpose would not be served by the use on objects. Firearms are not to be used against children nor, to the extent possible, against juveniles and women."

Such a formulation would comply more clearly with article 3 of the Code of Conduct for Law Enforcement Officials.

Principle 5. The principle of proportionality should not only refer to the legitimate objective to be achieved but also be commensurate with the type and seriousness of the offence or assault. Therefore the wording "... and in any event shall act in proportion to the type and seriousness of the offence or assault and to the legitimate objective to be achieved" was considered to be more appropriate.

Principle 8. It was suggested that principle 8 should be deleted because compulsory reporting was regulated in principle 13 (f).

Principle 9. It was observed that not all illegal use of force or firearms should be punishable as a crime; administrative sanctions might be sufficient in certain cases.

Principle 12. The words "if it is not evidently unnecessary or without purpose" should be inserted after "law enforcement officials shall ...".

Principle 16. The drafting proposal contained in the report on the tenth session of the Committee on Crime Prevention and Control (E/1988/20, page 107) was supported. It was also considered necessary to harmonize the exception clause at the end of principle 16 with the exception clause contained in principle 11.

Principle 20. It was suggested that principle 20 should emphasize that only those persons should be admitted to law enforcement agencies whose disposition of character, personal maturity and moral attitude guaranteed that they would always serve the aims of social progress and humanism.

Principle 23. The first sentence of principle 23 should be reworded to read:

"Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents in which firearms were used by law enforcement officials, as well as for all incidents in which injuries or the death of persons were caused due to the use of force."

In the second sentence the word "independent" should be deleted.

Principle 24. The word "independent" should be deleted.

Model Agreement on Transfer of Proceedings in Criminal Matters

Provision 1. It was observed that the terminology of the draft was not uniform. Use was made of the term "Contracting Party" as well as of the term "State". A possible wording for paragraph 1 might read:

"When a person is suspected of having committed an offence under the law of a State which is a Contracting Party, that State may, if the interests of adequate consideration and implementation of measures of criminal liability so require, request another State which is a Contracting Party to institute proceedings in respect of this offence."

Provision 3 (c). The existing wording "or other information of the results of investigations" was too indefinite. The provision might therefore be reformulated to read:

"The original or a copy of the results of investigations which substantiate the suspicion of an offence;"

Provision 3 (e). Information on citizenship should be added.

Provision 4. It would be advisable to determine a fixed date of preclusion, since the term "promptly" allowed different interpretations.

Provision 6 (c). It was not clear why offences in connection with taxes, duties, customs or exchange should be excluded, whereas such offences had been included in the draft Model Treaty on Mutual Assistance in Criminal Matters.

Provision 6 (d). No use should be made of the term "offences of a political nature", since it was narrowly formulated and subject to varied subjective interpretations. In fact, the point at issue was offences that might violate the public or legal order of the State in the widest sense. The wording should read:

"Offences against the State as well as against law and order."

Provisions 7 to 9. The phrase "the views of suspected persons" should be clarified so as to ascertain whether it referred to the offence or the intended transfer, and whether it implied obligations for the examining authorities and rights of the suspected persons in terms of requests, complaints etc.

Provision 10. If a settlement of the claim of the victim had not been reached before the transfer, it would be advisable to provide for the representation of the claim for compensation in the transferred proceedings, in so far as the law of the requested State permitted.

Provision 11. The first line should read "by the requested State" instead of "by the requesting State". Likewise, the headline of section VII should read "on the requested State" instead of "on the requesting State".

Provision 14. Copies of any final decision should only be transmitted upon request.

Model Agreement on Transfer of Supervision of Foreign Offenders Who Have Been Conditionally Sentenced or Conditionally Released

It was suggested that provision 1, paragraph 3, should state more precisely the contents of the request, and that the necessary information should be added regarding the place of residence, the nationality of the person concerned as well as the res judicata of the sentence and other particulars. Moreover, the Model Agreement should indicate what issues would be covered and under what pre-conditions.

Draft United Nations Guidelines on Prosecution

The Chairman of the working group set up to consider the draft United Nations Guidelines on Prosecution said that the document provided by the Secretariat had been the first attempt to deal with that important subject. The group had therefore deemed it appropriate to discuss the various issues involved in general terms, and to refrain from specific comments on particular rules at the current stage.

In the deliberations of the working group it had become clear that there existed considerable differences between the structure and functions of prosecution in countries with different legal systems. The group had focused on the following basic issues: status of the prosecutor, public or private agent; appointment or election, selection process for public service or political office; problems of immunity for suits in civil proceedings; conditions of service and tenure; qualifications, selection and training; disciplinary proceedings; role in criminal proceedings; discretionary powers; and relations with the police, courts and other agencies.

III. ADOPTION OF THE REPORT OF THE MEETING

97. At the final session, the Meeting adopted the report introduced by the Rapporteur.

98. In a closing statement, the Director of the Social Development Division of the Centre for Social Development and Humanitarian Affairs, United Nations Office at Vienna, appealed for increased government support for the activities of the Crime Prevention and Criminal Justice Branch. Closing statements were also made by the Chairman, the Representative of the Committee on Crime Prevention and Control and the Executive Secretary of the Eighth Congress.

99. On behalf of all participants, appreciation was expressed to the Government of Finland and HEUNI for hosting the Meeting.

Notes

1/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

4/ Ibid., sect. C.

Annex I

LIST OF PARTICIPANTS

Members of the Economic Commission for Europe

Austria

Hans Georg Rudofsky, Ambassador Extraordinary and Minister Plenipotentiary, Ambassador of Austria to Finland

Emil Tellian, Counsellor, Federal Ministry of Interior

Peter Ziebart, Prosecutor, Federal Ministry of Justice

Irene Gartner, Prosecutor, Federal Ministry of Justice

Belgium

Eugene Jules Henri Frencken, Secretary General, Ministry of Justice, member of the United Nations Committee on Crime Prevention and Control

Bulgaria

Anguel Djambazov, Deputy Minister, Ministry of Justice

Boyan Stankov, Office of the Chief Prosecutor

Simeon Botshev, Head, Criminology Section, Institute of Ministry of Internal Affairs

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Non-governmental organizations

Category II: International Bar Association, International Centre of Sociological, Penal and Penitentiary Research and studies, International Commission of Jurists, International Council for Adult Education, International Centre of Sociological, Penal and Penitentiary Research and Studies, International Federation of Women Lawyers, Lutheran World Federation

Annex II

LIST OF DOCUMENTS

A. Basic documents

A/CONF.144/PM.1 Discussion guide for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Reports of the interregional preparatory meetings for the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

A/CONF.144/IPM.1 Topic 1
A/CONF.144/IPM.2 Topic 3
A/CONF.144/IPM.3 Topic 2
A/CONF.144/IPM.4 Topic 4
A/CONF.144/IPM.5 Topic 5

E/AC.57/1988/20 Report of the Committee on Crime Prevention and Control on its tenth Session

B. Background documents

A/CONF.121/22/Rev.1 Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders

E/AC.57/1988/NGO/3 Statement submitted by non-governmental organizations in consultative status with the Economic and Social Council, category II

International Penal and Penitentiary Foundation document No. 31 Standard Minimum Rules for the Implementation of Non-Custodial Sanctions and Measures involving Restriction of Liberty

C. Instruments

Adopted by the General Assembly

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (resolution 43/173, annex)

Code of Conduct for Law Enforcement Officials (resolution 34/169, annex)

Adopted by the Economic and Social Council

Safeguards guaranteeing protection of the rights of those facing the death penalty (resolution 1984/50, annex)

Standard Minimum Rules for the Treatment of
Prisoners and Procedures for the Effective
Implementation of the Rules (resolutions 663
(XXIV) and 2076 (LXII))

Contained in the report of the Seventh Congress

Guiding Principles for Crime Prevention and
Criminal Justice in the Context of Development
and a New International Economic Order
(chap. I, sect. B)

Basic Principles on the Independence of the
Judiciary (chap. I, sect. D.2)

Model Agreement on the Transfer of Foreign
Prisoners and Recommendations on the Treatment
of Foreign Prisoners (chap. I, sect. D.1)

United Nations Standard Minimum Rules for the
Administration of Juvenile Justice (chap. I,
sect. C.1)

Declaration of Basic Principles of Justice for
Victims of Crime and Abuse of Power (chap. I,
sect. C.2)

D. Publications series of the Helsinki Institute for Crime Prevention
and Control, affiliated with the United Nations

Number

- 1 "The feasibility of a European information system on trends in crime and criminal justice", report of the Ad Hoc Meeting of Experts held at Helsinki, 9-10 May 1983
- 2 "Towards a victim policy in Europe", report of seminar held at Espoo, Finland, 31 October-2 November 1983
- 3 "Effective, rational and humane criminal justice", report of the European Seminar held at Helsinki, Finland, 31 May-3 June 1984
- 4 Selected Issues in Criminal Justice (Helsinki, 1984)
- 5 "Criminal justice systems in Europe", report of the ad hoc expert group on a cross-national study on trends in crime and information sources on criminal justice and crime prevention in Europe
- 6 Károly Bárd, Matti Joutsen and Aleksander Yakovlev, Papers on Crime Policy (Helsinki, 1986)

- 7 Peter J. P. Tak, The Legal Scope of Non-Prosecution in Europe (Helsinki, 1986)
- 8 "Non-prosecution in Europe", report of the European Seminar held at Helsinki, 22-24 March 1986
- 9 Papers on Crime Policy No. 2 (Helsinki, 1986)
- 10 "Computerization of criminal justice information systems: realities, methods, prospects and effects", report of the European Seminar held at Popowo, Poland, 18-22 May 1987
- 14 Norman Bishop, Non-custodial alternatives in Europe (Helsinki, 1988)
- 15 "Alternatives to custodial sanctions", report of the European Seminar held at Helsinki, 26-28 September 1987

E. Other Documents

Matti Joutsen, The Criminal Justice System of Finland: A General Introduction (Helsinki, Ministry of Justice, 1989)

Annex III

STANDARDS FOR THE PROTECTION OF JUVENILES DEPRIVED
OF THEIR LIBERTY

Draft resolution submitted by Denmark, Finland, Norway and Sweden

The European Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, on topic 4, "Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions",

Bearing in mind the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the draft Convention on the Rights of the Child, as well as other international instruments relevant to the protection of the rights and well-being of young persons,

Bearing in mind also the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,*

Recalling General Assembly resolution 40/33 of 29 November 1985 and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules),

Recalling also resolution 21 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, that called for the development of United Nations rules for the protection of juveniles deprived of their liberty,

Recalling further Economic and Social Council resolution 1986/10 of 21 May 1986, which, inter alia, requested the Secretary-General to report on progress achieved in respect of the rules to the Committee on Crime Prevention and Control at its tenth session, and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the proposed standards with a view to their adoption,

Alarmed at the conditions and circumstances under which juveniles are being deprived of their liberty all over the world,

Aware that juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights,

1. Affirms that the placement of a juvenile in an institution should always be a measure of last resort and for the minimum necessary period;

2. Recognizes that, because of their high vulnerability, juveniles deprived of their liberty require special attention and protection, and that their rights and well-being should be guaranteed during and after the period when they are deprived of their liberty;

*General Assembly resolution 43/173.

3. Notes with appreciation the valuable work of the Secretariat and the collaboration which has been established between the Secretariat and experts, practitioners, intergovernmental organizations, the non-governmental community, particularly Defence for Children International, and scientific institutions concerned with children's rights and juvenile justice in developing the standards annexed to the present resolution;

4. Approves the draft United Nations Standards for the Protection of Juveniles Deprived of Their Liberty;

5. Invites the Committee on Crime Prevention and Control, in its capacity as preparatory body for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and the Eighth Congress itself to review the draft standards with a view toward their adoption;

6. Invites further the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights to consider this new draft international instrument under the item "protection of children", with a view to providing its comments and observations;

7. Calls upon Member States to incorporate, promote and apply the standards, in law, policy and practice, after adoption by the Eighth Congress;

8. Requests the Secretary-General and all relevant United Nations Offices and interested institutions, as well as individual experts, to make a concerted effort to promote the application of the standards, once adopted;

9. Requests also the Secretary-General to give attention to the final formulation of the draft instrument, taking into account further comments, before presentation to the Eighth Congress.

Annex

DRAFT UNITED NATIONS STANDARDS FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

I. MINIMUM USE OF DEPRIVATION OF LIBERTY

1. Juveniles have a right to liberty. Juveniles may be deprived of their liberty only in accordance with the principles and procedures set forth in these standards and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

2. Detention pending trial shall be used for juveniles only as a measure of last resort and for the minimum necessary period. Juveniles should not be kept in police custody or remanded in custody other than in exceptional cases of serious crimes committed by older juveniles. Whenever possible, detention pending trial shall be replaced by alternative measures.

3. Juveniles shall not be deprived of their liberty as a sanction other than for a serious act of violence against another person, for continued serious offences, or in other exceptional circumstances. Even in such cases, juveniles should not be deprived of their liberty as a sanction if an appropriate alternative sanction is available.

4. Children under an absolute age limit defined by law shall not under any circumstances be deprived of their liberty as a sanction.

II. NON-DISCRIMINATION CLAUSE

5. These standards shall be applied impartially to all juveniles without discrimination on any grounds, such as those of race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral precepts of the juvenile shall be respected.

III. SCOPE AND APPLICATION OF THE STANDARDS

6. For the purposes of these standards, the following definitions shall apply:

(a) A juvenile is a person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult. Should the legal system in question be based on several age limits, a juvenile is a person who falls under the age limit considered to be the major dividing age limit separating juveniles from adults;

(b) Deprivation of liberty shall mean any form of detention or imprisonment or the placement of a person in a public or private setting from which this person is not permitted to leave at will, by an order of any judicial, administrative or other public authority.

7. These standards are intended to apply to all institutions and facilities in which juveniles are or may be deprived of their liberty.

8. The standards are not intended to apply to apprehension, placement in temporary custody, or other forms of incarceration for periods of a few hours. The basic principles of the standards should, however, also be applied where appropriate to such short-term deprivation of liberty.

IV. CONDITIONS OF DEPRIVATION OF LIBERTY

9. The deprivation of liberty shall be effected in conditions which ensure respect for human dignity and shall be used to foster the education or vocational training of the juvenile and to facilitate the treatment of the juvenile.

10. The conditions of the detention of the juvenile shall approximate as much as possible life outside the institution and in any case should not aggravate the suffering inherent in the deprivation of liberty. The treatment of juveniles shall emphasize their sense of continuing membership of the community and their integration into it. Community agencies should therefore be enlisted wherever possible to assist the staff of the institution in education and social rehabilitation.

11. Institutions for juveniles should be small in scale and, where possible, decentralized in order to facilitate contact between the juveniles and their families and community.

12. The detrimental and unintended negative effects of the deprivation of liberty should be avoided or at least counteracted, in particular by establishing open institutions, by the use of institutional furloughs, by the use of special permissions to leave the institution briefly for educational, vocational and other important reasons, by semi-institutional arrangements and by early release.

13. Juveniles deprived of their liberty shall not by reason of this status be denied their civil, political, economic, social or cultural rights under national or international law, such as social security rights and other social benefits, freedom of association and the right of juveniles of age established by law to marriage. Under exceptional circumstances, such as detention pending trial, rights such as the right to correspondence may, however, be abrogated if necessary to safeguard the aims of the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the implementation of detention measures as well as the objectives of social integration shall be secured through regular inspections and other means of control carried out, in accordance with international standards, national laws and regulations, by judicial authority or other duly constituted bodies authorized to visit the juveniles and not belonging to the administration of the institution.

V. COMPLAINTS AND GRIEVANCES

15. On admission all juveniles shall be given a copy of the rules governing the institution and a written description of their rights in a language they can understand, together with the address of the authorities competent to receive complaints and grievances as well as the address of public or private agencies and organizations which provide legal assistance to juveniles deprived of their liberty.

VI. CLASSIFICATION AND PLACEMENT

16. The principle criterion for separation of different categories of juveniles deprived of their liberty shall be the provision of the type of care that is best suited to the needs of the juvenile concerned and to the protection of the physical and moral integrity of the juvenile.

17. Juveniles shall be separated from adults unless they are members of the same family or unless the juveniles are brought together with adults as part of a nationally adopted correctional policy.

VII. DISCIPLINARY REGIME

18. All disciplinary measures constituting cruel, inhumane or degrading treatment shall be prohibited, including corporal punishment, placement in a dark cell, close or solitary confinement or any punishment that may be prejudicial to the physical or mental health of the juvenile. Juveniles deprived of their liberty shall under no circumstances be subjected to mutilation or intentional pain.

19. Reduction of diet and restriction or denial of contact with family members may not be used as sanctions for disciplinary offences.

20. No juvenile shall be sanctioned more than once for the same disciplinary offence. Collective sanctions shall be prohibited.

VIII. APPLICATION OF OTHER INTERNATIONAL INSTRUMENTS

21. The application of these standards shall not preclude the application of other relevant international instruments, including those protecting children's rights, in particular the draft Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the Body of Principles for the Protection of all

Persons under any form of Detention or Imprisonment, the United Nations Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

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