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du Ministère

Seventh United Nations Congress
on the Prevention of Crime and the Treatment of Offenders
August 26 – September 6, 1985
Milan, Italy

REPORT OF THE CANADIAN DELEGATION

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Canada

"United Nations Congress on the Prevention of Crime
and the Treatment of Offenders (7th: 1985, Milan, Italy)"

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REPORT OF
THE CANADIAN DELEGATION

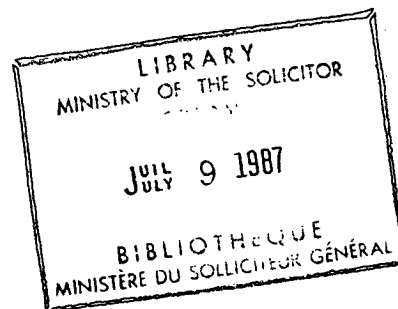
**THE 7TH UNITED NATIONS CONGRESS
ON THE PREVENTION OF CRIME AND
THE TREATMENT OF OFFENDERS**

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MILAN, ITALY

AUGUST 26 - SEPTEMBER 6, 1985



**THE HONOURABLE PERRIN BEATTY
SOLICITOR GENERAL OF CANADA**

HEAD OF THE DELEGATION

FEBRUARY 1986

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PART I - INTRODUCTION

1.1 Previous Congresses

The United Nations congresses on the Prevention of Crime and the Treatment of Offenders trace their origin to the international penitentiary congresses organized by the International Penal and Penitentiary Commission since 1846. In 1950, the United Nations assumed the functions of the Commission and, by General Assembly resolution, undertook to convene a world-wide congress every five years, starting in 1955, to discuss the prevention of crime and the treatment of offenders.

These quinquennial congresses provide a forum for the discussion of criminal justice priorities by policy-makers, administrators, academics and other professionals. Participants include delegates officially appointed by their governments, representatives of international, inter-governmental and non-governmental organizations, representatives of specialized agencies of the United Nations and of the International Atomic Energy Agency, individual experts invited as observers, expert consultants invited by the United Nations Secretariat, and officials of the Secretariat.

Through the Congresses on the Prevention of Crime and the Treatment of Offenders, the United Nations has aimed at setting basic international standards for the maintenance of the fundamental human rights, and for crime prevention, criminal justice and the rehabilitation of offenders. The first three congresses, held in Geneva, London and Stockholm respectively, gave primary attention to penal and correctional systems. The Fourth Congress, in Kyoto, directed attention to social defence policies and development. The Fifth Congress was held in Geneva and introduced policing issues. The Sixth Congress, in Caracas, emphasized crime prevention in the context of development and the Seventh Congress focussed on new dimensions of criminality and crime prevention.

1.2 The Seventh U.N. Congress

1.2.1 Theme and Agenda

The general theme of the 7th UN Congress was "Crime Prevention for Freedom, Justice, Peace and Development". Under this theme, the five main topics discussed in Milan were:

- New Dimensions of Criminality and Crime Prevention in the Context of Development: Challenges for the Future (Topic I);

- Criminal Justice Processes and Perspectives in a Changing World (Topic II);
- Victims of Crime (Topic III);
- Youth, Crime and Justice (Topic IV);
- Formulation and Application of United Nations Standards and Norms in Criminal Justice (Topic V).

At the request of the United Nations General Assembly, the Congress paid particular attention to the strengthening of technical cooperation in crime prevention and criminal justice and to the question of international illicit drug trafficking. These additional subjects were considered under topic I. Similarly, the fair treatment of women by the criminal justice system was discussed under topic II, and women as victims of crime under topic III. The Congress also examined the conclusions and recommendations of the previous Congress.

1.2.2. Organizational aspects

- Prior to the Congress:

The Seventh Congress was convened in accordance with the standard practice for major United Nations conferences, and for the first time a Secretary-General for the Congress was appointed. The UN Committee on Crime Prevention and Control served as the preparatory body for the Congress and thus played a major role in both the organizational and substantive preparations.

The deliberations and success of the Congress were also highly dependent on the preparatory regional and interregional meetings. During 1983, five regional meetings, convened in cooperation with the regional commissions and regional United Nations institutes for the prevention of crime and treatment of offenders, were attended by government representatives of over one hundred countries. Each meeting dealt with all agenda items and identified priorities and main policy options, highlighting the experience of the respective regions, namely Africa, Asia and Pacific, Europe (which includes Canada and the United States), Latin America and Western Asia. In 1984, four interregional meetings of experts examined the issues involved with respect to each of the five topics on the Congress agenda. They took place in Budapest, Hungary (topic II), Ottawa, Canada (topic III), Beijing, China (topic IV), and Varenna, Italy (topic V). In April 1985, a fifth interregional meeting of eminent persons

(topic I) held in India adopted the "New Delhi Consensus on the New Dimensions of Criminality and Crime Prevention in the Context of Development" put before the Congress last August. In addition, a meeting of experts took place in Houston, Texas in 1984 and another was held in Ottawa the next year, about criminal justice information systems.

- During the Congress:

Some 124 Member States were represented at the 7th UN Congress, 19 of them with cabinet ministers serving as head of delegation. In recognition of the increasingly political character of Member States' delegations to the Congress, heads of delegations were afforded a special opportunity to make opening statements from a podium in the plenary session. The Solicitor General was among those who availed themselves of this opportunity.

Topic I served as the umbrella topic for the Seventh Congress and was discussed in plenary session. The other topics were dealt with by two Committees of the plenary, with topics II and V allocated to Committee 1, and topics III and IV to Committee 2.

The regional and interregional approaches of the U.N. preparatory meetings were maintained at the Congress, providing the forums necessary to discuss issues within regions and promote inter-group negotiations. This organization was crucial to the success of deliberations in all areas.

The Secretariat, in collaboration with the United Nations Social Defence Research Institute, the United Nations regional institutes for the prevention of crime and the treatment of offenders, and competent national and international research institutes, offered a one-day research workshop on Perspectives in Action-oriented Research: Youth, Crime and Juvenile Justice. As at past Congresses, experts and scholars gave lectures on selected issues related to the agenda topics. A number of meetings were also held for professional and geographical interest groups participating in the Congress. Finally, Non-Governmental Organizations held some fifteen ancillary meetings concerning such issues as capital punishment, victims of crime, victimization of women, protection of children in adult prisons, alternatives to imprisonment, social defence, and the Third World and crime prevention. These established an opportunity for exchanges between the professional and scientific community and the official deliberations of the Congress.

As for the previous three Congresses, the Solicitor General of Canada was responsible for Canadian participation in the UN Congress, in consultation with the Minister of Justice and the Secretary of State for External Affairs.

PART II - CONGRESS ACHIEVEMENTS/CANADIAN DELEGATION'S ROLE

2.1 Summary

The Seventh U.N. Congress on the Prevention of Crime and the Treatment of Offenders adopted six major international instruments for the application of criminal justice norms and standards and passed twenty-four resolutions and a decision on a broad range of issues. All texts were adopted by consensus.

The six international instruments are:

- Guiding principles for crime prevention and criminal justice in the context of development and a new international economic order;
- The Milan plan of action;
- Basic principles on the independence of the judiciary;
- Draft declaration on basic principles of justice
a) relating to victims of crime and b) relating to victims of abuse of power;
- Model agreement on the transfer of foreign prisoners and recommendations for the treatment of foreign prisoners;
- United Nations standard minimum rules for the administration of juvenile justice ("the Beijing Rules").

The resolutions adopted at the Congress concern matters such as terrorism, organized crime, drug abuse, victims of crime, the status of prisoners, the human rights of prisoners, the reduction of prison populations, alternatives to imprisonment and social integration of offenders, extra-legal, arbitrary and summary executions, the rights of those facing the death penalty, transfer of criminal proceedings, the code of conduct for law enforcement officials and the role of lawyers. Resolutions were also passed on youth, crime and justice, training of criminal justice personnel and exchange of criminal justice information and expertise, and the establishment of an African regional institute for the prevention of crime and the treatment of offenders.

The Solicitor General was elected as one of 24 Vice-Presidents of the Congress, and Me Gisèle Côté-Harper was elected as a friend of the Rapporteur of Committee 2. Headed by the Honourable Perrin Beatty, Solicitor General of Canada, the Canadian delegation played an active and constructive role on most of the issues. The delegation was organized in sub-groups to parallel the Congress committees. Mr. Blaine Thacker chaired the deliberations related to topic I (plenary); Mr. D. Préfontaine led the group dealing with Committee 1 issues; and Mr. Fred Gibson chaired the Committee 2 group, while also serving as Deputy Head of the delegation.

Canada played a major role in discussions by a group of representatives and advisers interested in the development of guiding principles for crime prevention and criminal justice. This drafting committee, called the Milan Group, developed a document generally agreed to be one of the most important instruments of the Congress. The Canadian contribution, both individually and as Chair of the Western group, was acknowledged by all regional groups to have had a central role in the production of the final document. The Milan Group also developed a set of concrete proposals in the field of criminal justice. Canada again was very constructive in moving away from a vague, often unfocussed draft to a final product consistent with Canadian interests.

Canada also played a lead role on the victims topic, producing a compromise between the U.N. Secretariat and U.S.A. proposals which served as the working document for the Congress deliberations and with further adjustments, became the draft resolution and declaration of basic principles of justice. The Canadian delegation was also involved in every stage of the development of a draft resolution on terrorism, participating in discussions and drafting with the U.S.A. and within the Western European and other groups. Canada played a key role in facilitating and promoting the integration into one resolution of three texts dealing with alternatives to imprisonment and reduction of prison population. The final text was praised highly by the U.S.A., U.S.S.R., Spain, Norway, G.D.R., and U.K. The Canadian delegation also played a leadership role in the discussions of the working group which produced the basic principles on the independence of the judiciary. Significant contributions were also made in plenary and in Committee 1. Canada was also instrumental in achieving consensus on the resolutions dealing with drug trafficking and organized crime.

The delegation made an intervention on the proposed standard minimum rules for the administration of juvenile justice ("the Beijing Rules"), expressing support but stressing that two

concerns remained: the 'welfare' orientation of some rules and the abrupt limitation on the use of juvenile offender records. Still on juvenile justice, Canada intervened to question the assumptions underlying the causes of youth crime and the solutions proposed in a draft resolution tabled by the U.S.S.R. on the prevention of juvenile crime. The resolution was revised accordingly and later adopted. In addition, the Canadian delegation made two interventions relating to the need for better coordination of justice information and statistics, another on the Canadian experience with respect to the fair treatment of women in the criminal justice system, one dealing with the model agreement for the transfer of foreign prisoners and a fifth one regarding alternatives to imprisonment.

One of the more difficult proposals at the Congress proved to be a Cuban resolution on "Crime Prevention in the Context of Development", which identified "the right to development as an inalienable human right". Canadian advisers were active in assisting the chairman of the Western European and Others Group, the head of the U.K. delegation, in negotiations with the Cuban delegation. At the last minute, Cuba accepted an amendment that involved moving the contentious material from the body of the resolution into the preambular paragraphs.

2.2 Reports of the Advisers to the Canadian Delegation

Topic I

New Dimensions of Criminality and Crime Prevention in the Context of Development: Challenges for the Future.

I(1) Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order.

A/Conf. 121/L. 11

I(2) Milan Plan of Action

A/Conf. 121/L. 15

Adopted by consensus on September 6, 1985.

Highlights

I(1) The Guiding Principles

Following on from the Caracas Declaration, adopted by the Sixth United Nations Congress on the Prevention of Crime, General Assembly resolutions of 1980 and 1981 and an Economic and Social Council resolution of May 1982 the task of defining guiding principles for the future course of crime prevention and criminal justice, within a context of development, was given to the Seventh United Nations Congress.

A draft set of guiding principles was provided to Member States as a basis for discussion at the Milan Congress. They were discussed, in general terms, at a preparatory meeting of experts in Vienna in October 1984 and at a meeting of "Eminent Persons" in India in April 1985.

The topic was considered to be the lynch-pin of the Congress and hence was discussed in the plenary session throughout the two weeks.

The final form of the paper - "New Dimensions of Criminality and Crime Prevention in the Context of Development: Challenges for the Future", adopted by consensus in Milan, consists of 10 operative paragraphs (with a preamble) and an annex of 47 "Guiding Principles".

Although the guiding principles deal with recommendations for crime prevention and criminal justice within developed and developing nation states, much of the real emphasis is on the problems of crime in an international context and, in particular, in relation to the problems of developing countries and the establishment of a new international economic order. (In 1974 the concept of The New International Economic Order was introduced into the United Nations. The aim was to get agreement from the rich countries that the world financial and economic structure should be changed so that the poor countries would gain. In the assessment of many developing countries the concept of a new international economic order has not had the impact they had hoped it would have.

The topic ranged far and wide over international order, peace, development, long term planning, causes of crime, injustices, economic organization sanctions, social policy, human rights, laws, community participation, new crimes, abuse of power, victims, international cooperation and the role of the United Nations.

The attitude of the western group of countries was, to over-generalise, that the draft guiding principles were too vague, wandered too far from the problems of traditional crime and that they should be tightened so as to make it clear that the principles applied to crime rather than economic development, planning and exploitation. However, there was not unanimity among the group. The Federal Republic of Germany and the United Kingdom were the most anxious to restrict the scope of the document, Sweden was happy to leave the draft alone (on the grounds that it was vague but good-intentioned), the United States was willing to go along with the principles with a few minor changes, while Canada, although accepting the general thrust wished to make changes which would clarify the role of international law and restrict the concerns to those of more traditional crime and crime prevention.

The Soviet Union and its allies followed a traditional path. They were extremely anxious to ensure that the document did not appear to allow states to 'interfere' with the internal problems of other states but they were also keen to ensure the document condemned the activities of multinational corporations and the 'colonial' powers.

The developing countries were most anxious to maintain the document in as-close-as-possible a state to the draft. They felt that the international aspects of crime causation and prevention must be recognized; they wished to put crime within the context of development and planning; they wanted recognition of the criminogenic impact of colonialism and they wanted to bring attention to abuses of power.

The draft documents were not discussed in the plenary sessions. It was obvious that there would have to be intensive negotiations among the interested states. The U.N. Secretariat, therefore, initiated discussions and a working group (called the Milan Group) was set up. The group met for five days and successfully produced a draft which was accepted by all the participants.

The final draft was a much tighter document, much more aimed at traditional crime, less intrusive in the affairs of Member States but it still recognized that crime is an economic, social, and international problem. The Canadian delegation was able to support the final document. It was believed that it dealt with crime and crime prevention on an international level which recognized its multifaceted causes, was sensitive to the ambitions and fears of the developing world but was also relevant to the needs of the developed world.

The final document is not a blue print, it is not a set of rigid rules, it is a set of guidelines which could help understanding and prevention of crime.

I(2) The Milan Plan of Action

The second document produced by the Milan Group was the 'Milan Plan of Action'. There was no draft to discuss so that after a day of discussions the UN Secretariat wrote one. Again there were intensive discussions and a program for the U.N. and Member States for the next five years was the unanimous result.

The Plan of Action recommends that governments accord high priority to crime prevention through social development, international cooperation and planning. It also urges an end to discrimination and encourages the combating of terrorism, improving drug control and the improvement of criminal justice systems.

The plan goes on to request the Secretary-General of the United Nations to review, in consultation with the Committee on Crime Prevention and Control, the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice. (The original intent by certain members of the United Nations Secretariat was to have this review done by the Secretary-General alone. It was assumed that the review would result in crime prevention being taken out of the social development area and put into a new area of social problems, including drugs. It is suggested by some that the motive behind this was personal ambition. However, as the Milan Group asked the Secretary-General to do the work in consultation with the Committee on Crime Prevention and Control, the review has been taken out of the hands of the United Nations bureaucrats and placed in the intergovernmental arena, thus guaranteeing that the issues are discussed publicly. The United Kingdom, Sweden and Canada were instrumental in changing the original proposal). It also requests the United Nations to start a regional institute in Africa and to encourage technology transfer and aid.

Finally the Plan calls for the widest possible public education.

Canadian Delegation's Role

Canada chaired the Western European and Others Group meetings related to the guiding principles and the Plan of Action. These meetings preceded and were concurrent with the Milan Group of Meetings.

Canada played an active part in the work of the Milan Group and was acknowledged by all regional groups to have played a central role in negotiating the final documents.

Sub-Topic

I(3) Illicit Drug Trafficking

- Resolution A/CONF. 121/L.4
Struggle against illicit drug trafficking - Adopted by consensus on September 3, 1985.
- Resolution A/CONF. 121/L.5
International Co-operation in Drug Abuse Control -
Adopted by consensus on September 3, 1985.

I(4) Organized Crime

- Resolution A/CONF. 121/L.2
Adopted by consensus on September 3, 1985.

Highlights

The subject of illicit drug trafficking was discussed in plenary session of the 7th UN Congress, on August 27 and 28, 1985. Interventions were made by concerned countries including Australia, Britain, the United States, Canada, and most Western European countries.

The two drug resolutions adopted at the Congress were drafted and introduced by Italy. On August 26, the American delegation circulated a draft resolution, entitled the Struggle Against Illicit Drug Trafficking, for discussion at a meeting attended by delegates from Canada and the United Kingdom. Some minor changes resulted from this meeting. It was agreed that any resolution calling for U.N. action to deal with illicit drug trade or drug abuse should clearly involve the U.N. Commission on Narcotic Drugs and its support agencies rather than duplicate efforts by calling on the 7th U.N. Congress itself and its Committee on Crime Prevention and Control to carry out work in this area. The Draft resolution developed by the U.S. prior to the Milan Meeting had been put together with advice from External Affairs, Ottawa. This document essentially supported the development of a new draft convention by the Commission on Narcotic Drugs and identified the key elements that ought to be considered for inclusion.

Although the U.S. draft covered all major issues with respect to a new convention, it contained too much detail, and it was feared that many delegations would not be able to relate to some of the detailed initiatives. Italy, although supporting the thrust of the U.S. proposals, felt that the draft resolution should be more general in scope. Members of the Canadian delegation met with the Italian delegate, with the support of the U.S. delegation, to combine the Italian and U.S. proposals. This resulted in the new draft resolution being circulated by Italy.

The original U.S. draft resolution along with the Italian draft were assigned to a WEOG working group chaired by a member of the Swedish delegation. The U.S. withdrew their document and supported the Italian draft resolution. This Italian document was then filed with the Congress as A/CONF. 121/L.4 and approved by a committee of the plenary chaired by a member of the French delegation, on September 2, 1985.

The second resolution dealing with International Co-operation in Drug Abuse Control was drafted by Italy, following consultation with members of the U.S. and Canadian delegations. The draft resolution basically recognizes the need to support the U.N. fund for drug abuse control, invites Member States to take full advantage of the facilities offered by the Fund and urges them to give increased support to fight international drug trafficking. The resolution was accepted by members of WEOG and the Committee of the Plenary as A/CONF. 121/L.5. While it was adopted without vote, the representative for Burkina Faso spoke against the thrust of the resolution, because he felt that any increased funding for drug abuse control may affect the level of contributions to drought relief programs in Africa.

The third resolution, on Organized Crime, was prepared and circulated by Australia well before the 7th U.N. Congress began. Most western countries received copies of the Australian proposal weeks in advance of the Congress through their embassies. The draft resolution was also immediately circulated at the Congress. A number of deletions and additions to the text were requested by various delegations, but Australia refused to make any changes before the document was formally filed as a draft resolution.

Representatives of Canada and the U.S. met informally with a representative of the Australian delegation to suggest several changes to the document. In particular, Australia had named several regional groups where mutual assistance agreements had been successfully concluded, but had omitted several major areas and groups. They agreed to amend the document to recognize all regional efforts without naming any region. Australia was

also requested to include the name of the U.N. Commission on Narcotic Drugs as the agency of the U.N. to carry out certain drug-related matters rather than the Committee on Crime Prevention.

This resolution, tabled as document A/CONF. 121/L.2, recommends among other things that the Committee on Crime Prevention and Control develop a comprehensive framework of guidelines and standards to assist Governments in developing measures to deal with organized crime at the national level. The Committee is also asked to develop model treaties dealing with extradition and mutual legal assistance. This measure will obviously require considerable input and assistance from National Governments.

The other significant matter called for in this resolution is the establishment of national institutions with powers to investigate organized crime activity.

Canadian Delegation's Role

The Canadian delegation played a lead role in negotiating an arrangement whereby the U.S. withdrew their proposed resolution in favour of an amended Italian compromise prepared with assistance from Canada. Canada co-sponsored this resolution on illicit drug trafficking (A/CONF. 121/L.4) subsequently adopted without vote by the Congress.

The issues raised here are consistent with Canada's submission to the U.N. Discussion on Narcotic Drugs, in preparation of a draft convention by the Commission on Narcotic Drugs. The Commission will meet in Vienna in February 1986, and the Canadian resolution will draw attention to those issues which should form part of any new convention dealing with the problems associated with drug trafficking.

Canada also assisted in the preparation of the second draft resolution which was circulated and introduced by Italy, on International Cooperation in Drug Abuse Control. This resolution (A/CONF. 121/L.5) was also co-sponsored by Canada and adopted without vote by the Congress.

The operative parts of this resolution are consistent with the Canadian position with respect to contributions and support for the United Nations fund for drug abuse control. Canada has contributed annually to the fund since it was formed in 1972. Canada has increased its contribution annually and is currently considering plans to earmark additional funds for

UNFDAC programs in South East Asia (Thailand) and Pakistan. Canada is a member of the Ad Hoc major donors groups of UNFDAC and has participated in providing consultation and advice on planned programs.

Finally Canada participated with the U.S. in convincing Australia to make certain changes to their draft resolution A/CONF. 121/L.2, on Organized Crime. These changes were welcomed by many delegates and resulted in the resolution being adopted without vote.

The operative parts of this resolution will require the Committee on Crime Prevention to carry out several specific tasks. Canada along with Italy, the U.S. and Australia are perhaps the only countries with the necessary expertise to assist the Committee in preparing a comprehensive framework of guidelines and standards to deal with organized crime and to develop model treaties on extradition and mutual legal assistance.

The resolution also calls on Member States to introduce new offences to deal with novel and sophisticated forms of criminal activity. It also calls for provisions in laws to provide for the forfeiture of illegally acquired assets. Most of these issues were covered in the Enterprise Crime Study, and recommendations are contained in the report submitted to the Federal/Provincial Attorneys General in 1983.

The provision calling for the establishment of national institutions to investigate and obtain evidence for the prosecution of those centrally involved in organized crime, has already been addressed in Canada. In 1966, the Federal/Provincial Attorneys General agreed to establish a central co-ordinating mechanism to investigate national organized crime. The RCMP subsequently established National Crime investigative units and commercial sections across Canada. In addition, Criminal Intelligence Service Canada was established as a central co-ordinating body, to concentrate on groups involved in organized crime. This is carried out through provincial bureaus in each province. This co-ordinating group brings together the Federal, Provincial and Municipal Police Agencies in Canada to co-ordinate the efforts to attack major organized crime groups in Canada.

Topic II

Criminal Justice Processes and Perspectives in a Changing World.

- II(1) Fair treatment of women by the criminal justice system;
- II(2) Prosecution;
- II(3) Criminal justice system - development of guidelines for the training of criminal justice personnel;
- II(4) Development of crime and criminal justice information and statistical systems.

The adopted version of these resolutions is found in document A/CONF. 121/L.14.

Highlights

The subject matter entitled "Criminal Justice Processes and Perspectives in a Changing World" was dealt with by Committee 1 and its report was adopted by consensus on Friday, September 6, 1985 as contained in A/CONF. 121/L.14; A/CONF 121/C.1/L.22 and CORR.1. Three basic documents were available for the discussion of Committee 1, namely:

- (a) Working paper prepared by the Secretariat on criminal justice processes and perspectives in a changing world (A/CONF. 121/5);
- (b) The fair treatment of women by the criminal justice system - report of the Secretary-General (A/CONF. 121/17 and ADD.1 and CORR.1);
- (c) Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II (item 4) - criminal justice processes and perspectives in a changing world (A/CONF. 121/IPM/2).

The discussions of the delegations revolved around the processes of social change in the criminal justice system. The primary concern was with the role of criminal justice agencies and the need for greater coordination among them, increased public awareness and involvement, and additional exchange of information and technology. The interaction between criminal justice agencies was discussed. In this context, the role of the police was examined, the role and status of prosecutors, the

operation of the courts and the judiciary including the type of sentences being utilized by the courts, the type of legislation which fosters decriminalization and depenalization including mechanisms of diversion and the overall public participation in the criminal justice system, crime prevention and the use of alternatives to imprisonment at the community level. Some discussion took place on the efficiency of criminal justice as it relates to administrative practices and procedures and the use of modern technology. An important item raised by many countries was the need for better information flow and use of technology by criminal justice agencies, particularly by police forces. In summary, the need for better cooperation between countries especially with respect to information technology was highlighted. The need for accurate statistical records and trends in criminality was also emphasized.

The sub-topic relating to "the fair treatment of women by the criminal justice system" generated a good deal of discussions, especially on the importance of the criminal justice system becoming more responsive to the needs of females in general and more particularly with respect to female offenders and their needs. The need for fair and equal employment practices, equal pay for equal value, and other related matters was stressed. The needs of female victims were emphasized particularly in relation to sexual offences and domestic assaults. In summary, it was stressed that a fundamental change in attitudes toward women and their role in the criminal justice system was an essential pre-requisite for improving the condition of women within the criminal justice system.

Four resolutions emanating from the discussions of the Committee were adopted by the Congress.

Canadian Delegation's Role

The Canadian delegation played a very active role in the discussions that took place with respect to topic II, by both making a series of interventions and working energetically to develop three of the four resolutions adopted by the Congress. On the subject of the development of crime and criminal justice information and statistical systems, two interventions emphasized the need to take into account social, demographic and economic changes in criminal justice planning and what forms of cooperation and information flow between the sectors of the criminal justice system should be promoted. The need for the development of guidelines for the training of criminal justice personnel was the subject of another intervention. On the sub-topic of fair treatment of women by the criminal justice system, Canada spoke on the twin issues of the fair treatment of women within the criminal justice system and the compassionate

treatment of female victims. As a matter of special concern needing increased recognition, the Canadian delegation intervened to support the resolution introduced by Panama on the fair treatment of women in the criminal justice system.

The members of the Canadian delegation involved in the work of Committee 1 participated with other countries in working groups established to draft the resolutions dealing with the development of guidelines for training of criminal justice personnel, the development of crime and criminal justice information and statistical systems and the fair treatment of women in the criminal justice system. In addition, informal comments and suggestions were provided to the country sponsoring the resolution on the role and status of prosecutors.

A review of the resolutions and their recommendations for action will need to take place to determine the necessary action to be taken to follow up thereon.

Topic III

Victims of Crime

III(1) Domestic Violence

Resolution A/CONF. 121/L.18, adopted by consensus on September 6, 1985.

Sponsors in Committee 2: Australia, Canada, Costa Rica, Egypt, Federal Republic of Germany, Greece, Israel, New Zealand, Sweden and the United States of America.

Highlights

In its preambular paragraphs, the Resolution stressed the role of the family as a social unit and the harm occasioned by domestic violence to all family members, especially the young. The preamble established links between domestic violence and a variety of initiatives intended to address the problem, the most notable of which were crime prevention, the fair treatment of women in the criminal justice system, women's equality, the elimination of all forms of discrimination against women, and the rights of children, particularly their right to be protected against exploitation, neglect and cruelty.

The Resolution requests the Secretary General to intensify research on domestic violence and to formulate, in collaboration with all relevant UN bodies, agencies and institutes, "action-oriented strategies" to serve as a basis for policy development. As well, the Economic and Social Council was requested to invite the Committee on Crime Prevention and Control to examine the problem of domestic violence. The Secretary General was asked to report on these efforts at the 8th UN Congress.

Member States were invited to take specific measures to make their criminal and social justice systems more sensitive to domestic violence. Among the more significant of these measures were the following:

- enact and enforce civil and criminal legislation to protect victims of domestic violence; this legislation should provide for sanctions that offer alternative ways of treatment for offenders according to type of violence;
- legal remedies should be made more accessible, provided that due consideration is given to maintaining a balance between intervention and privacy;
- ensure that the victims of domestic violence are treated with respect at all stages of the criminal process, starting with the police investigation;
- take preventive measures to assist families in creating a non-violent environment, e.g., by providing counseling and support that emphasises the equality of rights and responsibilities for men and women, partnership and peaceful resolution of conflicts;
- enhance public awareness of the problem of domestic violence, particularly as it relates to children; initiate and/or intensify research; and provide specialised training to those who deal with victims of domestic violence;
- provide specialised assistance to victims of domestic violence, as an integral part of social policy, including shelters and other facilities and services;
- coordinate social welfare, health administration and criminal justice systems in the provision of assistance to victims of domestic violence.

Canadian Delegation's Role

This resolution was primarily an initiative of the United States, although Canada was active in supporting it and numbered among the eventual co-sponsors in Committee 2. The Canadian delegation was very active in bilateral negotiations with the American delegation to secure amendments to the original proposal, in order to give it a more generic orientation towards the problems of domestic violence, rather than towards the more specific problems of battered women. Thus, in part due to Canada's efforts, the Resolution extends to the generality of victims of domestic violence, but with particular reference to children and women.

III (2) Draft Declaration of Basic Principles of Justice:

- A. Relating to victims of crime, and**
- B. Relating to victims of abuse of power**

Resolution A/CONF.121/L.18, adopted by consensus on September 6, 1985.

Sponsors in Committee 2: Argentina, Australia, Canada, Costa Rica, Denmark, Egypt, France, Greece, India, Italy, Netherlands, New Zealand, Panama, Senegal, the United States of America, Uruguay, Venezuela, Yugoslavia and Zimbabwe.

Highlights

The draft declaration that was adopted by the 7th UN Congress reflected the quite disparate variety of concerns from which it derived its impetus. The 6th UN Congress, in its resolution 7, had recommended, inter alia, "that the United Nations should continue its work on the development of guidelines and standards regarding the abuse of economic and political power". (Although initially supportive of this resolution, Canada abstained when the matter came to a vote.) The 6th Congress had also considered a Secretariat working paper entitled "Crime and the abuse of power: offences and offenders beyond the reach of the law". The Committee on Crime Prevention and Control, in formulating the terms of reference for the 7th UN Congress, had stressed that, while victims of traditional crime should be dealt with, major attention should be given to "the victims of illegal abuses of power, especially of a large-scale nature, and those which may not even yet be proscribed, yet whose impact may be far greater than assumed, with particularly serious consequences for vulnerable disadvantaged segments of the population" (E/CN.5/1983/2, paras. 137-143). As well, the victims

declaration derived considerable impetus from a declaration on individual victims of crime, formulated at the initiative of the World Society of Victimology, and submitted to the UN by the World Federation of Mental Health (E/AC.57/1984/NGO/3).

Briefly, then, the elements that, over the years, had found their way into the victims topic could be listed as follows:

(1) justice and redress for

- victims of traditional crime
- victims of of abuses of economic and political power
- victims of serious violations of international standards relating to human rights
- victims of transnational corporations
- victims of environmental pollution

(2) such "victims rights" as

- access to justice and fair treatment
- restitution from offenders or responsible third parties
- compensation from the state for victims and their dependents
- the creation of international funds for compensation to victims, as exemplified by the UN Voluntary Fund for Victims of Torture
- services and support

(3) prevention of victimisation by crime and abuse of power.

Although Member States within the Western European and Others Group would have preferred a declaration more specifically focused on victims of crime and crime prevention, the other elements--particularly those relating to abuse of power--were perceived as paramount by a significant body of opinion at the Congress. If these concerns were to be accommodated, it was imperative for members of the WEOG, for the U.S.S.R. and for India that any rights enunciated in the Declaration be limited to victims of acts prohibited under domestic criminal law. The declaration that was eventually adopted was thus designed to encourage justice and redress for victims of acts or omissions which are in violation of domestic criminal law, including abuses of power to the extent that they have been criminalized, while leaving it to national law whether to criminalize other abuses of power and to provide compensation to victims thereof.

In the result, the "Draft Declaration of Basic Principles of Justice: A. Relating to victims of crime, and B. Relating to victims of abuse of power" that was referred to the General Assembly by the 7th UN Congress called upon Member States to provide victims of crime with access to justice and fair treatment, restitution, compensation and social assistance. In respect of victims of abuses of power constituting violations of internationally recognised norms relating to human rights, but which did not constitute a violation of national criminal laws, the draft Declaration invites Member States to consider proscribing such abuses of power within their national legislation and providing remedies to victims of such abuses; to consider legislation proscribing serious abuses of political or economic power, as well as promoting policies and mechanisms for their prevention and the provision of appropriate rights and remedies for victims of such abuses; and to consider negotiating multilateral treaties relating to victims of abuse of power constituting violations of internationally recognised norms relating to human rights.

In the draft Resolution that accompanied the draft Declaration, the Secretary General was requested to invite Member States to report periodically to the General Assembly on the implementation of the Declaration. It remains, of course, for the Declaration to be considered by the General Assembly before it acquires any status as an international instrument. The UNGA's consideration of the draft Declaration is presently scheduled for the late fall of 1985.⁽¹⁾

Canadian Delegation's Role:

The Congress began with four different UN Secretariat-sponsored versions of a draft declaration on victims of crime and abuse of power: the first deriving from the July 1984 Ottawa meeting of the UN Interregional Committee of Experts on Victims of Crime; the second representing a revision of the July 1984 draft (A/CONF.121/IPM/4/Add.1); the third representing a statement of "Main Principles of Justice and Assistance for Victims of Crime", which was attached as an annex to "Victims of Crime: A Working Paper prepared by the Secretariat" (A/CONF.121/6); and a fourth, which, although lacking an official Congress designation, was represented as a more authoritative version of the "Main Principles" than the one that was officially distributed. Because of this confusion on the part of the UN Secretariat, the Congress had considerable difficulty focusing on the issues entailed in the victims topic. To add to the confusion, the American Delegation submitted to the Congress a proposal for a draft declaration dealing exclusively with victims of crime (A/CONF.121/C.2/L.10).

(1) All 7th UN Congress resolutions and instruments were adopted by the UN General Assembly on November 29, 1985.

Canadian difficulties with the various UN-sponsored versions of the draft declaration had been fully explored before going to Milan, not only with the Departments of Justice and External Affairs, but also with representatives of the provinces and the non-governmental organisations. Briefly, Canada was anxious going into the Congress to be as constructive as possible in achieving a draft declaration on behalf of victims of crime. Most significant among the defects of the various drafts preceding the Congress was that they went beyond compensation for victims of crimes under domestic law, thereby creating a broad and undefined potential liability for individuals, corporations and States. A related problem for the Canadian delegation was that the various versions of the draft declaration called for the same benefits to be conferred upon victims of abuse of power as were provided for victims of crime. For the Canadian delegation, this represented an over-reliance upon the criminal justice system, a system that we in Canada prefer to invoke as a conflict resolution mechanism of last resort, rather than as a mechanism for securing substantive economic, social and political justice.

In his opening statement to the Congress, the Head of the Canadian Delegation, the Hon. Perrin Beatty, made a particular point of expressing his hope that there would be some progress made on behalf of victims of crime. In the days that followed, Canadian delegates and advisers consulted extensively with other delegations, with a view to ascertaining whether they shared our difficulties with the UN Secretariat's draft declarations and our desire to resolve those difficulties consistently with our belief that it should be possible to arrive at a declaration that addressed the problems of both victims of crime and victims of abuse of power. It was critical to the pursuit of these objectives that the UN provide an informal forum within which delegates from outside the Western European and Others Group could discuss their aspirations for a draft declaration on victims, particularly with reference to those elements pertaining to victims of abuse of power. Canada, Australia and France were chiefly instrumental in securing such a forum, complete with translation facilities, on Friday, August 30 and Saturday, August 31, with one of the Canadian advisers serving as rapporteur to the discussions. On Sunday, September 1, the Deputy Solicitor General met with delegates from other countries and regions, and with UN Special Consultants and interested NGO representatives, all with a view to seeking as wide a consensus as possible on the best method of achieving an acceptable draft declaration on behalf of victims.

On Monday, September 2, Canada proposed a revision to the "Main Principles of Justice and Assistance for Victims" (A/CONF.121/6), the essence of which was the separate definition of "victims of crime" and "victims of abuse of power", together with a separation of the "benefits" to be conferred upon the two classes of victims. This proposal was then applied to the "Main Principles" and combined with a covering resolution drafted by the U.K. delegation, resulting in a new proposal for a draft declaration on victims of crime (A/CONF.121/C.2/L.11), which was co-sponsored by Australia, Canada and France and tabled on Tuesday, September 3, 1985. Thereafter, this proposal became the working document for the remainder of the Congress, to the exclusion of the various Secretariat-sponsored versions and the American proposal.

The Canadian proposal (L.11) was then taken up in the formal proceedings of Committee 2, during the late afternoon of Tuesday, September 3, with the Committee voting first to determine that L.11 was to be used as the working vehicle for the Committee's deliberations, and, in the time remaining, in favour of Article 1 of L.11, which defined "victims of crime". It became obvious during the voting on these two issues that L.11 had overwhelming numerical support, but that its supporters did not include the United States of America, the U.S.S.R. or Japan (which voted against); nor did it include the United Kingdom (which abstained). Although it was clear that the Canadian proposal could have been adopted through sheer force of numbers, it was also clear that the moral force of any declaration thus obtained would have been significantly diminished by the absence of U.S., U.S.S.R. and U.K. support. For that reason, formal consideration of L.11 in Committee 2 was suspended early on September 4, in order to permit further informal discussions.

In the interval, the U.S.A. and U.S.S.R. developed a joint response to L.11, which they presented to an informal meeting, chaired by the Deputy Solicitor General and attended by representatives of all regions, most notably by Yugoslavia on behalf of the non-aligned nations ("the Group of 77"), India, Egypt, Senegal, Australia, France and Argentina. At this meeting, the joint American-Russian proposals for amending L.11 were submitted and, ultimately, accepted. Essentially, these proposals entailed a more distinctive separation of the two categories of victims: hence the title (Draft Declaration of Basic Principles of Justice: A. Relating to victims of crime, and B. Relating to victims of abuse of power); and hence also the relocation of the definitional provisions within the sections dealing, respectively, with victims of crime and victims of abuse of power. As well, for reasons that were never articulated, the U.S.A. and U.S.S.R. insisted that the section of the draft

declaration dealing with "Prevention" be relocated within the covering resolution.

The proposal thus agreed upon, together with a revised covering resolution, was then tabled in Committee 2 as A/CONF.121/L.18, with co-sponsorship from 19 Member States from all geographic regions, and adopted by consensus for reference to the Plenary Session of the Congress. The draft declaration was then adopted by consensus in the Plenary Session on Friday, September 6, 1985.

III(3) International Year of the Victim

Highlights

Australia proposed the recognition of 1986 as "The International Year of the Victim" by the UN General Assembly. There was, however, little support for this proposal. When the proposal was debated on the floor of Committee 2, the Soviet delegation sought to invest the term "victim" with references to victims of apartheid and created various procedural hurdles to the proposal. In the result, Committee 2 was unable to conclude the consideration of this draft resolution and decided to transmit the text to the plenary for consideration and action as appropriate. In the plenary, the same substantive and procedural hurdles were raised and, in the event, the matter was left entirely unresolved.

Canadian Delegation's Role

Immediately prior to Australia proposing this draft resolution, the Canadian delegation was approached informally and asked to support the initiative. Essentially, our position was that we would neither support nor oppose the proposal and the Australians were so advised. We were reluctant to support the proposal because the Australians had done too little preparatory work to ensure a broad measure of support; because the concept of an International Year of the Victim had not been fully or properly articulated; and because the expense and effort entailed in such international years is considerable. As well, we were at that point concluding our securing a consensus on the draft Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Having been in the forefront of efforts to integrate the two classes of victims within a single declaration, it would have been quite inappropriate, both for the Canadian delegation and the Congress, to put forward a proposal such as the Australian, which was explicitly confined to victims of crime. We took some care, however, to ensure that we were not

perceived as actively opposing the Australian initiative, not least because we had obtained considerable support and cooperation from the Australians in our own initiative on victims of crime and abuse of power.

Topic IV

Youth, Crime and Justice

IV(1) Standard Minimum Rules for the Administration of Juvenile Justice

A/CONF. 121/L. 1

Highlights

The United Nations prepared draft standard minimum rules for the administration of juvenile justice, now known as the "Beijing Rules". The proposed rules were forwarded to Member States in advance of the Congress, for consideration and possible adoption in Milan. The consideration and adoption of standard minimum rules was the most significant contribution of the 7th U.N. Congress in the area of juvenile justice. The administration of criminal law for adults is guided by fundamental principles of justice and it is equally important that certain standards and principles be extended to the administration of juvenile justice. The rules adopted promote those ends.

Canadian Delegation's Role

Canada made an early intervention at the discussion of the Beijing Rules to indicate general support but also to recommend specific amendments: at least one rule was contrary to our Charter of Rights and many were inconsistent with our domestic juvenile justice policy as expressed in the Young Offenders Act.

After Canada's intervention, the United States, the United Kingdom and Australia expressed an interest in making a joint submission for suggested amendments. Representatives of the four countries met to discuss Canada's proposals. A consensus was reached, and written suggested amendments were presented to the Rapporteur of Committee 2.

The Rapporteur attempted to address these amendments proposed by Canada together with about 100 others. The rule in conflict with the Charter of Rights was removed but some other policy issues were not resolved. Canada intervened during the discussion of the Rapporteur's report to express support for the Beijing Rules but to make clear that two concerns remained: one about the abrupt limitation on the use of records and the other relating to a failure to emphasize that the needs of the young offenders can only mitigate and not aggravate the response to the offence. The Rapporteur agreed to include the concerns in his report.

IV(2) Youth, Crime and Justice

A/CONF. 121/L.2

Highlights

The USSR tabled a draft resolution on the prevention of juvenile crime. The resolution recognized the broader context of youth crime and called upon all nations to eliminate the social conditions thought to cause the criminal behaviour. The resolution suggested primarily an economic and social approach to effect that end. An extension of research efforts into the causes of youth crime is necessary to appropriately invoke preventive measures.

Canadian Delegation's Role

Again, Canada made an early intervention, this time questioning the underlying assumptions about the causes of youth crime and the solutions recommended by the USSR, which included censorship. Other countries also expressed concerns. The Soviet Union revised the draft resolution to respond to these concerns and the resolution was adopted by consensus.

IV(3) Research on Youth, Crime and Justice

A/CONF. 121/L. 3

Highlights

The 7th UN Congress recognized that any policy and legislative changes in youth justice should be premised on reliable empirical evidence. After a one-day workshop on the

issue, a resolution relating to research on youth, crime and juvenile justice was tabled. It set out principles, guidelines and priorities respecting research on youth crime. "Action-oriented" research was defined and emphasized as an empirical model for youth justice research. Further, particular problems were targeted as priorities for research, such as drug trafficking, drug abuse and their relationship with youth crime; violent crime involving juveniles; street children and deviance with special emphasis on preventive programmes; female juvenile delinquency; models and methods of control processes and treatment of young offenders; provision of education and training skills and techniques essential to the exercise and implementation of research; promotion of information and data collection methodologies and programmes, and the systematic dissemination of such information; further strengthening of research and consultancy capacities in developing countries.

Canadian Delegation's Role

By and large, Canada's research in juvenile justice is sophisticated and generally exceeds the guidelines. Canada had no difficulty in accepting that policy makers and researchers should participate in a common effort.

IV(4) Development of Standard Minimum Rules for the Protection of Children Deprived of their Liberty

A/CONF. 121/L. 4

Highlights

Neither the standard minimum rules for the administration of juvenile justice nor the standard minimum rules for adult corrections specifically addressed issues relating to juveniles deprived of their liberty. The resolution proposed that standard minimum rules be developed specifically to extend basic protections to young people in correctional facilities and programs. Accordingly, a resolution was tabled suggesting that the Committee on Crime Prevention and Control formulate standard minimum rules for the treatment of children deprived of their liberty, that the Secretary-General report to the 8th UN Congress on the progress achieved, and that the latter consider those issues as a matter of priority.

Canadian Delegation's Role

Canada co-sponsored the resolution.

IV(5) Development of Standards for the Prevention of Juvenile Delinquency

A/CONF. 121/L. 5/REV. 1

Highlights

The controversial proposition that providing requisite assistance and opportunity for youth prevents crime was addressed in this resolution. Some Member States felt that the provision of necessary assistance should be an end in itself, not tied to whether or not it prevents youth crime. A resolution was tabled calling upon the Economic and Social Council to request the Committee on Crime Prevention and Control to develop standards for the prevention of juvenile delinquency, which would assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance and care and the active involvement of the community, and to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved in the development of the proposed standards for review and final action.

Canadian Delegation's Role

Canada participated in the working group set up to clarify the original proposal, and assisted in differentiating child welfare concepts from crime prevention concepts.

Topic V

Formulation and Application of United Nations Standards and Norms in Criminal Justice.

[The Report of Committee 1 was contained in three documents: A/CONF.121/C.1/L.23, A/CONF.121/L.16 and A/CONF.121/L.16/Add.1. The following report incorporates parts of those reports.]

General Considerations

Topic V of the Congress reflected the long-standing concern of the United Nations with the humanization of criminal justice. United Nations work in this area has pursued two approaches, the development of legally binding instruments and the adoption of recommendations in the form of basic standards and guidelines. Some of these have originated at previous Congresses. Indeed, many of the items of topic V were derived directly from a number of the recommendations of the Sixth Congress, and follow-up work by the United Nations. At the Seventh Congress, in addition to a number of U.N. reports on particular subjects (itemized *infra*), Committee 1 of the Congress had for its consideration the following general documents: Working paper prepared by the Secretariat (A/CONF.121/8), and the Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic V: "Formulation and application of United Nations standards and norms in criminal justice" (A/CONF.121/IPM/3).

In the course of plenary debate in Committee 1 the representative of the United Nations Centre for Human Rights informed the Committee about the Centre's work in relation to the issues discussed under this agenda item. He recalled that the "Draft Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment" (see A/C.6/39/L.10, annex), prepared by United Nations human rights bodies, were being considered by the General Assembly. He drew attention to the draft instrument currently prepared by the Commission on Human Rights and its Sub-Commission on the prohibition of unacknowledged detention; the independence of justice and, in particular, the independence of the legal profession and the possibility of adopting a second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (See A/39/535.)

Amongst the delegations there was general consensus on the important role played by the United Nations over the years in the formulation and implementation of basic international instruments in criminal justice. It was pointed out that international cooperation was essential in the implementation of United Nations standards and norms and that there was also a need for formulating new standards and guidelines that could be incorporated into national legislation. Some delegations, however, observed that there were already sufficient international norms and guidelines and that the most important matter was the enhancement of the implementation of the existing standards.

In the discussion, reference was made to a number of existing United Nations instruments of great significance, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials and the Standard Minimum Rules for the Treatment of Prisoners. It was stressed that it was very important to guarantee the implementation of these international instruments.

Some delegates drew attention to the different socio-economic and cultural conditions of the various countries and stressed that the principles embodied in the instruments before the Congress should be formulated in such a way that they could be applied in accordance with different legal traditions. In this context, many delegates drew attention to their own legal systems, the problems encountered and the reforms needed.

There was also emphasis given to the need for in-depth studies and research activities to be undertaken at the national, regional and international levels. A number of delegations also expressed the opinion that Congresses of this kind should not consider specific questions which are to be solved at a national level. This would make the work of the future Congresses easier and reduce the workload of the Crime Prevention and Criminal Justice Branch of the Secretariat.

Canadian Delegation's Role

Canada made an intervention on the general topic of human rights and international instruments. The intervention noted that the humanization of justice is a topic of great concern to Canadians since the nation was built by people who sought, in a new land, both freedom from oppression and discrimination, and opportunities for free expression and self-development. Canada affirmed its support for U.N. work, human rights and civil and political freedoms by noting that it is a signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, including being a signatory to article 41 of the latter which permits signatory states to lodge a complaint against another signatory about a violation of the Covenant. Canada noted that these instruments presaged the amendment of the Canadian Constitution that enshrined a Charter of Rights. Canada also noted its participation in the drafting and signing of the Convention against Torture and other Cruel, Inhuman or Degrading

Treatment or Punishment, and urged other countries to become signatories. Canada also stressed that it was important that the Congress not adopt an indifferent attitude to the continuing need for mechanisms of international conventions on human rights and freedoms so that the guarantee of full civil and political rights may one day be a world-wide reality.

V(1) Basic Principles on the Independence of the Judiciary
A/CONF. 121/L. 16

Highlights

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1980) called upon the Committee on Crime Prevention and Control to include among its priorities the formulation of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors. The Committee formulated a draft set of guidelines, based largely on principles relating to the independence of the judiciary adopted by the First World Conference on the Independence of Justice, held in Montréal in 1983. These principles also inspired the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, of the Commission on Human Rights, which was preparing a study on the independence and impartiality of the judiciary, jurors, assessors and lawyers. A report on this study was to be made to the Sub-Commission, which was sitting in Vienna at the same time that the Congress was being held in Milan.

The work of the Committee on Crime Prevention and Control had a more limited approach, addressing only the independence of the judiciary and making pragmatic suggestions for the operation of the judiciary. For its consideration, the Seventh U.N. Congress had before it the "Guidelines on the Independence of the Judiciary" (Note by the Secretariat on Guidelines on the Independence of the Judiciary, A/CONF.121/9 and Corr.1) and the Report of the Interregional Preparatory Meeting (A/CONF.121/IPM/3). A number of delegations supported the adoption of the draft guidelines but, because of the complexity of the subject in view of the many different judicial systems of Member States, Committee 1 of the Congress decided at its first meeting that an open Working Group should be set up to discuss the draft guidelines. Consideration of the draft guidelines by the Working Group proceeded at an arduously slow pace although no delegation spoke against the draft guidelines. Instead, a number of countries proposed either minor amendments, possibly designed to delay consideration, or substantive amendments that would have changed the tenor of various articles; for example, by tying the

independent exercise of judicial functions to subjection to the law. Other delegations raised variations of form or matters of substance, responded or suggested amendments to accommodate the concerns of other delegations. After four days, only nine of the proposed forty-seven articles had been debated and half of these had been deferred for further consideration due to a lack of consensus on appropriate wording. This lack of progress also appeared to be seriously affecting the progress of other substantive matters, of which discussion appeared to be taking a similar course in the Committee.

Following informal consultations among some members of the Working Group, it was surmised that many delegations were not opposed to the guidelines in principle, but objected to the lack of prior adequate consultation on the guidelines and to the detailed nature of both the scope and wording of the guidelines which, at times, appeared to read like a set of rules and regulations. A new abbreviated and synthesized text consisting of basic principles, taking into account most of the viewpoints discussed during the general debate on the draft guidelines, was proposed by a number of delegates. The introduction of the basic principles was welcomed by a number of delegations who commented favourably on the quality of the synthesis and drafting. Several delegations indicated that they were willing to consider the new text in a spirit of compromise, while expressing their preference for adoption or continued work on the draft guidelines. Consideration of the basic principles progressed at a quicker pace under a new spirit of reconciliation and accommodation. After a full discussion, including the making of some amendments, by both the Working Group and subsequently by the Committee, a set of Basic Principles on the Independence of the Judiciary was adopted. Due to the lack of the introduction of a sponsoring resolution, the resolution that accompanied the Basic Principle was drafted by the Committee as a whole.

The Basic Principles (A/CONF.121/L.16) were reported by Committee 1 to the general plenary of the Congress, but in the course of adoption two delegations raised objections. After some informal discussions, one delegation indicated that it would not oppose the adoption, but only register a reservation. The other delegation was adamantly opposed to article 5, and in formal opposition would have put the Congress to a vote, thereby breaking the spirit of "adoption by consensus" that had been achieved on all topics at the Congress. This result had the potential to promote the dissolution of other agreements of consensus on other topics. After further informal discussions, a compromise of wording was achieved, an amendment made and the resolution adopted by consensus.

Canadian Delegation's Role

Canada's basic position was that it supported in principle the concept of internationally developed guidelines relating to judicial independence. The draft guidelines on the independence of the judiciary were with some exceptions, generally reflective of Canadian law and practice. Nevertheless, there were a number of ambiguities and at times a lack of clear context to which improvement could have been directed. Due to the turn of events, many of these items were not addressed.

Anticipating that there might be opposition from some regions, the Western European and Others Group (WEOG), to which Canada belonged, formed an informal sub-group, the purpose of which was to resolve any differences or problems among the members of the group (civil law and common law) in order to reduce the number of possible amendments and avoid the appearance that even the WEOG may have disagreements and problems about what constituted independence of the judiciary. Canada was invited to lead this sub-group.

In the course of debate on the draft guidelines within the Committee's Working Group, Canada made a number of interventions in support of various guidelines, in opposition to some proposed amendments and also to make amendments designed to overcome opposition. It soon became clear to Canada that the prolonged debate threatened to scuttle not only the draft guidelines but the other work of the Committee as well. Added to this was a realization by Canada and other members of the WEOG that, for various reasons, the more comprehensive work in Vienna at the meeting of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, of the Commission on Human Rights, concerning the report on the independence of justice was being deferred for at least another year. Informal discussions by Canada with a number of delegations from various regions also revealed that a set of basic principles on the independence of the judiciary might have greater success. A small drafting group, led by Canada, synthesized the draft guidelines into a set of basic principles which were submitted to the Committee's Working Group. These were well received by the Working Group and the Committee, as discussed above, and appeared to break the deadlock in the Committee.

In introducing the new set of principles, Canada stressed its respect for human rights, its belief that an impartial and independent judiciary is essential to the administration of justice and the protection of human rights, and its support in principle to the concept of internationally developed instruments relating to judicial independence. Canada indicated its willingness to continue to work on the guidelines,

but if adoption was not possible due to the problems encountered by various delegations in accommodating the detailed guidelines to the various legal system of the world, Canada would as an alternative propose the consideration of a set of basic principles that would enunciate those essential principles to which adherence is requisite to the establishment and maintenance of an independent judiciary.

Canada and a number of other delegations drafted a resolution, somewhat stronger than the one finally adopted, that would have more strongly recommended application and implementation of the principles, and addressed the problem of coordination between the work of the Congress, the work of the Sub-Commission of the Human Rights Commission and the future of the guidelines. Due to a lack of consensus within the Canadian delegation on the issue of Canadian sponsorship of the resolution and the basic principles, the resolution was not tabled. No other resolutions having been tabled, Committee 1 as a whole drafted the final resolution. When the resolution was adopted by the plenary of the Congress on September 6, 1985, Canada filed a reservation noting that while Canada was pleased to support the resolution, it was its understanding that any further work in the area by U.N. bodies would be coordinated by the Economic and Social Council. Canada also pointed out that it would have preferred stronger language in operative paragraph 2 of the resolution. It was Canada's view that given the consensus reached on the Basic Principles, operative paragraph 2 of the resolution went too far in qualifying the recommendation for the implementation of the Basic Principles.

Finally, as noted earlier in the Highlights, in the course of adoption of the Basic Principles by the Congress a crisis arose when one delegation objected to the wording of one of the articles and threatened to dissolve the spirit of consensus that had been reached. Canada played an instrumental role in resolving the crisis and reaching a compromise text.

V(2) Model Agreement for the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners

V(3) Transfer of Criminal Proceedings

V(4) Transfer of Supervision of Foreign Offenders Conditionally Sentenced or Conditionally Released

A/CONF. 121/L. 16

Highlights

The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1975) had recommended that countries should develop policies and institute regional cooperation and bilateral arrangements in order to facilitate the return to the domicile of persons serving their sentences in foreign countries. The Sixth Congress further discussed the issue and urged Member States to consider establishing procedures and requested the Committee on Crime Prevention and Control to develop a model agreement for the transfer of offenders.

For its consideration, the Seventh Congress had before it the Note by the Secretariat on the Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners (A/CONF.121/10), as well as the Report of the Interregional Meeting that was held in Varenna, Italy in 1984 (A/CONF.121/IPM/3). Committee 1 of the Seventh U.N. Congress expressed general approval for the development of the model agreement which had been formulated by the Committee on Crime Prevention and Control and transmitted by the Economic and Social Council for adoption by the Seventh Congress (A/CONF.121/10). Some delegations expressed concern about some of the points contained in the model agreement, in particular as regards the requirement that the consent of the prisoner shall be obtained for a transfer. It was pointed out, however, that the model agreement only served as a model for the conclusion of new instruments on the transfer of prisoners and would not in any way affect existing bilateral and multilateral agreements on the transfer of foreign prisoners. Informal discussions were held and some changes to the text were proposed. For example, the proposed mandatory requirement that the consent of the prisoner be obtained, in addition to the consent of the sentencing and administering state, was weakened somewhat by replacing the word "shall" with the word "should". The amended text was adopted by the Committee and the Congress.

The issue of transfer of foreign prisoners also raised discussion on two other items; the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, and the transfer of criminal proceedings. Resolutions were presented on both topics and were adopted. Both resolutions invite Member States to consider concluding agreements in these areas, call upon the Secretary-General to provide advice and technical support and to encourage research, and request the Committee on Crime Prevention and Control to study the subjects and consider the possibility of the formulation of model agreements for the consideration of the next Congress. (Resolution V and VI of the Report of Committee 1, A/CONF.121/L.16).

Canadian Delegation's Role

Since 1976, Canada has negotiated, signed and implemented a number of bilateral treaties concerning the transfer of offenders. Canada's current treaties and the provisions of the Transfer of Offenders Act are generally in accord with the terms of the model agreement, and in some cases are more detailed. Canada, therefore, supported the Model Agreement, noting that treaties of this nature help to ensure that the hardship of prisoners can be somewhat alleviated by relieving the pressures of cultural and familial dislocation caused by incarceration aboard. It was Canada's hope that the Model Agreement, and any resulting treaties, be adopted without undue delay. Canada also played an active role with a number of countries in explaining Canada's process in developing and signing agreements with other countries.

A resolution was passed that: adopted the Model Agreement on the Transfer of Foreign Prisoners; approved the recommendations on the treatment of foreign prisoners; invited Member States to take the Model Agreement into account in establishing or revising treaties; and, requested the Secretary-General to assist Member States, at their request, in the development of agreements and to make regular reports to the Committee on Crime Prevention and Control (resolution III of the Report of Committee 1, A/CONF.121/L.16).

With respect to the resolutions concerning the transfer of criminal proceedings, and the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, Canada provided some informal input and comment on the drafting of the text and supported both resolutions.

V(5) Reduction of the Prison Population, Alternatives to Imprisonment, and Social Integration of Offenders

A/CONF. 121/L. 16/ADD 1

Highlights

At the Sixth Congress (1980), resolution 8 recommended that Member States should implement and utilize alternatives to imprisonment and requested the UN to prepare a report on the subject for consideration at the Seventh Congress. Resolution 10 recommended that Member States develop measures for the social resettlement of the imprisoned and requested the UN to study the issue and submit a report to the Seventh Congress.

For its consideration, Committee 1 of the Seventh Congress had the Report of the Secretary-General on alternatives to imprisonment and measures for the social resettlement of prisoners (A/CONF.121/13) and the Report of the Inter-regional Meeting (A/CONF.121/IPM/3).

In discussing the report for this item, many delegations acknowledged that imprisonment should be regarded as a last resort to sanctioning and that every effort should be made to find alternatives to imprisonment for the social resettlement and re-socialization of offenders. Many delegates stated that their legal systems provided various forms of alternative measures to imprisonment, at the pre-trial stage, at the trial stage and the post-conviction stage, such as fines, probation, conditional release and community services.

It was also proposed that decriminalization and depenalization of offences should be considered as appropriate alternative measures. It was further noted that any alternative measures should be real alternatives and not merely sanctions in addition to imprisonment. In any case, in the use of alternatives to imprisonment, care should be taken so as not to jeopardize public safety or arouse public alarm. It was also stated that the punitive and deterrent effect of imprisonment should not be disregarded.

The necessity of active public participation in the successful application of alternatives was stressed by several delegations and it was further pointed out that the use of alternatives should be linked, wherever possible, to related social services to assist in the offender's social reintegration.

In the course of the Committee deliberations, three resolutions were introduced (A/CONF.121/C.1/L.13, L.15 and L.16). These resolutions were amalgamated into an integrated resolution (A/CONF.121/C.1/L.15/Rev.1). This document was well received by a number of delegations, but suggested amendments resulted in a new revised resolution (A/CONF.121/C.1/L.15/Rev.2). The final resolution to be adopted by the Congress, which was contained in an addendum to the Report of Committee 1 (A/CONF.121/L.16/Add.1), concerned the "Reduction of the prison population, alternatives to imprisonment, and social integration of offenders". The resolution recommended that Member States should increase their efforts to reduce the negative effects of imprisonment and intensify the search for credible non-custodial sanctions. It also called upon and requested the Committee on Crime Prevention and Control to: examine the question of non-custodial sanctions and measures for the social integration of offenders, taking into account a number of listed considerations; strengthen its programs both to develop effective

non-custodial sanctions and measures for the social integration of offenders, and to develop limitations on the use of imprisonment; give assistance to Member States in undertaking research; and prepare a report and submit it to the Eighth Congress for further consideration.

Canadian Delegation's Role

Canada played a major role in the discussions and adoption of the resolution. In an intervention, Canada outlined its support for alternatives to imprisonment, its record to date and major thrusts and initiatives. In particular, detailed reference was made to experimental projects on diversion, community service orders, restitution, bail verification and supervision, fine option programs, pre and post trial victim-offender mediation, specific programs for Native people, participation of voluntary organizations in community-based programs and the use of volunteers in the delivery of correctional programs and temporary absence programs. Additionally, reference was made to the comprehensive review of the criminal law, launched by the federal government with the cooperation of the provinces, which is to include a review of correctional law. Reference was also made to the federal Commission of Inquiry with respect to sentencing that, in addition to examining sentencing guidelines and maxima and minima, will examine sentencing alternatives. The alternatives to imprisonment and the community alternatives of the Young Offenders Act were also noted.

Canada co-sponsored one of the original resolutions (A/CONF.121/C.1/L.15), and, although a number of the sponsoring countries of the three resolutions discussed the possibility of integration, it was upon Canada's initiative and its facilitation to the other countries as an "honest broker" that integration into one resolution was promoted. Canada played an active part in the formulation of the integrated resolution, which was welcomed by the UN Secretariat and praised for its craftsmanship by a number of countries. Upon several suggested amendments being made, Canada again took the lead as a broker in revising the document in order to appease the objectors and, through quiet diplomacy, convince the sponsors and co-sponsors to agree to proposed changes. Formal interventions by Canada on the resolution stressed the need for community and volunteer participation. Canada was a co-sponsor of the final resolution (A/CONF/C.1/L.15/Rev.2) which was subsequently adopted by the Congress (A/CONF.121/L.16/Add.1).

V(6) Code of Conduct for Law Enforcement Officials

A/CONF. 121/L.16

Highlights

The General Assembly, in resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials and recommended that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials. Subsequently, the Assembly, in its resolution 35/170 of 15 December 1980, recalling resolution 12 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders invited the Committee on Crime Prevention and Control to study the application of the Code and to report back on the conclusions of its work. In the course of consideration, it was also decided to submit a report on implementation of the Code to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

For its consideration, the Seventh United Nations Congress had before it the Report of the Secretary-General on the Code of Conduct for Law Enforcement Officials (A/CONF.121/12 and Add.1), and the Report of the Interregional Preparatory Meeting (A/CONF.121/IPM/3). In response, many delegates stressed the need for the further implementation of the principles of the Code at the national level. Some delegates mentioned the important role of the United Nations, and its regional and interregional institutes for the prevention of crime and the treatment of offenders, in facilitating the implementation of the Code through technical assistance and advisory services. The representative of the Centre for Human Rights drew the attention of the Committee to a proposal of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, of the United Nations Commission on Human Rights, that the Seventh Congress should study ways and means to promote international technical co-operation in the area of restraints on the use of force by law enforcement officials and military personnel area.

It was pointed out by some delegates that, following the recommendations of the Interregional Preparatory Meeting on topic V, held at Varenna, Italy, from 24 to 28 September 1984, priority should be given to the establishment of a mechanism for the more effective implementation of the Code, including periodic reporting by Member States to the United Nations.

A resolution by Australia (A/CONF.121/C.1/L.4) invited Member States to inform the Secretary General every five years of the progress achieved in the implementation of the Code, appealed

to Governments to promote national and regional seminars and training courses on the role of law enforcement officials, requested the Secretary General to provide the advice of experts to Governments concerning implementation and called upon the UN to establish a mechanism for the more effective implementation of the Code. A subsequent resolution by Italy requested that the Guidelines for the More Effective Implementation of the Code of Conduct for Law Enforcement Officials, which were discussed at the Varenna Interregional Preparatory Meeting, should be approved by the Congress and implemented by the Secretary General in cooperation with all concerned bodies and institutions. A compromise resolution was struck (A/CONF.121/C.1/L.21) and sponsored by both Australia and Italy. In addition to the inclusion of operative clauses similar to the Australian resolution, it invited attention to the guidelines formulated at Varenna.

Canadian Delegation's Role

The conduct of law enforcement officials in Canada has been regulated for some time by federal and provincial legislation and the internal regulations of numerous police forces. The principles of the Code of Conduct are generally reflected in Canada's police laws and practices, and in many cases these meet and often exceed those set out in the Code.

While Canada made no formal interventions of a substantive nature during the Committee sessions, members of the Canadian delegation met with the Australian and Italian delegations to discuss and modify the resolutions. The results of these discussions were eventually incorporated into the one resolution, co-sponsored by Australia and Italy. Canada supported the resolution, which was adopted by the Congress in the Report of Committee 1 as A/CONF.121/L.16.

V(7) Safeguards Guaranteeing the Rights of those Facing the Death Penalty

A/CONF. 121/L. 16/ADD.1

Highlights

Many delegations welcomed the "safeguards guaranteeing protection of the rights of those facing the death penalty", adopted by the Economic and Social Council in its resolution 1984/50, of 25 May 1984, and noted that the procedures and guarantees laid down in their national legislations frequently

went beyond the safeguards. In this connection, support was expressed for the formulation of a mechanism for the implementation of the Safeguards, as initially drafted by the Varenna meeting (A/CONF.121/IPM/3, para. 65) in pursuance of the above resolution of the Economic and Social Council. It was the understanding of many delegations that such a mechanism was a useful basis for deliberations by the Seventh Congress.

Some delegations noted that, in accordance with the Safeguards, they should not be interpreted as affecting the consideration of abolition of capital punishment. In this connection reference was made to General Assembly resolution 2857 (XXVI) of 20 December 1971, in which the Assembly emphasized that, in order to guarantee fully the right to life, the main objective to be pursued was that of progressively restricting the number of offences for which capital punishment might be imposed with a view to the desirability of abolishing this punishment in all countries.

Several countries which had abolished capital punishment informed the Committee on historical developments which had led to this end. Concern was expressed about the current use of capital punishment, as documented in the third quinquennial report of the Secretary-General on capital punishment (E/1985/43). Some delegations indicated their interest in information about trends in the abolition of the death penalty.

A resolution, concerning the "Safeguards, guaranteeing the right of those facing the death penalty", contained in an addendum to the Report of Committee 1, was adopted which endorsed the Safeguards, invited all States to adopt and implement them, requested the United Nations and other organizations to promote, and to take into account within their work, the safeguards, and requested the Secretary General to publicize, disseminate and ensure so far as possible the implementation of the safeguards and to report thereon to the Economic and Social Council (A/CONF.121/L.16 Add.1).

Canadian Delegation's Role

While not a formal co-sponsor, Canada supported the resolution which was eventually adopted by consensus.

V(8) Status of Prisoners

A/CONF. 121/L. 16

Highlights

In 1957, the Economic and Social Council approved the Standard Minimum Rules for the Treatment of Prisoners as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Following the Fifth Congress (1975), the Economic and Social Council requested the Committee on Crime Prevention and Control to formulate a set of implementing procedures. At the Sixth Congress, resolution 14 requested the General Assembly to include in the agenda of the Seventh Congress a specific item concerning the implementation of human rights for prisoners.

For its consideration, the Seventh Congress had before it the Report of the Secretary-General on the Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (A/CONF.121/15 and Add.1) and the Report of the Interregional Preparatory Meeting (A/CONF.121/IPM/3). It was pointed out by many delegations that the standard Minimum Rules for the Treatment of Prisoners was a very useful instrument, that the Rules continued to influence to a large degree the legislation and correctional practice in various countries, and that they remained valid and needed no revision until their major elements had been implemented at the national level. Some countries pointed out that the principles embodied in the Rules had already been enshrined in their constitutions. It was also noted that efforts had been made in various countries to improve prison staff, differentiate institutional treatment and secure early release.

Many delegations welcomed the adoption of the Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, by the Economic and Social Council in its resolution 1984/47 of 25 May 1984, as a useful means to further enhance the application of the Rules.

Some countries observed that they had difficulties in attaining the full implementation of the Rules because of overcrowding in prisons. In this connection reference was made to financial restraints both in the areas of planning of prison buildings and their organizational structure, and the training and adequate remuneration of personnel of penal institutions. Other countries stated, however, that they had developed practices that went beyond the minimum standards contained in the Rules.

Some delegations drew attention to the need to improve the legal status of prisoners and to strengthen the mechanisms for safeguarding their basic rights, which were the same as those of any other citizen, except for the prisoner's temporary deprivation of liberty. To this end, it was suggested that the various aspects of enforcement of those rights should not be the exclusive responsibility of the executive branch of the Government, but should also be the responsibility of judicial bodies.

It was emphasized by many delegates that the exchange of information and experience as regards implementation of the Rules was essential in order to help countries meet the challenges in the field of prison administration. In order to enhance the implementation of the Rules, Member States should endeavour to inform the Secretary-General on the progress made on a more frequent basis.

A resolution on the "Status of Prisoners", sponsored by a number of countries, was adopted that: welcomed the Procedures of the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners; invited Member States to include, in their periodic reports to the Secretariat on the implementation of the Rules, special reference to efforts made to ensure the guarantees embodied in the Rules and to the mechanisms developed to this end; and, recommended that the Eighth Congress should further consider the above issues as a matter of importance.

Canadian Delegation's Role

At the fifth Congress (1975), Canada endorsed the Standard Minimum rules and undertook to consider embodying the rules in Canadian legislation and practice. At the Sixth Congress (1980), Canada reiterated its commitment to the Rules. At the present Congress, Canada noted that ongoing improvements in both federal and provincial facilities had provided opportunities to ensure that the intent of the Rules was reflected, and that many of Canada's correctional practices and facilities reflect standards much higher than the minimum standards of the Rules. Canada described in detail the nature of its improvements relating to physical facilities, inmate services and programs, special services to inmates (especially those requiring special needs), recruitment and training of personnel, grievance and complaint procedures and inmate rights and responsibilities. Mention was also made of the incorporation of the Canadian Charter of Rights and Freedoms in the Constitution, and its impact on prisoners. Canada acknowledged the role that the Rules played in the humanization and development of Canadian correctional systems and invited other countries to subscribe and apply the Rules. Canada was pleased to co-sponsor the resolution that was adopted by the Congress.

V(9) Extra-legal, Arbitrary and Summary Executions

A/CONF. 121/L. 16

Highlights

There have been several initiatives within the United Nations to deal with the problem, including a resolution at the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1980) deploring the conduct and urging Governments to take measures to prevent such acts. Following the Sixth Congress the General Assembly has annually considered similar resolutions requiring respect for relevant international instrument touching this issue and the provision of safeguards at the national level.

For its consideration, the Seventh U.N. Congress had before it the Note by the Secretary-General on extra-legal, arbitrary and summary executions (A/CONF.121/21) and the Report of the Interregional Preparatory Meeting (A/CONF.121/IPM/3).

Committee 1 of the Congress expressed its grave concern about the abhorrent practice of extra-legal, arbitrary and summary executions which continued to exist in some parts of the world. It was recommended that greater efforts should be made in preventing and investigating such occurrences and support was expressed for whatever new initiatives could be undertaken by the United Nations in that regard. Several delegations observed that the recommendations made by the Varenna meeting, contained in the Report of the Interregional Meeting, would constitute a viable basis for the elaboration of an instrument which, in the future, might strengthen measures aimed at the prevention and investigation of such executions. A resolution, co-sponsored by a number of countries (A/CONF.121/C.1/L.8), was deleted and a final version was adopted as Resolution II of the Report of Committee 1 (A/CONF.121/L.16). The resolution calls upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty, and to take all other measures necessary to prevent those practices. It also requested the Secretary General to submit an analytical review of all documents on the subject for the consideration of the Committee on Crime Prevention and Control, taking into account the recommendations made by the Interregional Preparatory Meeting held in Varenna.

Canadian Delegation's Role

Canada supported the resolution.

PART III - MATTERS ARISING OUT OF THE CONGRESS

3.1 Consideration of Congress Resolutions by UN Bodies

On November 11, 1985, resolutions dealing with the Seventh U.N. Congress were passed by the Third Committee of the United Nations General Assembly. The discussions held in the Third Committee had no bearing on the substance of the resolutions adopted in Milan.

The Seventh UN Congress was only one out of about ninety-eight issues considered by the Third Committee at its fortieth session, in the context of its examination of social, humanitarian and cultural matters for the General Assembly. It is important to realize that all substantive work must therefore be finalized at the Congress, the Third Committee having neither the time nor the substantive expertise to improve on Congress achievements.

Because of the way the covering resolutions were drafted in Milan, certain resolutions and instruments adopted by the Congress were organized as separate items for reference to the General Assembly, whereas the rest were grouped as resolutions from the Seventh U.N. Congress. The following had to be treated separately: (i) United Nations Standard Minimum Rules for the Administration of Justice ("The Beijing Rules"); (ii) Declaration of Basic Principles of Justice (a) Relating to Victims of Crime, and (b) Relating to Victims of Abuse of Power; (iii) Development of Standards for the Prevention of Juvenile Delinquency; and (iv) Domestic Violence. Further, the title of the declaration on victims was modified slightly and now reads: Declaration of Basic Principles of Justice for Victims of Crime and Victims of Abuse of Power.

Hence the General Assembly was presented with separate resolutions for the above and one omnibus resolution dealing with all other instruments, resolutions and decisions of the Congress. All resolutions were simultaneously adopted by the U.N. General Assembly on November 29, 1985. The title of the declaration on victims was modified further to read: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

In the Third Committee, Canada reiterated the reservations expressed in Milan concerning those aspects of the Standard Minimum Rules on the Administration of Juvenile Justice that are contrary to the Canadian philosophy of juvenile justice. Similarly, Canada spoke in favour of the Basic Principles for the Independence of the Judiciary, but noted that the resolution could have been stronger with respect to the implementation of the principles.

Adoption of the resolutions of the Seventh U.N. Congress by the General Assembly of the United Nations conferred on these resolutions a formal status as international instruments, which in turn emphasizes the need to identify appropriate follow-up to the agreements reached in Milan.

3.2 Areas Deserving Emphasis over the Coming Years

Given the contribution made by Canada to the proceedings of the 7th U.N. Congress on the Prevention of Crime and the Treatment of Offenders, and the success of the Canadian delegation in bringing major resolutions and instruments to adoption, Canada is in a position to provide leadership in demonstrating support for international action toward implementation.

A list of follow-up items under each topic on the Congress agenda is presented below.

TOPIC I

In relation to the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, the Milan Plan of Action, and the four resolutions adopted in plenary:

Internationally, Canada could:

- 1) participate actively, through its involvement with the UN Committee on Crime Prevention and Control, in the review of the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice;
- 2) assist in efforts to coordinate crime prevention planning and to promote the recognition of crime prevention as a social issue requiring community involvement;
- 3) assist in and advise on the development and sharing of criminal justice information;
- 4) continue to cooperate with other governments in the struggle against terrorism, drug trafficking, organized crime and other transnational crimes, particularly through assistance in the development of model treaties on extradition and mutual legal assistance;

- 5) continue to support the preparation of a new international convention by the Commission on Narcotic Drugs;
- 6) fulfill the requirement for periodic reporting to the United Nations on a variety of issues.

Nationally, Canada could:

- 1) continue to promote community involvement in crime prevention;
- 2) pursue the efforts already undertaken with respect to enterprise crime, in order, for example, to facilitate the forfeiture of illegally acquired assets;
- 3) monitor compliance with the standards established at the Congress in relation to research, public education, information systems and other types of initiatives in criminal justice.

TOPIC II

In relation to the resolutions dealing with the Fair Treatment of Women by the Criminal Justice System, Prosecution, the Development of Guidelines for the Training of Criminal Justice Personnel, and the Development of Crime and Criminal Justice Information and Statistical Systems, action could seek to:

- 1) examine ways of increasing our contribution to the international exchange of criminal justice information, and share the Canadian experience in developing adequate mechanisms for data collection and dissemination;
- 2) contribute to the promotion of greater coordination among criminal justice agencies, both nationally and internationally;
- 3) continue to develop and provide specialized training programs for law enforcement, custodial and other criminal justice personnel;
- 4) improve the existing programs and services available to women offenders in Canada, and look at opportunities for action to promote women's equality as employees within the correctional and judicial systems as well as law enforcement agencies.

TOPIC III

With reference to the resolution on Domestic violence, Canada could:

- 1) publicize the resolution and make it relevant to domestic intervention policies already in place;
- 2) adopt legislation, particularly in response to the recent Badgley and Fraser reports, consistent with the thrust of the resolution adopted at the Congress;
- 3) provide specialized training to those who deal with victims of domestic violence; and
- 4) examine Canadian social policy and expand the provision of assistance to victims of domestic violence, including shelters and other facilities and services.

In relation to the Declaration on Victims of Crime and Victims of Abuse of Power,

Internationally, Canada could, through its role on the UN Committee on Crime Prevention and Control:

- 1) Give special attention to the UN Secretariat work plan to be approved by the Committee, putting forward specific suggestions on measures to facilitate periodic reports to the General Assembly;
- 2) facilitate the dissemination of the declaration, the organization of conferences, workshops and training sessions to promote implementation, the drafting of recommended practices and codes of conduct, the consideration of an International Year of the Victim, and finally, the specification of an agenda for the 1990 Congress.

Domestically, Canada could:

- 1) publicize the declaration;
- 2) introduce a domestic declaration on justice for victims;
- 3) review Canadian legislation and programmes with a view to bringing them into conformity;

TOPIC IV

In relation to the adoption of the Standard Minimum Rules for the Administration of Juvenile Justice, of resolutions calling for the Development of Standard Minimum Rules for the Protection of Children Deprived of their Liberty and the Development of Standards for the Prevention of Juvenile Delinquency, and of two resolutions dealing with the causes of juvenile delinquency and the research needed in juvenile justice:

Internationally, Canada could:

- 1) support the implementation of the Standard Minimum Rules for the Administration of Justice ("the Beijing Rules");
- 2) participate, as required, in the development of Standard Minimum Rules for detained children and of standards for the prevention of juvenile delinquency;
- 3) continue to promote the differentiation of child welfare from crime prevention concepts, consistently with Canadian legislation (which makes a clear distinction between interventions by the criminal justice system vs. child welfare authorities in the lives of young people).

Domestically, Canada could:

- 1) maintain the high standards achieved in juvenile justice research;
- 2) monitor implementation of the Young Offenders Act and ensure compliance with international standards.

TOPIC V

As a result of the nine resolutions adopted in Milan, namely

- Basic Principles on the Independence of the Judiciary
- Model Agreements for the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners
- Transfer of Criminal Proceedings
- Transfer of Supervision of Foreign Offenders Conditionally Sentenced or Conditionally Released
- Reduction of the Prison Population, Alternatives to Imprisonment, and Social Integration of Offenders
- Code of Conduct for Law Enforcement Officials
- Safeguards Guaranteeing the Rights of those Facing the Death Penalty
- Status of Prisoners, and
- Extra-legal, Arbitrary and Summary Executions

Internationally, Canada could:

- 1) continue to support in principle the concept of internationally developed instruments relating to judicial independence;
- 2) assist the UN Committee on Crime Prevention and Control in the consideration of possible model agreements on the Transfer of Foreign Prisoners and publicize the Canadian process in developing and signing such agreements with other countries;
- 3) provide information as requested for UN surveys regarding trends in the abolition or reinstatement of the death penalty;

Domestically, Canada could:

- 1) continue and expand existing initiatives in various areas such as experimental projects on diversion, community service orders, restitution, bail verification and supervision, fine option programs, pre- and post-trial victim-offender mediation, specific programs for native people, participation of voluntary organizations in community-based programs, and use of volunteers in the delivery of correctional programs and temporary absence programs;
- 2) support the work of the federal Sentencing Commission that, in addition to examining sentencing guidelines and maxima/minima, will examine sentencing alternatives;
- 3) carry out and conclude the comprehensive review of the criminal law undertaken by the federal government with the cooperation of the provinces (incl. review of correctional law);
- 4) maintain correctional practices and facilities above the standards called for in the SMR for the Treatment of Prisoners, and continue work towards the improvement of physical facilities, inmate services and programs, the provision of special services to inmates, recruitment and training of personnel, the design and implementation of grievance and complaint procedures and respect for inmate rights.

PART IV - RECOMMENDATIONS

4.1 Congress Preparations

1. Size and Composition of the Delegation. Efforts should be made as far in advance of the Congress as possible to secure ministerial and/or Cabinet authorization for the size and composition of the delegation. Settling upon the appropriate size of the delegation is imperative, for example, for purposes of making the requisite financial and administrative arrangements; for determining the number of support personnel required to service the delegation's travel, secretarial, hospitality and administrative needs; and for determining the most effective and representative mix of delegates and advisers.

The Canadian Delegation at the 1985 Congress comprised 23 official delegates (12 of whom were designated by the provinces and territories), 7 advisers and a coordination and support staff of 7, for a total of 37. Indeed, the Canadian delegation would appear to have been the largest at the Congress, although it was significantly smaller than the delegation sent to Caracas in 1980. In contrast, some countries functioned well and adequately with much smaller delegations than Canada. However, those same countries do not have the same constitutional framework, which explains the size of the Canadian delegation.

It is perhaps premature at this time to suggest a formula for determining the size and composition of the Canadian delegation. It is appropriate to observe, however, that Canada should attempt to field a rather smaller delegation, consistent with the relative size of our population and our role as a middle power, and proportionate to the delegation of other similarly situated Members States.

2. Inventory for National Criminal Justice Programs. The preparations for the Congress should include the preparation of an inventory of provincial, territorial and federal criminal justice programs. Early identification of and assignment of responsibility to provincial and territorial liaison officers would assist in this undertaking, the object

of which would be to have the inventory available for purposes of pre-Congress consultation and, subsequently, to have it available in published form for distribution at the Congress.

3. Dissemination of Information. The early dissemination of information related to the next Congress to provincial and territorial liaison officers would greatly assist in generating interest in the Congress. For example, it would permit the organization of workshops, school projects and traveling exhibits around the Congress agenda. The conjunction in 1985 of International Youth Year, the juvenile justice items on the Congress agenda and the implementation of the Young Offenders Act, for example, could have been exploited very effectively in elementary and high school programs. Similarly, the Solicitor General's Crime Prevention Week could have been directed to the prevention of juvenile crime, again drawing upon the International Youth Year and the 7th UN Congress agenda.

4.2 Participation in the Congress

1. Participation of Non-governmental Sector. At the 1985 Congress site, there were parallel meetings of a host of non-governmental organizations (NGOs). It is recommended that the non-governmental members of the Canadian delegation be given specific responsibilities for liaising with the NGOs represented at the Congress, in order to ensure that the Canadian Delegation is better informed on developments in the NGO forum. As it happened, the non-governmental members of the 1985 Canadian Delegation were fully, and very profitably, engaged in the business of the committees and plenary session. However, this assignment of responsibilities meant that there was rather less cross-fertilization of ideas between the Congress and the NGO forum than there could have been.

In this same connection, it should be noted that Canadian NGO representatives at the Congress were invited to attend the evening reporting meetings of the Canadian Delegation (though not the morning strategy meetings). This practice went some considerable way toward facilitating the sharing of information between the delegation and the NGO representatives, and toward making the NGOs part of the Canadian presence.

4.3 Follow-up to the 7th UN Congress

1. The resolutions from the 7th UN Congress should be reviewed and an inventory prepared of the follow-up activities best-suited to ensure the implementation of the Congress. For that purpose, the resolutions should be disseminated as widely as possible, e.g., invoking the assistance of the provincial, territorial and non-governmental representatives on the 1985 delegation, together with the national NGOs that participated in preparations for the Congress; including elements in National Crime Prevention Week activities that would highlight the themes of the resolutions etc. Every effort should be made to take advantage of regular NGO events to disseminate the Congress results. As part of the dissemination exercise, the resolutions should be accompanied by information materials that solicit suggestions on what follow-up activities should be pursued, both in their own right and as necessary preliminaries to preparations for the next Congress.

2. There could be at least one major annual event in the years between Congresses. In the first year, for example, the follow-up process described above could culminate in a federal-provincial meeting or, for that matter, in a national conference to identify resolutions whose implementation would prove best-suited to achieve both domestic criminal justice and foreign policy objectives, e.g., ratification of existing international instruments such as the Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In preparation for a national meeting, the provinces could be invited to develop a response paper to the resolutions of the previous Congress.

3. In the second year, the status of the implementation of the resolutions thus identified could be reviewed at meetings of Deputy Ministers Responsible for Criminal Justice, Heads of Corrections, Social Service Deputies, etc. Presumably by the second year, the agenda will have been settled for the 1990 Congress. At that point, then, information materials could be assembled to generate interest on the agenda items in schools, community groups and NGOs and distributed through federal and provincial departments responsible for criminal justice.

4. In the third year, regional, national and/or international symposia or committees of experts could be convened for the purpose of addressing agenda items of particular interest to Canada and for the purpose of informing the development of the discussion papers that will presumably be prepared to assist in federal/provincial/territorial and NGO consultations prior to the 1990 Congress.

5. In the fourth year, preparations for the 1990 Congress should begin in earnest. In addition to preparing the discussion papers necessary for consultations, every effort should be made to conclude the first round of federal/provincial/territorial and NGO consultations by October of the fourth year. This would permit the provinces, territories and NGOs ample time to organize their own consultations and programs. By moving these consultations forward, the business of appointing the members of the Canadian delegation, convening delegation meetings and settling upon the formal positions to be adopted on behalf of Canada could be made rather more manageable. In that event, the first delegation meeting could be held in March of 1990 and the second in June, thereby greatly facilitating the process of securing, from responsible ministers and/or Cabinet, the necessary approvals for the formal positions to be taken in relation to the items on the Congress agenda.

The recommendations concerning procedural and administrative arrangements for the next Congress will be the subject of future discussions among the participating departments.

CANADIAN DELEGATION
TO THE
7TH U.N. CONGRESS
ON THE
PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS
MILAN, AUGUST 26 - SEPTEMBER 6, 1985

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APPENDIX II
INTERNATIONAL INSTRUMENTS AND RESOLUTION
ADOPTED AT THE CONGRESS

(Extracted from an advance version of the
United Nations Report of the Seventh U.N.
Congress on the Prevention of Crime & the
Treatment of Offenders)

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Part one

DECISIONS OF THE CONGRESS

CHAPTER I

DECISIONS OF THE CONGRESS

1. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, adopted six major instruments (see sects. A, B, C (1 and 2) and D below), 24 resolutions and a decision (see sects. C (3 and 4) and E below), the texts of which are set forth below.

A. Milan Plan of Action

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

Bearing in mind the Caracas Declaration, 1/ unanimously approved by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Having extensively discussed and carefully considered the results of the regional and interregional preparatory meetings including the Meeting of the Panel of Eminent Persons on the New Dimensions of Criminality and Crime Prevention in the Context of Development, held at New Delhi from 22 to 26 April 1985, 2/

Adopts the Milan Plan of Action set out below and submits it to the United Nations General Assembly at its fortieth session for consideration:

Milan Plan of Action

1. Crime is a major problem with national and, in some cases, international dimensions. Certain forms of crime can hamper the political, economic, social and cultural development of peoples and threaten human rights, fundamental freedoms, and peace, stability and security. In certain cases it demands a concerted response from the community of nations in reducing the opportunities to commit crime and address relevant socio-economic factors, such as poverty, inequality and unemployment. The universal forum of the United Nations has a significant role to play and its contribution to multilateral co-operation should be made more effective.

2. The past years have witnessed rapid and far-reaching social and economic transformations in many countries. Development is not criminogenic per se, especially where its fruits are equitably distributed among all the peoples, thus contributing to the improvement of overall social conditions; however, unbalanced or inadequately planned development contributes to increases of criminality.

1/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A.

2/ For the report of the Interregional Preparatory Meeting, see A/CONF.121/IPM/5.

3. The success of criminal justice systems and strategies for crime prevention depend on the progress achieved in preserving peace, improving social conditions, making progress towards a new international economic order and enhancing the quality of life. The multisectoral and interdisciplinary nature of crime prevention and criminal justice, including their linkages to peace, demands the co-ordinated attention of various agencies and disciplines.

4. Crime prevention and criminal justice should be considered in the context of economic development, political systems, social and cultural values and social change, as well as in the context of the new international economic order. The criminal justice system should be fully responsive to the diversity of political, economic and social systems and to the constantly evolving conditions of society.

In the light of these general considerations, the following recommendations are made as essential elements of an effective plan of action for consideration by the United Nations General Assembly:

(a) Governments should accord high priority to crime prevention and criminal justice through, inter alia, the strengthening of national crime prevention mechanisms and the allocation of adequate resources;

(b) Interested Governments should co-operate bilaterally and multilaterally, to the fullest extent possible, with a view to strengthening crime prevention measures and the criminal justice process by undertaking action-oriented programmes and projects;

(c) Since criminality is a dynamic concept, the United Nations and Member States should continue to strengthen their research capacity and to take action to develop the required data bases on crime and criminal justice. In particular, attention should be given to possible interrelationships between criminality and specific aspects of development, such as population structure and growth, urbanization, industrialization, housing, migration and employment opportunities;

(d) There is also need for further study of crime and criminality in relation to human rights and fundamental freedoms and to investigate traditional and new forms of crime;

(e) Member States should adopt concrete and urgent measures for eradicating racial discrimination, particularly apartheid, and other forms of oppression and discrimination against peoples, and to refrain from committing any acts which undermine the sovereignty and independence of countries;

(f) Priority must be given to combating terrorism in all its forms including, when appropriate, by co-ordinated and concerted action by the international community;

(g) It is imperative to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime, both of which disrupt and destabilize societies;

(h) Continued attention should be given to the improvement of criminal justice systems so as to enhance their responsiveness to changing conditions and requirements in society and to the new dimension of crime and criminality. The United Nations should facilitate the exchange of information and experiences between Member States and undertake study and policy research drawing on available expertise;

(i) Non-governmental organizations should continue to be effectively involved in the work of the United Nations in the field of crime prevention and criminal justice;

(j) The Secretary-General of the United Nations is requested to review, in consultation with the Committee on Crime Prevention and Control, the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice, including the United Nations regional and interregional institutes, in order to establish priorities and to ensure the continuing relevance and responsiveness of the United Nations to emerging needs. In such a review, special attention should be given to improving the co-ordination of relevant activities within the United Nations in all related areas. Given the diversity of economic, social and cultural situations, it is also imperative to initiate and strengthen the subregional, regional and interregional programmes of the United Nations in the field of crime prevention and criminal justice with the concurrence of concerned Member States;

(k) The regional and interregional institutes of the United Nations should be strengthened and their programmes reinforced to meet the requirements of their respective constituencies. Action should be taken for the immediate establishment in Africa of the long-delayed regional institute for the prevention of crime and the treatment of offenders;

(l) The capacity of the United Nations to extend technical co-operation to developing countries, upon their request, should be urgently reinforced, particularly in the areas of training, planning, exchange of information and experiences, reappraisal of legal systems in relation to changing socio-economic conditions and appropriate measures to combat criminality in all forms. Necessary action should be taken to promote regional advisory services in this field. All of these efforts require adequate resources;

(m) Member States should intensify their efforts in developing the widest possible public participation in preventing and combating crime and to this end efforts should be made to engender the widest public education.

5. Member States are urged to implement this Plan of Action as the collective endeavour of the international community to deal with a major problem whose disruptive and destabilizing impact on society is bound to increase unless concrete and constructive action is taken on an urgent and priority basis.

B. Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order

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

Recalling the Caracas Declaration, unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling also General Assembly resolution 35/171 of 15 December 1980 in which the Assembly endorsed the Caracas Declaration and urged implementation of the recommendations relating to the new perspective for international co-operation in crime prevention in the context of development adopted by the Sixth Congress,

Recalling further General Assembly resolution 36/21 of 9 November 1981, in which the Seventh Congress was invited to consider current and emerging trends in crime prevention and criminal justice, with a view to defining new guiding principles for the future course of crime prevention and criminal justice in the context of development needs and the goals of the International Development Strategy for the Third United Nations Development Decade and a new international economic order, taking into account the political, economic, social and cultural circumstances and traditions of each country and the need for crime prevention and criminal justice systems to be consonant with the principles of social justice,

Bearing in mind Economic and Social Council resolution 1982/29 of 4 May 1982, in which the Council approved the provisional agenda for the Seventh Congress, encouraged Governments to make adequate preparations and requested the Secretary-General to take all necessary measures to ensure the success of the preparatory activities and of the Congress itself,

Bearing in mind also General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, containing the Declaration and the Programme of Action on the Establishment of a New International Economic Order, which is one of the principal guarantees for the creation of better conditions so that all peoples may attain a decent life,

Mindful, further, that the International Development Strategy for the Third United Nations Development Decade, contained in the annex to General Assembly resolution 35/56 of 5 December 1980, declares that the ultimate aim of development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom,

Emphasizing the responsibility assumed by the United Nations in crime prevention under General Assembly resolution 415 (V) of 1 December 1950, which was reconfirmed in Economic and Social Council resolutions 731 F (XXVIII) of 30 July 1959 and 830 D (XXXII) of 2 August 1961, and in the promotion and strengthening of international co-operation in this field in accordance with General Assembly resolutions 3021 (XXVII) of 18 December 1972, 32/59 and 32/60 of 8 December 1977, 35/171 of 15 December 1980 and 36/21 of 9 November 1981,

Bearing in mind also the theme of the Congress "crime prevention for freedom, justice, peace and development" and the importance of preserving peace as a condition for development and international co-operation,

Alarmed by the growth and seriousness of crime in many parts of the world, including both conventional and non-conventional criminality which have a negative impact on the quality of life,

Considering that crime, particularly in its new forms and dimensions, seriously impairs the development process of many countries, as well as their international relations, thus, inter alia, compromising the attainment of the objectives of the Third United Nations Development Decade and the establishment of a new international economic order,

Noting that the function of the criminal justice system is to contribute to the protection of the basic values and norms of society,

Aware also of the importance of enhancing the efficiency and effectiveness of criminal justice systems,

Noting also that to limit the harm caused by modern economic and unconventional crime effectively, policy measures should be based on an integrated approach, the main emphasis being placed on the reduction of opportunities to commit crime and on the strengthening of norms and attitudes against it,

Aware of the importance of crime prevention and criminal justice, which embrace policies, processes and institutions aimed at controlling criminality and ensuring equal and fair treatment for all those involved in the criminal justice process,

Mindful that the inclusion of crime prevention and criminal justice policies in the planning process can help to improve the life of people in the world, promote the equality of rights and social security, enhance the effectiveness of crime prevention, especially in such spheres as urbanization, industrialization, education, health, population growth and migration, housing and social welfare and substantially reduce the social costs directly and indirectly related to crime prevention and control by ensuring social justice, respect for human dignity, freedom, equality and security,

Convinced that due attention should be paid to crime prevention and criminal justice and the related processes, including the fate of victims of crime, the role of youth in contemporary society and the application of United Nations standards and norms,

Recognizing that the formulation of new guiding principles can assist in the enhancement of the role of crime prevention and criminal justice in relation to cultural and political development, to be pursued at the various stages of local, national, subregional, regional and interregional planning,

Acknowledging the urgent need for more effective international co-operation between Governments, keeping in mind that the international and national economic and social orders are closely related and becoming more and more interdependent and that, as a growing socio-political problem, crime may transcend national boundaries,

1. Reaffirms the crucial role of the United Nations in the field of international co-operation in crime prevention and criminal justice, and the treatment of offenders in the broader context of socio-economic development and the establishment of a new international economic order;
2. Recommends the guiding principles for crime prevention and criminal justice in the context of development and a new international economic order, annexed to the present resolution, for national, regional and international action as appropriate, taking into account the political, economic, social and cultural circumstances and traditions of each country on the basis of the principles of the sovereign equality of States and non-interference in their internal affairs;
3. Invites Governments to be guided by the principles annexed hereto in the formulation of appropriate legislation and policy directives;
4. Also invites Member States systematically to monitor the steps being taken to ensure co-ordination of efforts in the planning and execution of effective and humane measures to reduce the social costs of crime and its negative effects on the development process, as well as to explore new avenues for international co-operation in this field;

5. Urges the regional commissions, the regional and international institutes in the field of crime prevention and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the guiding principles;

6. Calls upon the Committee on Crime Prevention and Control to consider necessary ways and means to ensure appropriate action to follow up on the present resolution;

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the guiding principles, and the intensification of information activities in this field;

8. Also requests the Secretary-General, in his current review of existing priorities and programmes, to strengthen crime prevention and criminal justice activities in order to ensure more effective international co-operation in this field, including technical assistance to requesting countries and regional and subregional programmes of training, research and exchange of information;

9. Further requests the Secretary-General to prepare a report on the implementation of the present resolution for consideration by the General Assembly;

10. Invites the Economic and Social Council and the General Assembly to consider the above issues, as a matter of priority.

Annex

GUIDING PRINCIPLES FOR CRIME PREVENTION AND CRIMINAL JUSTICE IN THE CONTEXT OF DEVELOPMENT AND A NEW INTERNATIONAL ECONOMIC ORDER

A. Crime prevention and a new international economic order

International order and national structures

1. In view of the relationship between crime prevention, development and a new international economic order, changes in the economic and social structure should be accompanied by appropriate reforms in criminal justice, so as to ensure the responsiveness of the penal system to the basic values and goals of society, as well as to the aspirations of the international community.

New international economic order and individual guarantees

2. A just, fair and humane criminal justice system is a necessary condition for the enjoyment by the citizens of all countries of fundamental human rights. It contributes to equal opportunity to the economic, social and cultural life. In this connection, international co-operation should be encouraged to foster balanced economic developments of Member States, through restructuring of the international economic system, with due emphasis on the aspects of crime prevention and proper functioning of the criminal justice system.

Development objectives and elimination of causes of injustice

3. Human development objectives including the prevention of crime, should be one of the main aims of the establishment of a new international economic order. In this context, policies for crime prevention and criminal justice should take into account the structural including socio-economic causes of injustice, of which criminality is often but a symptom.

New directions and approaches

4. New directions and approaches should be explored at the national and international levels regarding concepts, measures, procedures and institutions of crime prevention and criminal justice.

Relations between States

5. In conformity with the purposes of the United Nations, Member States should refrain in their relations with other States from committing such acts aimed at harming the development of other countries, leading to massive human suffering and even causing death. In such relations, Member States should assist each other, as far as they are able, in all efforts and measures serving crime prevention and criminal justice, and thus promote the development and progress of these countries.

Especially harmful crimes

6. The prevention of crime as a global phenomenon should not be confined to common criminality but address itself also to those acts which are especially harmful e.g., economic crime, environmental offences, illegal trafficking in drugs, terrorism, apartheid and offences of comparable severity impinging on the legal

peace and internal security to an unusual extent. These would embrace crimes in which public and private institutions, organizations and individuals may be directly and indirectly involved.

Protection against industrial crime

7. In view of the characteristics of contemporary post-industrial society and the role played by growing industrialization, technology and scientific progress, special protection against criminal negligence should be ensured in matters pertaining to public health, labour conditions, the exploitation of natural resources and the environment and the provision of goods and services to consumers.

Economic crimes

8. The laws governing the functioning of business enterprises should be reviewed and strengthened as necessary to ensure their effectiveness for preventing, investigating and prosecuting economic crime. In addition, consideration should be given to having complex cases of economic crime heard by judges familiar with accounting and other business procedures. Adequate training should also be provided to officials and agencies responsible for the prevention, investigation and prosecution of economic crimes.

Issues of corporate responsibility

9. Due consideration should be given by Member States to making criminally responsible not only those persons who have acted on behalf of an institution, corporation or enterprise, or who are in a policy-making or executive capacity, but also the institution, corporation or enterprise itself, by devising appropriate measures that would prevent or sanction the furtherance of criminal activities.

Adequate sanctioning

10. Every effort should be made to achieve equivalent penalization of economic crimes and of conventional crimes of comparable gravity by means of appropriate sentencing policies and practices, so as to eliminate any undue inequality between sanctions for conventional property offences and those for new forms of economic crime. With that aim in view, more appropriate penalties or sanctions for economic crimes should be introduced whenever the existing measures do not correspond to the extent and gravity of those offences.

Damage and financial resources

11. When determining the nature and severity of penalties for economic crimes and related offences, both the harmfulness and potential harmfulness of the offence and the degree of guilt of the offender should be taken into account. Economic sanctions, in particular severe economic penalties, should be graded in such a way as to ensure that they are equally exemplary for both poor and wealthy offenders, taking into account the financial resources of those criminally responsible. Sanctions and legal measures should in the first place aim at taking away any financial or economic advantages obtained through such crimes.

Victim compensation

12. The necessary legislative and other measures should be taken in order to provide the victims of crimes with effective means of legal protection, including compensation for damage suffered by them as the result of crimes.

B. National development and the prevention of crime

Development, peace and justice

13. Development aimed at fostering economic growth and social progress and at ensuring peace in the world and social justice by means of a comprehensive and integrated approach should be planned and properly implemented on the basis of the contributions of various factors, including fair policies of crime prevention and criminal justice.

Crime prevention and planning

14. Integrated or co-ordinated crime prevention and criminal justice policies should not only reduce the human and social costs of traditional and new forms of criminality but should also, where appropriate, help provide safeguards to ensure equitable and full public participation in the development process, thereby enhancing the viability of national development plans, programmes and actions.

Systemic approach

15. Crime prevention and criminal justice should not be treated as isolated problems to be tackled by simplistic, fragmentary methods but rather as complex and wide-ranging activities requiring systematic strategies and differentiated approaches in relation to:

(a) The socio-economic, political and cultural context and circumstances of the society in which they are applied;

(b) The developmental stage, with special emphasis on the changes taking place and likely to occur and the related requirements;

(c) The respective traditions and customs, making maximum and effective use of human indigenous options.

Integrated or co-ordinated approach to planning

16. When making national plans, States should base these plans on a global, intersectoral and integrated or co-ordinated approach with short-term, medium-term and long-term objectives. This would permit the evaluation of the effects of the decisions taken, mitigate their possible negative economic and social consequences and decrease the opportunities for committing crimes, while increasing legitimate avenues for the fulfilment of needs.

Trends and social impact studies

17. Development projects and programmes that are to be planned and executed in conformity with local, regional and national realities should be based on reliable assessment and forecast of present and future socio-economic trends, including crime, and on studies of the social impact and consequences of the policy decisions and investments. Feasibility studies, which usually involve considerations of economic viability, should also include social factors and be complemented by research on the possible criminogenic consequences of such projects, with alternative strategies for avoiding them.

Intersectoral planning

18. Efforts towards intersectoral planning should be designed to achieve interaction and co-operation between economic planners, agencies and criminal justice sectors, in order to establish or strengthen appropriate co-ordination mechanisms and to increase the responsiveness of crime prevention policies to developmental requirements and changing conditions.

Sectoral planning

19. Crime prevention and criminal justice planning should be carried out from a dynamic and systematic perspective, taking into account the interrelationships of activities and functions in the areas of legislation, law enforcement, the judicial process, the treatment of offenders and juvenile justice, with a view to ensuring greater coherence, consistency, accountability, equity and fairness, within the broad framework of national development objectives. A systematic weighting of social costs and benefits would permit, in the case of alternatives, the selection of that option which exacts the least human and material costs while yielding the maximum benefits.

Crime prevention planning and co-ordination

20. The establishment of one or several planning and co-ordinating bodies or mechanisms, at both the national and the local levels, with the participation of representatives of the different criminal justice subsystems and other experts and with the involvement of members of the community should be promoted because of its special value in assessing needs and priorities, improving resource allocation, and monitoring and evaluating policies and programmes. The following should also be included in the objectives of such planning and co-ordinating bodies or mechanisms:

- (a) Encouraging local research potential and developing indigenous capabilities in respect of planning for crime prevention;
- (b) Assessing the social costs of crime and the efforts to control it and generating awareness of the significance of its economic and social impact;
- (c) Developing means for more accurately collecting and analysing data concerning crime trends and criminal justice, as well as studying the various socio-economic factors bearing on them;
- (d) Keeping under review crime prevention and criminal justice measures and programmes in order to evaluate their effectiveness and determine whether they require improvement;
- (e) Maintaining working relations with other agencies dealing with national development planning in order to secure the necessary co-ordination and mutual feedback.

Crime prevention as part of social policy

21. The criminal justice system, besides being an instrument to effect control and deterrence, should also contribute to the objective of maintaining peace and order for equitable social and economic development and redressing inequalities and protecting human rights. In order to relate crime prevention and criminal justice to national development targets, efforts should be made to secure the necessary

human and material resources, including the allocation of adequate funding, and to utilize as much as possible all relevant institutions and resources of society, thus ensuring the appropriate involvement of the community.

Interrelations between development and criminality

22. Further study and research on the possible interrelationships between criminality and certain aspects of development such as population structure and growth, urbanization, industrialization, housing, migration, health, education and employment opportunities should be undertaken in order to increase the responsiveness of crime prevention and criminal justice policies, in a dynamic way, to changing socio-economic, cultural and political conditions. These studies should be conducted, when possible, from an interdisciplinary perspective and be directed towards policy formulation and practical action.

C. The responsiveness of the criminal justice system to development and human rights a/

Development and fundamental human rights

23. Socio-economic programmes and national planning should be conducive to the promotion, protection and efficacy of social justice, fundamental freedoms and human rights. Existing socio-economic policies and programmes should be examined in the light of their implications for the achievement of these objectives.

Legal systems, criminal justice and development

24. Legal systems, including criminal justice, should be instrumental in promoting beneficial and equitable development and due regard to human rights and social justice considerations, in ensuring that those performing judicial or quasi-judicial functions exercise them in a manner that is independent of personal or group interest and in maintaining impartiality in the staffing of the courts, in the conduct of criminal court proceedings and in the provision of public access to them.

Periodic reappraisal of criminal justice policies and practices

25. There should be in every country, regardless of its stage of development, a periodic reappraisal of the existing criminal justice policies and practices in relation to both formal and informal means of social control, so as to foster their concordance and responsiveness to emerging requirements deriving from socio-economic, cultural and other changes.

Written laws and societal structures and values

26. The conflicts existing in many countries between indigenous institutions and traditions for the solution of socio-legal problems and the frequently imported or superimposed foreign legislation and codes should be reviewed with a view to assuring that official norms appropriately reflect current societal values and structures.

a/ As defined in relevant United Nations legislation.

Unrestricted access to the legal system

27. Legal systems should endeavour, through appropriate policies aimed at overcoming socio-economic, ethnic, cultural and political inequalities or disparities whenever they exist, to optimize access to justice for all segments of society, especially the most vulnerable ones. Appropriate mechanisms for legal aid and the protection of basic human rights, in accordance with the demands of justice, should be established wherever they do not yet exist. Legal systems should also provide easily available, less costly and non-cumbersome procedures for the peaceful settlement of disputes and litigation or arbitration, so as to ensure prompt and just parajudicial and judicial action for everybody while offering the means for widespread legal assistance for the effective defence of all those in need.

Community participation

28. Various forms of community participation should be explored and encouraged in order to create suitable alternatives to purely judicial interventions, which would provide more readily accessible methods of administering justice, such as mediation, arbitration and conciliation courts. Community participation in all phases of crime prevention and criminal justice processes should, therefore, be further promoted and strengthened, paying full attention to the protection of human rights.

Mass media and education

29. The role of the mass media and its impact on aspects of crime prevention and criminal justice should be examined and evaluated, since public perceptions of criminal policies and public attitudes are central to the effectiveness and fairness of the legal system. In this connection, the mass media should be encouraged to contribute positively to public education on issues of crime prevention and criminal justice, as an important tool of socialization, together with programmes of civic and legal education.

Human rights, social justice and effective crime prevention

30. While protecting human rights and promoting social justice, improvements in the effectiveness of crime prevention and criminal justice policies should be encouraged through the use of community and other alternatives to incarceration, by avoiding unnecessary delay in the administration of justice, by fostering staff training evaluation and by scientific and technological innovations and action-oriented research, especially when there is need to maximize limited financial and human resources.

Traditional forms of social control

31. When new crime prevention measures are introduced, necessary precautions should be taken not to disrupt the smooth and effective functioning of traditional systems, full attention being paid to the preservation of cultural identities and the protection of human rights.

New forms of crime and criminal sanctions

32. Criminal sanctions, generally applied to counteract conventional criminality, should also be oriented towards new forms and dimensions of crime through the adoption of new legislative instruments and measures adequate to meet the

challenges and by means of innovative techniques for detection, investigation, prosecution and sentencing. Appropriate instruments and mechanisms for international co-operation should likewise be devised and applied in order to cope effectively with such new and dangerous manifestations of crime.

Overall re-examination of criminal justice measures

33. The limited resources of the criminal justice system should be allocated on the basis of careful consideration of the benefits and costs associated with alternative strategies, taking into account not only the direct and indirect costs of crime but also the social consequences associated with its control. In this connection, constant efforts should be made to consider the use of alternatives to judicial intervention and institutionalization procedures, including community-oriented alternatives, thus decreasing the level of undue criminalization and penalization and reducing its social and human costs.

Modern technology and potential for abuses

34. New developments in science and technology should be used everywhere in the interest of the people and thus also for effective crime prevention. However, since modern technology may produce new forms of crime, appropriate measures should be taken against potential abuses. In particular, as computer systems may result in the accumulation of personal data that could be used to violate human rights, including the right to privacy, or to engage in other abuses, appropriate safeguards should be adopted, confidentiality ensured and a system of individual access to such data and of correction of errors should be established, together with appropriate procedures for expurgating such data in order to alleviate these and other discriminatory aspects deriving from their possible abuse.

Social marginality and inequality

35. In view of the staggering dimensions of social, political, cultural and economic marginality of many segments of the population in certain countries, criminal policies should avoid transforming such deprivation into likely conditions for the application of criminal sanctions. Effective social policies should, on the contrary, be adopted to alleviate the plight of the disadvantaged, and equality, fairness and equity in the processes of law enforcement, prosecution, sentencing and treatment should be ensured so as to avoid discriminatory practices based on socio-economic, cultural, ethnic, national or political backgrounds, on sex or on material means. It is necessary to proceed from the principle that the establishment of genuine social justice in the distribution of material and spiritual goods among all members of society, the elimination of all forms of exploitation and of social and economic inequality and oppression, and the real assurance of all basic human rights and freedoms represent a principal hope for the successful combating of crime and its eradication from the life of society in general.

D. International co-operation in crime prevention and criminal justice

Importance of international co-operation

36. All States and entities should co-operate through the United Nations or otherwise in the prevention and control of crime as an indispensable element for

contributing to the promotion of the peace and security of mankind, while enhancing the effectiveness, viability and fairness of criminal justice. b/

International law and criminal justice

37. Since international co-operation on crime prevention and criminal justice is desirable, the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation.

International instruments

38. In order to render the prosecution and adjudication of transnational and international crimes more effective, existing international instruments governing such crimes should be ratified and implemented.

Modalities of international co-operation

39. Ways and means of international co-operation in penal matters such as extradition, various forms of investigative and judicial assistance, including letters and commissions rogatory, service of writs and record of decisions, appearances of witnesses abroad, transfer of proceedings, transfer of foreign prisoners and execution of sentences abroad, including supervision of the conditionally released in other countries, should be made less cumbersome and more effective. In order further to promote the use of such mechanisms in all countries, thus maximizing the effectiveness of international co-operation in the struggle against crime, the United Nations should develop appropriate model instruments for use by interested countries and contribute to the formulation of comprehensive regional agreements. Furthermore, efforts should be made to strengthen existing arrangements for international co-operation between the

b/ The need for international co-operation in crime prevention and criminal justice in terms of existing international instruments has so far been recognized in the following specific instruments: the Convention on the Prevention and Punishment of the Crime of Genocide (General Assembly resolution 260 A (III)); the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV)); the International Convention on the Suppression and Punishment of the Crime of Apartheid (General Assembly resolution 3068 (XXVIII)); the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly resolution 3166 (XXVIII)); the International Convention against the Taking of Hostages (General Assembly resolution 34/146); the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)); the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169); the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963 (United Nations, Treaty Series, vol. 704, p. 219); the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970 (United Nations, Treaty Series, vol. 860, p. 105); the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971 (United Nations, Treaty Series, vol. 974, p. 177); the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961 (United Nations Treaty Series, vol. 976, No. 14151, p. 1); and the Convention of Psychotropic Substances of 1971 (United Nations, Treaty Series, vol. 1019, No. 14956, p. 175).

various agencies of criminal justice systems in order to combat criminality at the international level.

International legal standards and legal systems

40. International co-operation in criminal justice should be in accordance with the respective legal systems of the co-operating States and with due regard to human rights and internationally accepted legal standards, which should be further implemented and strengthened.

Technical co-operation

41. Technical co-operation of various forms should be increased in view of the shortage of technical and human resources in many developing countries, such as trained personnel in all branches of the crime prevention and criminal justice systems, research personnel and centres of study, readily available data and scientific resources, information exchange systems and educational facilities. Accordingly, existing bodies within the United Nations system and Member States with the capability and resources should make available technical assistance to other countries in need, on either a bilateral or a multilateral basis or as a part of broader development programmes and as a form of transfer of technology, in accordance with United Nations principles concerning a new international economic order. Similarly, developing countries might share with developed countries indigenous approaches and experiences that might be useful to them.

Co-operation among developing countries

42. Technical co-operation among developing countries on a regional and interregional level should be further promoted in order to share relevant common experiences, preserve particular cultural characteristics, strengthen indigenous institutions of social control and increase self-reliance.

Role of international and regional bodies and organizations

43. International agencies and bodies, including the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders, the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat and other international, intergovernmental and non-governmental organizations enjoying a consultative status with the Economic and Social Council and dealing with crime prevention issues, should within their mandates, assist the States in their struggle against crime and in the implementation of international co-operation in this field.

Regional and interregional activities

44. In promoting an international strategy of crime prevention and criminal justice in the context of development, the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders and the Crime Prevention and Criminal Justice Branch should continue further to enhance their functions as useful instruments for the effective implementation of this global approach, while their co-operation with the respective United Nations regional commissions and other relevant regional organizations should be strengthened.

Co-ordination among the institutes

45. Co-ordination of activities among the above-mentioned institutes should be fostered by institutionalizing contacts and exchanges of information and experience

between them, so as to increase their potential for training, research and technical assistance to interested countries. To the extent appropriate, the specialized agencies and international development institutions and bodies should be closely involved in such activities.

Scientific co-operation

46. The United Nations should make more intensive efforts to secure support and co-operation from scientific and professional governmental and non-governmental organizations and institutions that have an established reputation in the field of crime prevention and criminal justice, so as to make greater use of these resources on a subregional, regional, interregional and international level. To that end, the possibility of establishing an international council of scholarly, scientific, research and professional organizations and academic institutions should be explored. Such a council, consisting of selected representatives of the above-mentioned organizations and institutions in various parts of the world, should strengthen international co-operation in this field by furthering the exchange of information and providing technical and scientific assistance to the United Nations and the world community which it serves.

United Nations congresses on the prevention of crime and the treatment of offenders

47. The quinquennial United Nations congresses on the prevention of crime and the treatment of offenders are designed to promote an exchange of knowledge and experience between specialists of different States and to strengthen and develop international and regional co-operation in the fight against crime, being a principal forum for this co-operation. The States and the United Nations, along with other intergovernmental and non-governmental organizations, should contribute in every way possible to enhancing the effectiveness of the work of these congresses.

C. Draft instruments and resolutions recommended for adoption by the General Assembly

1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

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

Recommends to the General Assembly the adoption of the following draft resolution:

"The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

"The General Assembly,

Bearing in mind the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and other international human rights instruments pertaining to the rights of young persons,

"Also bearing in mind that 1985 was designated as International Youth Year: Participation, Development, Peace and that the international community has placed importance on the protection and promotion of the rights of the young, as witnessed by the significance attached to the Declaration on the Rights of the Child,

"Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 24 August to 5 September 1980, 3/ which called for the development of 'standard minimum rules for the administration of juvenile justice and the care of juveniles', which can serve as a model for Member States,

"Recalling also Economic and Social Council decision 1984/153 of 25 May 1984, by which the draft rules were forwarded to the Seventh Congress, through the Interregional Meeting of Experts on Youth, Crime and Justice, held at Beijing from 14 to 18 May 1984, 4/

"Recognizing that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in conditions of peace, freedom, dignity and security,

"Considering that existing national legislation, policies and practices may well require review and amendment in view of the standards contained in these rules,

"Considering further that, while such standards may seem currently difficult to achieve in view of existing social, economic, cultural, political and legal conditions, yet these standards are nevertheless intended to be attainable as a policy minimum,

"1. Notes with appreciation the work carried out by the Committee on Crime Prevention and Control, the Secretary-General, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and other United Nations institutes in the development of the Standard Minimum Rules for the Administration of Juvenile Justice;

"2. Also notes with appreciation the report of the Secretary-General on the draft Standard Minimum Rules for the Administration of Juvenile Justice; 5/

"3. Commends the Interregional Meeting of Experts at Beijing for having finalized the text of the rules submitted to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders for consideration and final action;

3/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

4/ See "Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic IV: youth, crime and justice" (A/CONF.121/IPM/1).

5/ A/CONF.121/14 and Corr.1.

"4. Adopts the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh United Nations Congress, and decides also to approve the recommendation of the Seventh United Nations Congress that the Standard Minimum Rules should be known as 'the Beijing Rules';

"5. Invites Member States to bring, wherever this is necessary, their national legislation, policies and practices, particularly in training juvenile justice personnel, in accordance with the Beijing Rules, as well as to bring the rules to the attention of relevant authorities and the public in general;

"6. Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Beijing Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;

"7. Invites Member States to inform the Secretary-General on the implementation of the Beijing Rules and to report regularly to the Committee on Crime Prevention and Control on the results achieved;

"8. Requests the Member States and the Secretary-General to undertake research and to develop a data base with respect to effective policies and practices in the administration of juvenile justice;

"9. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Beijing Rules in all of the official languages, including the intensification of information activities in the field of juvenile justice;

"10. Requests the Secretary-General to develop pilot projects on the implementation of the Rules;

"11. Requests the Secretary-General and Member States to provide the necessary resources to ensure the successful implementation of the Beijing Rules, particularly in the areas of recruitment, training and exchange of personnel, research and evaluation, and the development of new alternatives to institutionalization;

"12. Requests the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to review progress made with respect to the implementation of the Beijing Rules, as well as the recommendations made in the present resolution, under a separate agenda item on juvenile justice;

"13. Urges all relevant organs of the United Nations system, particularly the regional commissions and specialized agencies, and the United Nations institutes in the field of crime prevention and the treatment of offenders, as well as inter-governmental organizations and non-governmental organizations, to collaborate with the Secretariat and take the necessary measures to ensure a concerted and sustained effort, within their respective fields of technical competence, to implement the principles contained in these rules."

Annex

UNITED NATIONS STANDARD MINIMUM RULES FOR THE
ADMINISTRATION OF JUVENILE JUSTICE

Part one. General principles

1. Fundamental perspectives

- 1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.
- 1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.
- 1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.
- 1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.
- 1.5 The manner of implementation of these rules shall proceed in the context of economic, social and cultural conditions prevailing in each Member State.
- 1.6 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly

improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular Rules necessarily to be different from the manner adopted in other States.

2. Scope of the rules and definitions used

2.1 The following standard minimum rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts.

(a) A juvenile is a child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal system;

(c) A juvenile offender is a young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly.

Commentary

The standard minimum rules are deliberately formulated in such a way as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the rules always being applied impartially and without distinction of any kind. The rule follows the formulation

of principle 2 of the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV) of 20 November 1959). a/

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the juvenile offender, who is the main subject of these standard minimum rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these standard minimum rules.

Rule 2.3 is addressed to the necessity of specific national legislation with a view to the optimal implementation of these standard minimum rules, both legally and practically.

3. Extension of the rules

- 3.1 The relevant provisions of the rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.
- 3.2 Efforts shall be made to extend the principles embodied in the rules to all juveniles who are dealt with in welfare and care proceedings.
- 3.3 Efforts shall also be made to extend the principles embodied in the rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the standard minimum rules for the administration of juvenile justice to cover:

(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (e.g. truancy, school and family disobedience, public drunkenness etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

a/ See also the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180); the Declaration of the World Conference to Combat Racism and Racial Discrimination (Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978 (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners (A/CONF.6/1 (United Nations publication, Sales No. E.56. IV.4), annex I, sect. A.); the Caracas Declaration (General Assembly resolution 35/171, annex); and rule 9.

The extension of the rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. Age of criminal responsibility

- 4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, can a child, by virtue of her or his individual discernment and understanding, be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

- 5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just desert in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (e.g., social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (e.g., by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here too the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

- 6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.
- 6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.
- 6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.22.) The formulation of specific guidelines on the exercise of discretion and the provision of system of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

- 7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)) and in article 14.2 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex).

Rules 14 seq. of these standard minimum rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (e.g. the name of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

9. Saving clause

9.1 Nothing in these rules shall be interpreted as precluding the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards - such as the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)); the International Covenant on Economic, Social and Cultural Rights and the

International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex); and the Declaration of the Rights of the Child (General Assembly resolution 1386 (XIV)) and the draft convention on the rights of the child. It should be understood that the application of the present rules is without prejudice to any such international instruments which may contain provisions of wider application. b/ (See also rule 27.)

Part two. Investigation and prosecution

10. Initial contact

- 10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.
- 10.2 A judge or other competent official or body shall, without delay, consider the issue of release.
- 10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners. c/

b/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1).

c/ The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva. In its resolution 663 C (XIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, inter alia, the recommendations on the selection and training of personnel for penal and correctional institutions and on open penal and correctional institutions. The Council recommended that Governments should give favourable consideration to the adoption and application of the Standard Minimum Rules and should take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in resolution 2076 (LXII) of 13 May 1977. The text of the Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations is contained in ESA/SDHA/1 and in Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1). See also United Nations Action in the Field of Human Rights (United Nations publication, Sales No. E.83.XIV.2) and the Report of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.1956.IV.4).

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), article 9.3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (e.g., the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles, the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

- 11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.
- 11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these rules.
- 11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- 11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised, on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (e.g. the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making - by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.2 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention. d/) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (e.g. in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority" may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (e.g. first offence, the act having been committed under peer pressure etc.).

12. Specialization within the police

- 12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally as an instrument for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

d/ Adopted in June 1957 by the General Conference of the International Labour Organisation at its fortieth session.

13. Detention awaiting trial

- 13.1 Detention awaiting trial shall be used only as a measure of last resort and for the shortest possible period of time.
- 13.2 Whenever possible, detention awaiting trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- 13.3 Juveniles under detention awaiting trial shall be entitled to all rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners.
- 13.4 Juveniles under detention awaiting trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention awaiting trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention awaiting trial are entitled to all the rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex), especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (e.g., females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, e.g. of arrest etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention awaiting trial, thus contributing to the avoidance of victimization, and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards specified that the rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three. Adjudication and disposition

14. Competent authority to adjudicate

- 14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council etc.) according to the principles of a fair and just trial.
- 14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself/himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. Competent authority is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (e.g. the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to refuse to answer, the right to have the last word in a hearing, the right to appeal etc. (see also rule 7.1).

15. Legal counsel, parents and guardians

- 15.1 Throughout the proceedings the juvenile shall have the right to be represented by her or his legal adviser or to apply for free legal aid where there is provision for such aid in the country.
- 15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93. of the Standard Minimum Rules for the Treatment of Prisoners. e/ Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile - a function extending throughout the procedure.

e/ See footnote c/ above.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude toward the juvenile; hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

- 16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most cases involving legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board for this purpose. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

- 17.1 The disposition of the competent authority shall be guided by the following principles:
- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
 - (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
 - (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
 - (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.
- 17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is especially pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of standard minimum rules for the administration of juvenile justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular under subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, it encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in subparagraph 17.2 is in accordance with article 6.5 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex).

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)) as well as the draft convention on torture and other cruel, inhuman or degrading treatment or punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

18. Various disposition measures

18.1 A large variety of dispositions shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proven successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based corrections is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10.1 of the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI), annex), is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (e.g., child abuse).

19. Least possible use of institutionalization

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("least period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

- 21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.
- 21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. Need for professionalism and training

- 22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.
- 22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration

of juvenile justice. This was recommended by the Sixth United Nations Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Part four. Non-institutional treatment

23. Effective implementation of disposition

- 23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.
- 23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries a juge d'execution des peines has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

- 24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

- 25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services in particular, have proven to be valuable resources, yet one that is underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 (XXI), annex).

Part five. Institutional treatment

26. Objectives of institutional treatment

- 26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- 26.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex and personality and in the interest of their wholesome development.
- 26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.
- 26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
- 26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in light of the Caracas Declaration of the Sixth Congress, which inter alia calls for equal treatment in criminal justice administration, f/ and against the background of the Declaration on the Elimination of Discrimination against Women (General Assembly resolution 2263 (XXII) of 7 November 1967), and the Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180 of 18 December 1979).

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the United Nations Standard Minimum Rules for the Treatment of Prisoners

- 27.1 The United Nations Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.
- 27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were among the first to be promulgated by the United Nations. g/ It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, the Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

f/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A, para. 1.6.

g/ See footnote c/ above.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify the existing Standard Minimum Rules on the Treatment of Prisoners according to the particular characteristics of institutions for juvenile offenders within the scope of standard minimum rules for the administration of juvenile justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the specific varying needs of their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelates to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

- 28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.
- 28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

- 29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structure support as an important step towards successful reintegration into society.

Part six. Research, planning, policy formulation and evaluation

30. Research as a basis for planning, policy formulation and evaluation

- 30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.
- 30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.
- 30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.
- 30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning with the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and

to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

2. Declaration of Basic Principles of Justice (a) relating to victims of crime, and (b) relating to victims of abuse of power

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

Recognizing the need for more effective measures at the international, regional and national levels on behalf of victims of crime and victims of abuse of power,

Resolved to promote progress by all States in their efforts to respect and to secure for the victims of crime and for the victims of abuse of power the rights due to them,

Recommends that the General Assembly should adopt the following draft resolution and draft Declaration of Basic Principles of Justice (a) relating to Victims of Crime, and (b) relating to Victims of Abuse of Power:

"The General Assembly,

"Recalling that the Sixth Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power, 6/

"Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

"Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

"1. Affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of and respect for the rights of victims of crime and of abuse of power;

6/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4).

"2. Stresses the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects of offenders;

"3. Adopts the Declaration of Basic Principles of Justice (a) relating to Victims of Crime, and (b) relating to Victims of Abuse of Power annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;

"4. Calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, Member States should endeavour to:

"(a) Implement social, health (including mental health), educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;

"(b) Promote community efforts and public participation in crime prevention;

"(c) Review periodically their existing legislation and practices to ensure responsiveness to changing circumstances, and enact and enforce legislation proscribing acts which violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power;

"(d) Establish and strengthen the means for the detection, prosecution, and sentencing of those guilty of crimes;

"(e) Promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;

"(f) Promote the observance of codes of conduct and ethical norms, particularly international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;

"(g) Prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;

"(h) Co-operate with other States, through mutual judicial and administrative assistance in such matters as the detection and pursuit of offenders, their extradition, and the seizure of their assets, to be used for restitution to the victims;

"5. Recommends that, at the international and regional levels, all appropriate measures should be taken to:

"(a) Promote training activities designed to foster adherence to United Nations standards and norms, and to curtail possible abuses;

"(b) Sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and promote information exchanges on the most effective means of so doing;

"(c) Render direct aid to requesting Governments designed to help them to curtail victimization and alleviate the plight of victims;

"(d) Develop ways and means of providing recourse for victims where national channels may be insufficient;

"6. Requests the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;

"7. Also requests the Secretary-General to make use of the opportunities, which all relevant agencies and bodies within the United Nations system offer, so as to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;

"8. Also requests the Secretary-General to promote the objectives of the Declaration, particularly by ensuring its widest possible dissemination;

"9. Urges the specialized agencies, other entities and bodies of the United Nations system, relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration."

Annex

DECLARATION OF BASIC PRINCIPLES OF JUSTICE (a) RELATING TO VICTIMS
OF CRIME AND (b) RELATING TO VICTIMS OF ABUSE OF POWER

SECTION A. RELATING TO VICTIMS OF CRIME

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions which are in violation of criminal laws operative within Member States, including those laws which proscribe criminal abuse of power.

2. A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all without distinction of any kind, such as 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.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress as provided for by national legislation for the harm which they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal dispute resolution mechanisms, including mediation, arbitration, and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, particularly dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Social assistance

14. Victims should receive the necessary material, medical, psychological, and social assistance through governmental, voluntary, community-based, and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance, and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

SECTION B. RELATING TO VICTIMS OF ABUSE OF POWER

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions which do not yet constitute violation of national criminal laws but which constitute violations of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts which constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of those acts.

3. Development of standards for the prevention of juvenile delinquency

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

Recommends to the General Assembly the adoption of the following draft resolution:

"The General Assembly,

"Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 24 August to 5 September 1980, 7/ calling for the elaboration of a set of standard minimum rules for the administration of juvenile justice and for the care of juveniles,

7/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

"Noting that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 8/ are limited to the administration of juvenile justice and the assurance of legal guarantees in respect of young persons in conflict with the law,

"Mindful of the need to develop national, regional and international strategies for the prevention of delinquency among the young,

"Recognizing that the prevention of juvenile delinquency includes measures for the protection of juveniles who are both abandoned, neglected, abused and marginal, and, in general, those who are at social risk,

"Further recognizing the existence of a large number of young persons who are not in conflict with the law, but who are at social risk,

"Acknowledging that one of the basic aims of juvenile delinquency prevention is the provision of requisite assistance and a range of opportunities to meet the varying needs of the young, especially those who are most likely to commit crime or to be exposed to crime, and serve as a supportive framework to safeguard their proper development,

"1. Takes note with appreciation of the work undertaken by the United Nations institutes for the prevention of crime and the treatment of offenders and the regional commissions in the field of prevention;

"2. Also takes note with appreciation of the working paper prepared by the Secretariat on youth, crime and justice; 9/

"3. Endorses the recommendations contained in the report of the Interregional Preparatory Meeting, held at Beijing from 14 to 18 May 1984; 10/

"4. Requests the Secretary-General and Member States to take the necessary steps to establish joint programmes in the field of juvenile justice and the prevention of juvenile delinquency with the United Nations Social Defence Research Institute, the United Nations regional institutes for the prevention of crime and the treatment of offenders, the Arab Security Studies and Training Centre at Riyadh, and other national and regional institutes, and with the assistance of regional commissions and national correspondents, which would include, inter alia, the following activities:

"(a) To study the situation of juveniles at social risk and to examine the relevant prevention policies and practices within the context of socio-economic development;

"(b) To intensify efforts in training, research, and advisory services for the prevention of juvenile delinquency;

"5. Invites Member States to adopt distinct measures and systems as appropriate to the interest of juveniles in social risk;

8/ A/CONF.121/14 and Corr.1, known as "the Beijing Rules".

9/ A/CONF.121/7.

10/ A/CONF.121/IPM.1, sect. II.

"6. Calls upon the Economic and Social Council to request the Committee on Crime Prevention and Control, with the assistance of the United Nations institutes for the prevention of crime and the treatment of offenders, regional commissions and specialized agencies, to develop standards for the prevention of juvenile delinquency, which would assist Member States in formulating and implementing specialized programmes and policies, emphasizing assistance and care and the active involvement of the community, and to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved in the development of the proposed standards for review and final action;

"7. Requests that the prevention of delinquency among the young be regularly considered by the Committee on Crime Prevention and Control and be considered by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders under a separate agenda item;

"8. Urges all relevant agencies within the United Nations system to collaborate with the Secretary-General in taking appropriate measures to ensure the implementation of the present resolution."

4. Domestic violence

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

Recommends to the General Assembly the adoption of the following draft resolution:

"The General Assembly,

"Recalling Economic and Social Council resolution 1984/14 of 24 May 1984 on violence in the family,

"Further recalling resolution 9 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which calls for the fair treatment of women by the criminal justice system, 11/

"Bearing in mind the recommendations made on the subject of domestic violence by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi from 15 to 26 July 1985, 12/

"Having regard to the Declaration of the Rights of the Child, 13/ in particular to article 9, concerning their protection against exploitation,

11/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. 1, sect. B.

12/ For the report of the World Conference, see A/CONF.116/28.

13/ General Assembly resolution 1386 (XIV).

neglect and cruelty, and the Convention on the Elimination of All Forms of Discrimination against Women, 14/

"Mindful of the important role of the family in ensuring the proper development of the young and their integration into the mainstream of society, and in the prevention of delinquency,

"Mindful further of the social aspects of domestic violence and of the great importance of emphasizing and developing appropriate methods of conflict resolution between the parties involved,

"Recognizing that abuse and battery in the family is a critical problem which has serious physical and psychological effects on individual family members, especially the young, and which jeopardizes the health and survival of the family unit,

"Recognizing further the effects of exposure to domestic violence, especially at an early stage of human development, and the incalculable harm,

"Convinced that the problem of domestic violence is a multi-faceted one which should be examined from the perspective of crime prevention and criminal justice in the context of socio-economic circumstances,

"Convinced also of the necessity to improve the situation of the victims of domestic violence,

"Concerned that the abuse of alcohol and narcotic drugs and psychotropic substances may be an exacerbating condition of domestic violence and that such exacerbating effects should be further examined,

"1. Takes note with appreciation of the report of the Secretary-General on women as victims of crime; 15/

"2. Invites Member States concerned urgently to take specific action to prevent domestic violence and to render the appropriate assistance to the victims thereof;

"3. Requests the Secretary-General to intensify research on domestic violence, from a criminological perspective, and to formulate distinct action-oriented strategies which could serve as a basis for policy formulation, and to report thereon to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

"4. Requests the Economic and Social Council to invite the Committee on Crime Prevention and Control to examine the problem of domestic violence;

"5. Urges all relevant United Nations bodies, agencies and institutes to collaborate with the Secretary-General in ensuring a concerted and sustained effort to combat this problem;

14/ General Assembly resolution 34/180.

15/ A/CONF.121/16.

"6. Invites the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the problem of domestic violence under a separate agenda item dealing with domestic violence;

"7. Invites Member States to adopt specific measures with a view to making the criminal and civil justice system more sensitive in its response to domestic violence, including the following:

"(a) States should endeavour to introduce, if not already in place, legislation, civil and criminal, to deal with particular problems of domestic violence, and that such laws should be enacted and enforced which would protect battered family members and sanction the offender, and would offer alternative ways of treatment for offenders according to type of violence;

"(b) In all instances of the criminal proceeding, starting with the police investigation, the special and sometimes delicate position of the victim should be respected and should be reflected by the manner in which the victim is treated;

"(c) Preventive measures should be initiated, such as providing support and counselling to families, in order to improve their abilities to create a non-violence environment, emphasizing principles of education, equality of rights and equality of responsibilities of women and men, partnership and peaceful solution of conflicts;

"(d) The public should be informed as necessary about serious acts of violence perpetrated against children through all the available channels in order to create public awareness of this problem;

"(e) Appropriate, specialized assistance should be delivered to victims of domestic violence, as an integral part of social policy;

"(f) Shelters and other facilities and services should be provided as a temporary solution and safety for victims of domestic violence;

"(g) Specialized training and units should be provided for those who deal in some capacity with victims of domestic violence;

"(h) Research should be initiated and/or intensified and data collected on the background, extent and types of domestic violence;

"(i) Legal remedies to domestic violence should be made more accessible, and in view of the criminogenic effects of the phenomenon, particularly on young victims, due consideration should be given also to the interest of society by maintaining a balance between intervention and the protection of privacy;

"(j) Social welfare and health administration systems should be more intensely engaged in the assistance of victims of familial violence and abuses; and all efforts should be made to co-ordinate social welfare and criminal justice measures."

D. Other instruments adopted by the Congress

1. Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners

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

Recalling resolution 13 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 16/ in which States Members of the United Nations were urged to consider the establishment of procedures whereby transfers of offenders might be effected,

Recognizing the difficulties of foreigners detained in prison establishments abroad owing to such factors as different language, culture, customs and religion,

Considering that the aim of social resettlement of offenders could be best achieved by giving foreign prisoners the opportunity to serve their sentence within their country of nationality or residence,

Convinced that the establishment of procedures for the transfer of prisoners, on either a bilateral or a multilateral basis, would be highly desirable,

Taking note of the existing multilateral and bilateral international agreements on the transfer of foreign prisoners,

1. Adopts the Model Agreement on the Transfer of Foreign Prisoners, as set out in annex I to the present resolution;
2. Approves the recommendations on the treatment of foreign prisoners, as set out in annex II;
3. Invites Member States, if they have not yet established treaty relations with other Member States in the matter of the transfer of foreign prisoners to their own countries, or if they wish to revise existing treaty relations, to take into account, whenever doing so, the Model Agreement annexed hereto;
4. Requests the Secretary-General to assist Member States, at their request, in the development of agreements for the transfer of foreign prisoners and to report regularly thereon to the Committee on Crime Prevention and Control.

16/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

Annex I

MODEL AGREEMENT ON THE TRANSFER OF FOREIGN PRISONERS

PREAMBLE

The _____ and the _____

Desirous of further developing mutual co-operation in the field of criminal justice,

Believing that such co-operation should further the ends of justice and the social resettlement of sentenced persons,

Considering that those objectives require that foreigners who are deprived of their liberty as the result of a criminal offence should be given the opportunity to serve their sentences within their own society,

Convinced that this aim can best be achieved by transferring foreign prisoners to their own countries,

Bearing in mind that the full respect for human rights, as laid down in universally recognized principles, should be ensured,

Have agreed on the following:

I. GENERAL PRINCIPLES

1. The social resettlement of offenders should be promoted by facilitating the return of persons convicted of crime abroad to their country of nationality or of residence to serve their sentence at the earliest possible stage. In accordance with the above, States should afford each other the widest measure of co-operation.
2. A transfer of prisoners should be effected on the basis of mutual respect for national sovereignty and jurisdiction.
3. A transfer of prisoners should be effected in cases where the offence giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the sending (sentencing) State and the State to which the transfer is to be effected (administering State) according to their national laws.
4. A transfer may be requested by either the sentencing or the administering State. The prisoner, as well as close relatives, may express to either State their interest in the transfer. To that end, the contracting State shall inform the prisoner of their competent authorities.
5. A transfer shall be dependent on the agreement of both the sentencing and the administering State, and should also be based on the consent of the prisoner.
6. The prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.
7. The administering State should be given the opportunity to verify the free consent of the prisoner.

8. Any regulation concerning the transfer of prisoners shall be applicable for sentences of imprisonment as well as for sentences imposing measures involving deprivation of liberty because of the commission of a criminal act.

9. In cases of the person's incapability of freely determining his will, his legal representative shall be competent to consent to the transfer.

II. OTHER REQUIREMENTS

10. A transfer shall be made only on the basis of a final and definitive sentence having executive force.

11. At the time of the request for a transfer, the prisoner shall, as a general rule, still have to serve at least six months of the sentence; a transfer should, however, be granted also in cases of indeterminate sentences.

12. The decision whether to transfer a prisoner shall be taken without any delay.

13. The person transferred for the enforcement of a sentence passed in the sentencing State may not be tried again in the administering State for the same act upon which the sentence to be executed is based.

III. PROCEDURAL REGULATIONS

14. The competent authorities of the administering State shall: (a) continue the enforcement of the sentence immediately or through a court or administrative order; or (b) convert the sentence, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for a corresponding offence.

15. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, this State may adapt the sanction to the punishment or measure prescribed by its own law for a corresponding offence.

16. In the case of conversion of sentence, the administering State shall be entitled to adapt the sanction as to its nature or duration according to its national law, taking into due consideration the sentence passed in the sentencing State. A sanction involving deprivation of liberty shall, however, not be converted to a pecuniary sanction.

17. The administering State shall be bound by the findings as to the facts in so far as they appear from the judgement imposed in the sentencing State. Thus the sentencing State has the sole competence for a review of the sentence.

18. The period of deprivation of liberty already served by the sentenced person in either State shall be fully deducted from the final sentence.

19. A transfer shall in no case lead to an aggravation of the situation of the prisoner.

20. Any costs incurred because of a transfer and related to transportation should be borne by the administering State, unless otherwise decided by both the sentencing and administering States.

IV. ENFORCEMENT AND PARDON

21. The enforcement of the sentence shall be governed by the law of the administering State.
22. Both the sentencing and the administering State shall be competent to grant pardon and amnesty.

V. FINAL CLAUSES

23. This agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.
24. This agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in _____.
25. This agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.
26. Either Contracting Party may denounce this agreement in writing to the _____. Denunciation shall take effect six months following the date on which the notification is received by the _____.

In witness whereof the undersigned, being duly authorized thereto by the respective Governments, have signed this treaty.

Annex II

RECOMMENDATIONS ON THE TREATMENT OF FOREIGN PRISONERS

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.
2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.
3. Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison according to the same principles as nationals.
4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison régime, including relevant rules and regulations.
5. The religious precepts and customs of foreign prisoners should be respected.
6. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.
7. Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodations, special diets and religious representation and counselling.
8. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.
9. The conclusion of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problems faced by foreign offenders.

2. Basic Principles on the Independence of the Judiciary

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

Recalling the Caracas Declaration, 17/ unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 35/171 of 15 December 1980,

Recalling also resolution 16 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 18/ in which the Congress called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges,

Recalling further Economic and Social Council decision 1984/153 of 25 May 1984, in which the Council invited the interregional preparatory meeting on the formulation and application of United Nations standards and norms in criminal justice to finalize the draft guidelines on the independence of the judiciary formulated by the Committee on Crime Prevention and Control at its eighth session and invited the Secretary-General to submit the finalized text to the Seventh Congress for adoption.

Taking note with appreciation of the work accomplished in pursuance of the mandate cited above by the Committee on Crime Prevention and Control and by the Interregional Preparatory Meeting, held at Varenna, Italy, from 24 to 28 September 1984,

Further taking note with appreciation of the extensive discussions during the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders with respect to the draft guidelines on the independence of the judiciary, 19/ which led to the formulation of Basic Principles on the Independence of the Judiciary,

1. Adopts the Basic Principles on the Independence of the Judiciary as set out in the annex to the present resolution;
2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;
3. Invites Governments to take into account within the framework of their national legislation and practice and to respect the Basic Principles on the Independence of the Judiciary;

17/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A.

18/ Ibid., sect. B.

19/ "Guidelines on the Independence of the judiciary" (A/CONF.121/9).

4. Also invites Member States to bring the Basic Principles to the attention of judges, lawyers, members of the executive and the legislature and the public in general;

5. Urges the regional commissions, the regional and international institutes in the field of the prevention of crime and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles;

6. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the effective implementation of the present resolution;

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Basic Principles;

8. Also requests the Secretary-General to prepare a report on the implementation of the Basic Principles;

9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Basic Principles and to report thereon regularly to the Committee on Crime Prevention and Control;

10. Requests that the present resolution be brought to the attention of all United Nations bodies concerned.

Annex

BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.
13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.
14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.
16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts of omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.
20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

E. Other resolutions and decision adopted by the Congress

RESOLUTION 1

Organized crime

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

Seriously concerned by the abundant evidence of the escalation of organized crime, including illicit drug trafficking, in many countries and its enormous social and economic costs,

Aware that organized crime increasingly crosses national boundaries, is often camouflaged under apparently legitimate business activity and is extremely difficult to combat,

Recalling resolution 7 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, 20/ relating to the prevention of the abuse of power, in which it was recommended that co-operative efforts should be intensified among Member States to prevent, prosecute and control this form of activity and that such efforts, including mutual legal assistance treaties or conventions, should make provision for the establishment of procedures for the gathering of evidence and the extradition of persons,

Noting the provisions of the "Guiding principles for crime prevention and criminal justice in the context of development and a new international economic order" 21/ submitted for the consideration of the Seventh United Nations Congress, which state that ways and means of international co-operation in penal matters, such as extradition and various forms of investigative and judicial assistance, should be made less cumbersome and more effective, and that the United Nations should develop appropriate model instruments for use by interested countries to promote further the use of such mechanisms and to maximize the effectiveness of international co-operation in the struggle against crime,

Noting also the conventions and draft conventions adopted, or under consideration, by a number of regional organizations on the subject of mutual legal assistance,

Recalling General Assembly resolution 39/112 of 14 December 1984, in which, inter alia, the Assembly invited the Seventh Congress to pay particular attention to the question of illicit drug trafficking, and Assembly resolution 39/141, 39/142 and 39/143 of 14 December 1984 dealing with the Draft Convention against Traffic in Narcotic Drugs and Psychotropic Substances and Related Activities, 22/ the Declaration on the Control of Drug Trafficking and Drug Abuse 23/ and the international campaign against traffic in drugs, respectively,

Deeply concerned at the upward trend, as reported by the regional preparatory meetings for the Seventh Congress and the International Youth Year, in the involvement of young people in drug offences, leading to their physical and mental deterioration, the commission of crime, particularly in order to finance expensive drug habits, and even suicide,

1. Calls upon Member States to intensify their efforts to combat more effectively organized crime at the national level, including consideration, if thought necessary in their respective systems, of the following measures, subject to safeguards and the maintenance of basic rights under ordinary legal procedures and in conformity with international human right standards:

20/ See the report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

21/ A/CONF.121/19.

22/ General Assembly resolution 39/141, annex.

23/ General Assembly resolution 39/142, annex.

(a) The modernizing of national criminal laws and procedures, including measures to:

- (i) Introduce new offences directed to novel and sophisticated forms of criminal activity;
- (ii) Provide for the forfeiture of illegally acquired assets;
- (iii) Facilitate the obtaining of evidence abroad for use in criminal proceedings in national courts;
- (iv) Modernize national laws relating to extradition;

(b) The conduct of national campaigns against drug abuse to develop measures on treatment, rehabilitation, law enforcement and educational processes to deal with drug abuse;

(c) The strengthening of law enforcement authorities and the provision to those authorities of increased powers;

(d) The establishment of national institutions, such as national crime authorities or commissions, with appropriate powers, to investigate and obtain evidence for the prosecution of those centrally involved in organized criminal activity;

(e) The review or adoption of laws relating to taxation, the abuse of bank secrecy and gaming houses, in order to ensure that they are adequate to assist in the fight against organized crime and, in particular, the transfer of funds for or the proceeds of such crime across national boundaries;

2. Urges Member States to increase their activity at the international level in order to combat organized crime, including, as appropriate, becoming parties to relevant multilateral treaties and entering into bilateral treaties on extradition and mutual legal assistance;

3. Recommends that the Committee on Crime Prevention and Control should be requested to:

(a) Develop a comprehensive framework of guidelines and standards that would assist Governments in the development of measures to deal with organized crime at the national, regional and international levels;

(b) Develop model treaties dealing with extradition and mutual legal assistance, having regard to the efforts already undertaken by several States and regional organizations;

(c) Urges the Commission on Narcotic Drugs to continue to arrange for the regular dissemination of information on treatment, rehabilitation and educational programmes to deal with drug abuse, particularly as it affects young people;

4. Recommends that Member States should accord the highest priority to measures to combat organized crime and, in particular, should give urgent attention to the development of extradition treaties and mutual legal assistance and co-operation arrangements, under ordinary legal procedures and in conformity with international human rights standards.

RESOLUTION 2

Struggle against illicit drug trafficking

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

Concerned by the damage which the illicit drug traffic and abuse caused to public health, in particular to the health of young people, and to the economic and social development of peoples,

Concerned by the ascertained increase in illicit drug traffic reported by many Member States,

Considering that the greatest part of the illicit drug traffic is carried on by persons involved in criminal organizations whose activities usually cross national borders, and that such organizations are able to make use of enormous financial means,

Noting that the high profits obtained from illicit traffic are, on the one hand, a constant incentive for criminals to engage in the said traffic and that, on the other hand, those profits are financial resources which will eventually be used in this, as well as in other illicit activities,

Considering, therefore, that the struggle against illicit traffic could be more effective if, in addition to traditional means of criminal justice, other legal means were introduced in order to prevent the accumulation and reuse of illicit resources, particularly through the forfeiture thereof,

Considering, moreover, that it would be useful to strengthen the means of investigation in criminal proceedings, as concerns the origin, formation and destination of illicit proceeds,

Considering that the international character of drug traffic requires the closest co-operation among States in criminal proceedings and that such co-operation should also cover the activities concerning investigations of illicit proceeds, their seizure and forfeiture,

Recalling resolution I (XXX) adopted on 15 February 1983 by the Commission on Narcotic Drugs, in which it has been recognized, among other things, that depriving criminals of the proceeds from drug trafficking is an effective means of reducing that traffic,

Bearing in mind the significance of existing international instruments, particularly the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1961, 24/ and the Convention and Psychotropic Substances of 1971, 25/ in creating a legal framework for combating the illicit production of drugs and drug abuse,

24/ United Nations, Treaty Series, vol. 976, No. 14, 151, p. 1.

25/ United Nations, Treaty Series, vol. 1019, No. 14, 956, p. 175.

Convinced that, owing to the increasing complexity and sophistication of drug trafficking, further legal measures, at the national and international levels, must be developed to combat more effectively drug trafficking,

Recalling General Assembly resolution 39/141 of 14 December 1984, whereby the preparation has been started of a new convention against illicit traffic governing, in particular, those aspects which are not governed by the instruments now in force,

Recognizing the role of the Committee on Crime Prevention and Control in studying measures to combat crime, including all forms of organized crime,

Considering that the subject of the intervention of the proceeds from illicit traffic is not specifically dealt with either in the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol, or in the other existing instruments on narcotic drugs and psychotropic substances,

Believing that, in addition to any intervention on illicit profits, a full effort should be made in order to study and adopt new legal instruments of combat, and of international co-operation in the struggle against illicit traffic, in addition to those provided for in international agreements already in force,

Bearing in mind the need for safeguards and the maintenance of basic rights under ordinary legal procedures and in conformity with international human rights standards,

1. Invites all States Members of the United Nations to:

(a) Strengthen the instruments of combat against illicit drug traffic, also introducing or strengthening any legal instrument which appears to be effective in regard to the nature of organized crime, either international or transnational, displayed by such traffic;

(b) Introduce or strengthen, taking into account the characteristics of each domestic legislation, all such legal instruments as can facilitate the investigation of the proceeds from illicit traffic or allow the tracing, freezing and forfeiture thereof;

(c) Take all necessary legislative measures to maximize co-operation among States in the matter of investigation of illicit profits and the forfeiture thereof;

(d) Provide, when this appears to be necessary, for new kind of offences concerning the acquisition, possession, use or so-called laundering of illicit profits, in order to broaden the opportunities for the investigation and forfeiture of said profits;

2. Urges States that have not already done so to ratify the existing international instruments dealing with illicit drug trafficking;

3. Recommends that the preparation of a new international instrument on illicit drug traffic should be considered by Member States and the competent bodies of the United Nations as an absolute priority;

4. Further recommends that, in formulating the said new international instrument, a full effort should be made to introduce provisions addressing the issues set forth in operative paragraph 1;

5. Recommends also that a new international instrument on drug trafficking could further contribute to the international legal framework by addressing also the following subjects:

(a) Providing for effective penalties that take into consideration the serious nature of drug trafficking offences;

(b) Establishing all drug trafficking offences as extraditable offences;

(c) Establishing a system of control of precursor substances and essential chemicals used in the manufacturing of illicit drugs;

(d) Establishing jurisdictional issues regarding drug trafficking committed on the high seas;

(e) Developing measures to ensure a defendant's presence for the purpose of prosecution or extradition, taking into consideration the serious nature of the offence of drug trafficking;

(f) Introduction and recognition of the investigative technique of controlled delivery in cases involving major drug violators, and of the legal measures necessary to permit international co-operation in the utilization of that technique, on a case-by-case basis;

(g) Developing measures, consistent with international postal treaties and the sanctity of the mails, to counter drug smuggling through international postal systems;

(h) Establishing improved measures at free trade zones and ports to ensure that drugs and chemicals entering or in transit are of legitimate origin and are destined for legitimate purposes;

6. Requests the Secretary-General of the United Nations to bring the present resolution, as well as the relevant parts of the report of the Seventh Congress, to the attention of Member States and the competent bodies of the United Nations.

RESOLUTION 3

International co-operation in drug abuse control

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

Alarmed by the dramatic deterioration brought about in all aspects of criminality by the spread of illicit trafficking and abuse of drugs,

Considering that illicit drug trafficking has international dimensions and that the network of various types of drug-related criminal misbehaviour has well-established international implications,

Convinced that, in view of the international character and dimensions of drug-related criminal manifestations, their prevention and control require a dynamic international response,

Recognizing that any further delay in the full implementation of such a strategy poses serious dangers for individual human rights and for the economic, cultural and political structures of society,

Affirming that the development of appropriate international action requires a concerted effort by all States,

Recognizing that not all countries possess adequate resources to join this international undertaking and that it is, therefore, indispensable to provide the necessary assistance to permit them to do so,

Acknowledging that the international community has established the United Nations Fund for Drug Abuse Control as an appropriate tool for organizing and implementing such international assistance,

Acknowledging with appreciation the efforts already made by the Fund which, in recent years, as a result of the increased generous contributions of some countries, has strengthened and expanded its programme,

Appreciating the necessity to integrate the programmes for drug control and prevention of drug abuse within the general developmental needs of the concerned countries,

Noting that, compared with the gravity of the needs, those achievements are still insufficient and much more remains to be done,

1. Invites Member States to take full advantage of the facility offered by the United Nations Fund for Drug Abuse Control to pool resources and thus achieve a greater impact through improved co-ordination and unified programming;

2. Urges Member States, in order to give a firm impetus to the fight of the world community against international drug traffic, to initiate or increase substantially contributions to the Fund.

RESOLUTION 4

Establishment of an African Regional Institute for the Prevention of Crime and the Treatment of Offenders

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

Recalling resolution 19 adopted by the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders and, in particular, the recommendations contained therein, 26/

Also recalling that the Regional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at

26/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

Addis Ababa from 28 November to 2 December 1983, 27/ expressed great concern at the delay in the establishment of the African Regional Institute for the Prevention of Crime and the Treatment of Offenders and called upon all the organizations and institutions involved in the establishment of that Institute to take urgent measures, in co-operation with the Organization of African Unity, to ensure the rapid realization of this project, and further called upon the Member States of the African region to co-operate fully in this respect,

Taking into account the new dimensions of criminality and crime prevention in the African region, which call for urgent action designed to moderate the deleterious impact of crime on the development process,

1. Urgently requests the Secretary-General of the United Nations to establish, as a matter of the highest priority, in close collaboration with the Organization of African Unity and with the participation of the Economic Commission for Africa, an African Regional Institute for the Prevention of Crime and Treatment of Offenders;
2. Also requests the Secretary-General to arrange a meeting of African experts on this issue as soon as possible in order to consider the role, operation, organization and administration of the Regional Institute;
3. Appeals to all countries and regional organizations to support strongly whatever efforts the Secretary-General of the United Nations may take in this regard;
4. Requests the Secretary-General to call on the competent bodies and agencies of the United Nations system to provide the necessary financial assistance for the establishment of the Institute;
5. Further requests the Secretary-General to report regularly to the General Assembly of the United Nations on the measures taken for the establishment of this Institute;
6. Requests finally the Secretary-General to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the implementation of the present resolution.

RESOLUTION 5

Technical co-operation in the field of crime prevention and criminal justice

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

Convinced of the importance of strengthening the programmes of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs and of the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders, particularly those serving the developing countries,

27/ See A/CONF.121/RPM.4, annex III.

Recalling Economic and Social Council resolution 1979/20 of 9 May 1979, in which the Council emphasized the importance of technical co-operation in the field of crime prevention and efforts to combat delinquency, especially for the developing countries,

Recalling also General Assembly resolution 36/21 of 9 November 1981, in which the Assembly urged the Department of Technical Co-operation for Development of the United Nations Secretariat and the United Nations Development Programme to increase their level of support to technical assistance programmes among developing countries,

Taking note of resolutions 18 and 19 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1980, 28/ referring to the importance of the specialized regional institutes for the developing regions,

Bearing in mind Economic and Social Council resolution 1984/51 of 25 May 1984, in which the Council requested the strengthening of appropriate arrangements for the support of technical co-operation in crime prevention and criminal justice between developed and developing countries, and also among developing countries,

Convinced that various forms of technical co-operation at the regional and international levels should be expanded and that the United Nations regional and interregional institutes should play an important role in this regard,

Realizing that the existing United Nations regional and interregional institutes have made an important contribution to the development, promotion and intensification of technical co-operation in the field of crime prevention and criminal justice, despite the shortage of financial and human resources,

1. Requests the Secretary-General of the United Nations to give special attention to technical co-operation among developing countries in the area of the prevention of crime, the treatment of offenders and criminal justice, and to establish joint programmes with the regional and national institutes collaborating closely with the United Nations;
2. Invites Governments to contribute financially, through the United Nations Trust Fund for Social Defence, to the development of United Nations technical assistance activities supported by, among other organs, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the Secretariat and to the development of the activities of the United Nations interregional and regional institutes specializing in the prevention of crime and the treatment of offenders, particularly those serving the developing countries;
3. Further invites Governments to include in their country programmes for the United Nations Development Programme activities relating to the improvement of the system of criminal justice and crime prevention;

28/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

4. Urges the United Nations regional commissions to include crime prevention and criminal justice activities in their programmes in the context of global socio-economic planning, and to channel those programmes through the United Nations regional institutes for the prevention of crime and the treatment of offenders.

RESOLUTION 6

Fair treatment of women by the criminal justice system

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

Reaffirming resolution 9 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, 29/ and Economic and Social Council resolution 1984/49 of 25 May 1984 concerning the fair treatment of women by the criminal justice system and the recommendations contained therein,

Aware that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders is addressing females as offenders and victims as major agenda items,

Recognizing the United Nations World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi in July 1985, particularly the special areas of concern identified in the Nairobi Forward-looking Strategies for the Advancement of Women 30/ relating to abused women, women in detention and women victims of crime, violence or abuse, and recognizing the resolution on domestic violence against women 31/ as adopted by Committee II of the World Conference,

Bearing in mind that violence against women is a phenomenon in many areas of the world requiring immediate and effective policy action, that female victimization is extensive in many areas, that inadequate services and insufficient attention are offered to female victims and that many of them do not receive fair and humane treatment within the criminal justice system,

Seriously concerned that many criminal justice systems are dealing with an increasing number of females, whether as victims or offenders, but that programmes, services and personnel remain insufficient and inadequate to meet their special needs and circumstances,

Noting with appreciation the reports of the Secretary-General on the situation of women as victims of crime 32/ and the fair treatment of women by the criminal

29/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

30/ See A/CONF.116/28, chap. I, sect. A.

31/ See A/CONF.116/28, annex I, sect. 2, document A/CONF.116/C.2/L.20, as revised.

32/ A/CONF.121/16.

justice system 33/ and the efforts undertaken by the Secretary-General in the conduct of the First United Nations survey on the situation of women and the administration of criminal justice systems, 1970-1982,

1. Invites Governments to pay particular attention to implementing parity of programmes and services for female offenders and to recognize and provide for the special needs of adult and juvenile females;

2. Invites criminal justice authorities to examine the alternatives to the confinement of female offenders at each stage of the criminal justice process and to endeavour to ensure fair and equitable processing and the imposition of sanctions that are appropriate to the offence;

3. Requests the Secretary-General, in the implementation of the resolutions adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders directly or indirectly relevant to female offenders, victims and practitioners, to ensure that recognition be given to their particular situations and to the need to provide for them;

4. Recommends that, in furtherance of resolution 9 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Secretary-General and Member States should develop adequate strategies to ensure the fair treatment of female offenders, victims and criminal justice practitioners, and should encourage co-operative links with social, medical and mental health services;

5. Invites Member States to provide equal opportunities with respect to the recruitment, training and advancement of women in all sectors of the criminal justice system;

6. Requests the Secretary-General, and particularly the United Nations institutes for the prevention of crime and the treatment of offenders, in collaboration with the regional commissions and other relevant United Nations organizations, to intensify efforts in the areas of training, personnel exchange, research and policy formulation and evaluation, and technical assistance concerning the fair treatment of women by the criminal justice system;

7. Requests the Secretary-General, in consultation with the United Nations Commission on the Status of Women, to report to the Committee on Crime Prevention and Control within three years or, if earlier, in time for the first preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and to report to the Eight Congress itself on progress achieved since the Seventh United Nations Congress in Milan in the fair and equitable treatment of women as offenders, victims and practitioners;

8. Recommends the inclusion of the fair treatment of females as a continuing and regular activity of the programme of work of the Secretariat in the field of crime prevention and criminal justice and that this question be discussed regularly by the Committee on Crime Prevention and Control and at future congresses.

33/ A/CONF.121/17 and Add.1 and A/CONF.121/17/Add.1/Corr.1.

RESOLUTION 7

Prosecution

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

Considering the concerns expressed by the United Nations at all times for the role of justice in the world,

Bearing in mind that a fair and equitable criminal justice system, the effective protection of citizens against crime and the humane treatment of offenders depend on the way prosecutors carry out their functions and on the impartiality of prosecutors in instituting prosecutions, as well as on the independence and impartiality of the judiciary,

Aware that, because of the pivotal role that prosecutors play in the administration of justice, it is necessary to avoid all political, social, racial, religious, cultural, sexual or any other kind of discrimination in the selection and appointment of prosecutors,

Considering that professional qualifications are essential to ensure that prosecutors accomplish their tasks and that, accordingly, it is necessary to improve the recruitment and the legal and professional training of prosecutors, and to provide them with all the necessary means to enable them properly to fulfil their function in combating criminality, particularly in its new forms,

Affirming the concern expressed in resolution 16 of the Six United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, with respect to the selection and training of prosecutors, 34/

1. Recommends that Member States should avoid all political, social, racial, religious, cultural, sexual or any other kind of discrimination in the selection, appointment and advancement in their professional career of prosecutors;

2. Also recommends that Member States should guarantee the objectivity and proper functioning of the prosecution service so as to ensure the humane and effective administration of justice;

3. Recommends that Member States should make all necessary improvements in the recruitment and training, including in-service training, of prosecutors, and that they should consider the possible need to devote more resources to the recruitment and training of qualified prosecutors;

4. Requests the Secretary-General to provide interested Member States with technical assistance, as needed and requested by them, to attain the objectives described above;

34/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

5. Also requests the Secretary-General to encourage international collaboration in research and in the training of prosecutors, using in particular regional and interregional institutes for the prevention of crime and the treatment of offenders;

6. Calls upon the Committee on Crime Prevention and Control to consider the need for guidelines relating to the selection, professional training and status of prosecutors, their expected tasks and conduct, the question of the prosecutors' immunity, means to enhance their contribution to the smooth functioning of the criminal justice system and their co-operation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations Congresses.

RESOLUTION 8

Criminal justice systems - Development of Guidelines for the Training of Criminal Justice Personnel

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

Noting that the criminal justice system is an important mechanism for ensuring peace, justice and freedom in society,

Considering that, in order to achieve the goal of the prevention and control of crime to the fullest extent, criminal justice systems should be responsive to the changing nature of crime and society,

Aware that research should be fully utilized in formulating and implementing relevant policies regarding the administration of criminal justice,

Acknowledging that the training of criminal justice personnel in all parts of the system is important in enhancing the effective administration of criminal justice systems,

1. Recommends that Member States should develop and implement adequate training programmes for criminal justice personnel;

2. Requests the Secretary-General to develop guidelines for the establishment of training programmes in all parts of the system for criminal justice personnel and to report thereon to the Committee on Crime Prevention and Control.

RESOLUTION 9

Development of crime and criminal justice information and statistical systems

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

Recalling the concern of the Fifth and Sixth United Nations Congresses on the Prevention of Crime and the Treatment of Offenders with respect to more adequate

statistics about crime and delinquency and the development of criminal justice information systems, 35/

Recognizing the existence of and need for experts among the United Nations staff and among certain Member States who could provide technical assistance on statistical matters to Member States, as requested,

Acknowledging with appreciation the efforts which have already been made by the Secretary-General in collecting international crime statistics through two survey efforts and in analyses of world crime trends,

Noting the existence in some countries of the need to develop relevant and reliable statistical and other information about the phenomenon of crime and the operation of justice systems,

Recognizing the importance of information, particularly statistical information comparable among Member States, in research activities to understand better crime and the operation of justice systems in Member States,

Noting the potential benefits of such information, including better use of resources, enhanced ability to deal effectively with crime and improved ability to administer justice in an even-handed and fair way within a Member State,

Taking note of the shortage of information in certain countries about crime that can be used to document and deal more effectively with problems of crime and justice in those countries,

Mindful that information on persons involved in criminal justice processes must be protected from inappropriate use,

Recalling Economic and Social Council resolution 1984/48 of 25 May 1984, mandating the collection of data on crime and the operation of criminal justice systems,

1. Invites interested Member States to provide for proper measures to enhance the transfer of information within the agencies of the criminal justice system, and between such agencies and the community;

2. Urges interested Member States also to take the necessary steps to protect the rights and legal interests of citizens concerning the privacy of individually identifiable data contained in criminal justice information systems;

3. Requests the Secretary-General to initiate work on the use of information systems in the administration of criminal justice for those Member States requesting such assistance and to report thereon to the Committee on Crime Prevention and Control;

4. Requests the Secretary-General to allocate existing resources to allow for the enhancement of efforts to establish and develop national statistical data bases on crime and the operation of the criminal justice systems and to strengthen the work of the United Nations regional institutes in that field;

35/ For the reports of the Fifth and Sixth Congresses, see United Nations publications, Sales Nos. E.76.IV.2 and E.81.IV.4, respectively.

5. Recommends that the Committee on Crime Prevention and Control should conduct a careful review of the results of the United Nations surveys on crime trends, operations of criminal justice systems and crime prevention strategies and should identify problems experienced by Member States in responding to the survey, and propose solutions to the problem;

6. Requests that the Secretary-General prepare a report on ways to improve the comparability and utility of data collected in the survey, and that this report should form the basis for redesigning the Third Survey;

7. Recommends that the Secretary-General and Member States should place special emphasis on providing technical assistance to those developing countries that request aid in developing crime and criminal justice information and statistical programmes;

8. Further requests the Secretary-General to disseminate and publish the data collected in the survey as a simple data base, and separately with such analysis as can be undertaken by the Secretariat.

RESOLUTION 10

Status of prisoners

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

Considering that recent national and regional reports have reaffirmed the value of the United Nations Standard Minimum Rules for the Treatment of Prisoners 36/ and related recommendations which, in many countries, have transformed the profile of correctional practices and policies,

Considering also that the Rules have been unanimously recognized by the reporting countries as a body of principles which provides, within the correctional process, adequate safeguards and guarantees to ensure due respect for prisoners' dignity,

Bearing in mind that the Rules inspire the policies of Member States to the benefit of prisoners, stimulating constant endeavours to overcome practical difficulties in the way of their application,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 14, paid particular attention to human rights instruments and their implementation for prisoners, 37/

Recalling also the mechanisms which have been developed at national and regional levels to safeguard rights of prisoners,

1. Welcomes the Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in its resolution 1984/47 of 25 May 1984;

36/ United Nations publication, Sales No. E.56.IV.4, annex I, sect. A.

37/ See United Nations publication, Sales No. E.81.IV.4, chap. I, sect. B.

2. Takes note with appreciation of the report of the Secretary-General on the implementation of the Rules; 38/

3. Invites Member States to include, in their periodic reports to the Secretariat on the implementation of the Rules, special reference to efforts being made to ensure the guarantees embodied therein, and to the mechanisms which have been developed to this end;

4. Recommends that the Eighth Congress and its preparatory meetings should further consider those issues as a matter of importance.

RESOLUTION 11

Extra-legal, arbitrary and summary executions

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

Alarmed by the practice of extra-legal, arbitrary and summary executions in several parts of the world,

Recalling the Universal Declaration of Human Rights, 39/ which guarantees the right to life, liberty and security of person,

Recalling also the International Covenant on Civil and Political Rights, 40/ which states that every human being has the inherent right to life, that this right shall be protected by law and that no one shall be arbitrarily deprived of his life,

Welcoming General Assembly resolution 39/110 of 14 December 1984, by which the Assembly once more strongly deplored the large number of summary or arbitrary executions, including extra-legal executions, which continued to take place in various parts of the world,

Bearing in mind resolution 5 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980 on the prevention and control of extra-legal executions, 41/

Acknowledging the work accomplished regarding the prevention and control of extra-legal, arbitrary and summary executions by all United Nations organs concerned,

Deeply convinced of the need to strengthen further international co-operation for the prevention and control of extra-legal, arbitrary and summary executions,

38/ See A/CONF.121/15.

39/ General Assembly resolution 217 A (III).

40/ General Assembly resolution 2200 A (XXI), annex.

41/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

Considering that the recommendations on the above question made by the Interregional Preparatory Meeting on topic V for the Seventh United Nations Congress held at Varenna, Italy, from 24 to 28 September 1984, 42/ constitute a sound basis for further activities in this field,

1. Reaffirms the strong condemnation of extra-legal, arbitrary and summary executions;

2. Calls upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty, and to take all other measures necessary to prevent those practices;

3. Requests the Secretary-General to submit an analytical review of all documents on the effective prevention, investigation and elimination of extra-legal, arbitrary and summary execution for the consideration of the Committee on Crime Prevention and Control, taking into account in particular the recommendations on this question made by the Interregional Preparatory Meeting on topic V for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

4. Urges Member States to provide the Secretary-General with any relevant information on the subject.

RESOLUTION 12

Transfer of criminal proceedings

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

Recognizing the necessity of improving ways and means of international co-operation in criminal matters,

Desiring to supplement the work already accomplished in the area of United Nations standards and norms in criminal justice,

Bearing in mind that the transfer of criminal proceedings could contribute to an early return of foreign offenders to their home countries, thus also contributing to their better social situation and furthermore to the smoother functioning of the criminal justice process,

Bearing also in mind that the formulation of a model agreement on the transfer of criminal proceedings was identified as a priority by the Committee on Crime Prevention and Control at its eighth session 43/ and by the preparatory meetings for the Seventh Congress,

42/ See A/CONF.121/IPM/3, para. 72.

43/ See Official Records of the Economic and Social Council, 1984, Supplement No. 6 (E/1984/16).

Being aware that the imposition of pre-trial custody could be considerably reduced by applying the transfer of proceedings instrument rather than sentencing a foreigner in the country of the commission of the crime,

Recalling previous work already accomplished in this specific area,

1. Invites Member States to take further steps to improve the methods of international co-operation in criminal matters by considering the conclusion of agreements for the transfer of criminal proceedings;

2. Calls upon the Secretary-General to provide or facilitate the provision of professional advice and technical support at the request of Member States that are interested in establishing such proceedings;

3. Also calls upon the Secretary-General to encourage international collaboration in research with a view to the transfer of criminal proceedings, using in particular regional and interregional institutes for the prevention of crime and the treatment of offenders;

4. Requests the Committee on Crime Prevention and Control to study this subject and to consider the possibility of the formulation of a model agreement for the transfer of criminal proceedings with a view to presenting it to the General Assembly for consideration;

5. Requests also that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings should further consider these issues.

RESOLUTION 13

Transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released

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

Recognizing the necessity of improving ways and means of international co-operation in criminal matters,

Desiring to supplement the work already accomplished in the area of United Nations standards and norms in criminal justice,

Bearing in mind that the possibility of transfer of supervising foreign offenders who have been conditionally sentenced or conditionally released might contribute to an increasing use of alternatives to imprisonment also with a view to foreign offenders,

Being aware that the supervision in the offender's home country rather than the enforcement of the sentence in the country where the offender does not have any roots could contribute to an earlier and better re-integration into society,

Bearing also in mind that the formulation of a model agreement on the transfer of supervision of conditionally sentenced or conditionally released offenders was identified as a priority by the Committee on Crime Prevention and Control at its eighth session and by the preparatory meetings for the Seventh Congress,

Recalling previous work accomplished in this specific area,

1. Invites Member States to take further steps to improve the methods of international co-operation in criminal matters by considering the conclusion of agreements on the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released;
2. Calls upon the Secretary-General to provide or facilitate the provision of professional advice and technical support at the request of Member States that are interested in establishing such proceedings;
3. Also calls upon the Secretary-General to encourage international collaboration in research with a view to the transfer of the supervision of foreign offenders who have been conditionally sentenced or conditionally released, using, in particular, regional and interregional institutes for the prevention of crime and the treatment of offenders;
4. Requests the Committee on Crime Prevention and Control to study this subject and to consider the possibility of the formulation of a model agreement for the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, with a view to presenting it to the General Assembly for consideration;
5. Also requests the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings to consider further those issues.

RESOLUTION 14

Code of conduct for law enforcement officials

The Seventh United Nations Congress for the Prevention of Crime and the Treatment of Offenders,

Recalling General Assembly resolutions 34/169 of 17 December 1979, 35/170 of 15 December 1980 and 39/118 of 14 December 1984,

Recalling also resolution 12 on the Code of Conduct for Law Enforcement Officials, adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980 44/ the particular attention paid to questions relating to the dissemination of the Code as well as the training of law enforcement officials and the emphasis given by the Sixth Congress to the importance of the professionalization of law enforcement officials,

Noting the observations made by the Committee on Crime Prevention and Control at its eighth session, 45/

44/ See United Nations publication, Sales No. E.81.IV.4, Chap. I, sect. B.

45/ See Official Records of the Economic and Social Council, 1984, Supplement No. 6 (E/1984/16).

Noting also the recommendations of the Interregional Preparatory Meeting on topic V "Formulation and application of United Nations Standards and Norms in Criminal Justice", held at Varenna, Italy, from 24 to 28 September 1984, 46/

Acknowledging an increasing awareness among Member States of the principles embodied in the Code of Conduct for Law Enforcement Officials, 47/

Considering also that the work of law enforcement officials is a social service of great importance and that, therefore, there is a need to maintain and, whenever necessary, to improve their working conditions and status,

Bearing in mind that law enforcement officials have a vital role to play in the protection of human rights while carrying out their duties, and that some countries already have comparable principles of conduct embodied in their statutes and practices,

Bearing in mind also that the use of force and firearms by law enforcement officials should be commensurate with the due respect for human rights,

Recalling the concern expressed by Member States with respect to ensuring the dissemination of the Code and to establishing a set of guidelines for its more effective implementation,

Reaffirming General Assembly resolution 39/118 of 14 December 1984, in which the Assembly requested the Seventh Congress to give urgent attention to the matter of devising ways and means for ensuring more effective application of existing standards and to report thereon to the Assembly at its fortieth session,

1. Invites attention to the guidelines formulated at Varenna;
2. Invites Member States to inform the Secretary-General every five years, beginning in 1987, on the progress achieved in the implementation of the Code of Conduct for Law Enforcement Officials, including dissemination of the Code and incorporation of its principles into national legislation, and requests the Secretary-General to report thereon to the Committee on Crime Prevention and Control;
3. Appeals to all Governments to promote seminars and training courses on the role of law enforcement officials at the national and regional levels;
4. Requests the Secretary-General to provide to Governments, at their request, the services of experts and regional and interregional advisers to assist in implementing the Code;
5. Calls upon the Committee on Crime Prevention and Control to consider measures for a more effective implementation of the Code;
6. Requests that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings consider those issues.

46/ For the report of the Interregional Preparatory Meeting, see A/CONF.121/IPM/3.

47/ General Assembly resolution 34/169 of 17 December 1979, annex.

RESOLUTION 15

Safeguards guaranteeing the rights of those
facing the death penalty

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

Bearing in mind the provisions set out in article 2, paragraph 1, and articles 14 and 15, of the International Covenant on Civil and Political Rights and, in particular, those on the death penalty contained in article 6, 48/

Recalling General Assembly resolution 32/61 of 8 December 1977,

Welcoming Economic and Social Council resolution 1984/50 of 24 May 1984 containing safeguards guaranteeing protection of the rights of those facing the death penalty,

1. Endorses the safeguards approved by the Economic and Social Council in its resolution 1984/50;

2. Invites all States retaining the death penalty and whose present standards fall short of the safeguards to adopt the safeguards and to take the necessary steps to implement them by:

(a) Incorporating or making provision for the safeguards in national legislation and regulations;

(b) Ensuring that judges, lawyers, police officers, prison officials and other persons, including military personnel who may be concerned with the administration of criminal justice, are familiar with the safeguards, and any corresponding provisions in national legislation and regulations, by including them in courses of instruction, by disseminating and publicizing them and by other appropriate means;

(c) Drawing the attention of persons facing the death penalty, and their representatives, to the safeguards and to any corresponding provisions in national legislation and regulations, and disseminating to the public those safeguards, by all appropriate means;

3. Invites the General Assembly to request the criminal justice and human rights bodies of the United Nations to promote the safeguards and to take them fully into account in their work;

4. Requests intergovernmental organizations, including regional organizations, specialized agencies and other bodies within the United Nations system having responsibilities in the field of criminal justice and human rights, as well as the relevant non-governmental organizations, to promote the safeguards and to take them fully into account in their work;

5. Requests the Secretary-General of the United Nations:

48/ General Assembly resolution 2200 A (XXI), annex.

(a) To use his best endeavours in order to ensure as far as possible the effective implementation of the safeguards in all States;

(b) To include in the quinquennial reports on capital punishment submitted to the Economic and Social Council, in accordance with Council resolution 1745 (LIV) of 16 May 1973, a statement on the implementation of the safeguards;

(c) To bring the text of the safeguards and of the mechanism for their implementation to the attention of all States, the General Assembly, the appropriate intergovernmental organizations, including regional organizations and specialized agencies, and other appropriate bodies within the United Nations system as well as non-governmental organizations;

(d) To disseminate and publicize widely, the safeguards and the mechanism for their implementation, and to publish the texts in as many languages as possible.

RESOLUTION 16

Reduction of the prison population, alternatives to imprisonment, and social integration of offenders

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

Recognizing anxiety in many countries at the level of crime, and the importance of finding effective measures to provide reassurance and protection,

Welcoming the attention which Member States have given to preventive measures and to an increasing range of non-custodial sanctions, which have been found effective and acceptable to the public,

Emphasizing that non-custodial sanctions are a more humane way of facilitating rehabilitative efforts in relation to sentenced individuals,

Bearing in mind that the restriction on liberty and the possibility of encroachments on fundamental rights may be substantial even in the case of penal sanctions applied in the community,

Aware of the general undesirability of holding accused persons awaiting trial for long periods and of sentencing petty offenders to prison,

Recalling the draft United Nations Standard Minimum Rules on the Administration of Juvenile Justice, which recommend the avoidance of institutionalization to the greatest extent possible, 49/ and the report of the Secretary-General on alternatives to imprisonment and measures for the social resettlement of prisoners, 50/

49/ A/CONF.121/14 and Corr. 1, chap. II. For the Rules as adopted by the Seventh Congress, see chap. I, sect. B.1 above.

50/ A/CONF.121/13.

Aware also of research studies which indicate that in various countries increases in the number and length of prison sentences do not have a significant effect on the deterrence of crime, and believing that deterrence is more effectively achieved by the certainty and rapidity of detection,

Recognizing that the increasing prison populations and the prison overcrowding existing in many countries are one factor which may create difficulties in the observance of the Standard Minimum Rules for the Treatment of Prisoners, 51/

Recalling with appreciation the work of the previous United Nations congresses in those areas and Economic and Social Council resolution 1984/46 of 25 May 1984, in which the Council encouraged Member States to increase their efforts in order to overcome obstacles to the greater use of non-custodial sanctions,

1. Recommends that Member States should further increase their efforts to reduce the negative effects of imprisonment;
2. Recommends to Member States, therefore, that they should intensify the search for credible non-custodial sanctions, which would serve to achieve a reduction in the prison population;
3. Invites Governments to continue reporting to the Secretary-General every five years on developments in those areas;
4. Calls upon the Committee on Crime Prevention and Control to examine the question of non-custodial sanctions and measures for the social integration of offenders, taking into account, inter alia, the following:
 - (a) Imprisonment should be imposed only as a sanction of last resort, taking into account the nature and gravity of the offence, and the legally relevant social conditions and other personal circumstances of the offender. In principle, imprisonment should not be imposed on petty offenders;
 - (b) Due regard should be paid to the requirements of public safety;
 - (c) In no case should the use of alternatives interfere with, or delay, efforts towards depenalization and decriminalization;
 - (d) When non-custodial sanctions are introduced, they should, in principle, be used as real alternatives to imprisonment, not in addition to it;
 - (e) The general public should be better informed of the importance and advantages of non-custodial sanctions, compared with imprisonment;
 - (f) Efforts should be made to avoid as far as possible the use of imprisonment imposed because of the non-payment of fines in countries where imprisonment on these grounds is possible under the law, in particular by ensuring: (i) that fines are proportionate to the offender's ability to pay, (ii) that before a person is imprisoned for non-payment, the circumstances are fully taken into account, and (iii) that instead of imprisonment, non-custodial sanctions could be applied;

51/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August to 3 September 1955 (United Nations publication, Sales No. E.56.IV.4), annex I, sect. A.

(g) The use of alternatives to imprisonment must be co-ordinated with the competent social services in facilitating, if needed, the social resettlement of the offender;

(h) When alternatives to imprisonment are applied, care must be taken to ensure adequately legal and judicial guarantees in the application, management and supervision of the alternative measures;

(i) The management of alternative measures and the supervision of the convicted offenders must be carefully designed; it should also use the voluntary help of members of the public, provided that these have been carefully selected and adequately prepared;

5. Requests the Committee on Crime Prevention and Control to encourage the United Nations regional and interregional institutes on the prevention of crime and the treatment of offenders to strengthen their programmes so as to:

(a) Develop effective non-custodial sanctions and measures for the social integration of offenders, and limitations on the use of imprisonment;

(b) Give all possible assistance to Member States in undertaking research on the effectiveness of a problem-solving approach to crime prevention, on non-custodial sanctions and on obstacles to the reduction in the use of imprisonment;

6. Requests the Committee on Crime Prevention and Control to consider those problems, and requests the Secretary-General to prepare a report to assist the Committee in its deliberations;

7. Requests the Committee on Crime Prevention and Control to submit to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders proposals for further action on this topic;

8. Requests that the Eighth Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings further consider those issues.

RESOLUTION 17

The human rights of prisoners

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

Calling attention to the provisions of the Universal Declaration of Human Rights, 52/ the International Covenant on Civil and Political Rights, 53/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 54/ the International Convention on the Elimination of All Forms of

52/ General Assembly resolution 217 A (III).

53/ General Assembly resolution 2200 A (XXI), annex.

54/ General Assembly resolution 39/46.

Racial Discrimination, 55/ the Standard Minimum Rules for the Treatment of Prisoners and other relevant international instruments which deal, inter alia, with various aspects of the status of prisoners,

Bearing in mind that the report of the Interregional Preparatory Meeting held in Varenna, Italy, from 24 to 28 September 1984, 56/ recognized the importance of the rights of prison inmates and recommended that the Secretariat should continue to study them,

Conscious of the discussions which for some time have been going on in the Sixth Committee of the General Assembly on the Draft Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment,

Recommends that the General Assembly should finalize as soon as possible, the work on the Draft Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment paying due attention to any constructive proposals which may be made to it to that effect.

RESOLUTION 18

Role of lawyers

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

Considering that a fair and equitable system of administration of justice and the effective protection of rights and freedoms of citizens depend on the contribution of lawyers and of the judiciary,

Considering also that the role of lawyers and of the judiciary mutually complement and support each other as integral parts of the same system of justice,

Recognizing that adequate protection of the rights of citizens requires that all persons have effective access to legal services provided by the lawyers who are able to perform effectively their proper role in the defence of those rights, and to counsel and represent their clients in accordance with the law and their established professional standards and judgement without any undue interference from any quarter,

Aware that bar associations and other professional associations of lawyers have a vital role and responsibility to strive to protect and defend their members against improper restrictions or infringements, as well as to uphold their professional ethics,

Believing that the legal profession must serve all sections of society and that bar associations have a responsibility to co-operate in making available the services of lawyers to all those in need of them,

55/ General Assembly resolution 2106 A (XX), annex.

56/ For the report of the Interregional Preparatory Meeting, see document A/CONF.121/IPM/3.

1. Recommends that Member States should provide for protection of practising lawyers against undue restrictions and pressures in the exercise of their functions;
2. Requests the Secretary-General to provide interested Member States with all the technical assistance needed to attain the objective described above;
3. Also requests the Secretary-General to encourage international collaboration in research and in the training of lawyers, using, in particular, regional institutes for the prevention of crime and the treatment of offenders;
4. Requests the Committee for Crime Prevention and Control to study this question taking into account the work already done and to prepare a report on the role of lawyers;
5. Requests the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings to consider further those issues.

RESOLUTION 19

Youth, crime and justice

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

Taking into account that unemployment, low standards of living, illiteracy, inadequacy of education in the family, at school and at vocational training institutions, and other manifestations of social injustice such as racial and national discrimination are factors influencing juvenile crime,

Noting that the strategic focus of the struggle against juvenile crime must be the prevention of criminal conduct,

Considering that success in the prevention of juvenile crime may be achieved by neutralizing the negative effect of the above-mentioned factors and conditions which contribute to juvenile crime and by removing them altogether,

1. Calls upon all States Members of the United Nations to take all measures in their power to eliminate such conditions in the life of young persons as illiteracy, unemployment, racial and national discrimination and other forms of social inequality;
2. Suggests that all States should, as part of the process of economic and social development, take all measures in their power for the proper upbringing and education of youth and for providing young people with work;
3. Considers it necessary to emphasize the need for the implementation of those measures on behalf of all young people and, above all, of young persons in those groups and strata of the population which, because of their economic and social status, particularly require this;
4. Recommends that the public should be more widely involved in educational-preventive work among juveniles;

5. Calls upon all States to adopt multifaceted and effective measures to limit opportunities for young persons to use alcohol and narcotic substances as well as to protect young persons from the adverse influence of the cult of violence, cruelty and amoral behaviour;

6. Proposes an expansion at the regional and interregional levels of scientific research into the causes of juvenile crime, the ways and means of eliminating those causes, the active dissemination of the knowledge acquired regarding the nature of juvenile crime, its causes and the ways of eliminating them on a social basis as a strategic focus of the prevention of juvenile crime;

7. Invites the Economic and Social Council to consider the question of economic and social approaches to the prevention of juvenile crime in the general context of measures to combat and prevent crime.

RESOLUTION 20

Research on youth, crime and juvenile justice

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

Recalling the Caracas Declaration adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and, in particular, its affirmation that "Crime prevention and criminal justice should be considered in the context of economic development, political systems, social and cultural values and social change, as well as in the context of the new international economic order", 57/

Recalling also the endorsement which the Declaration gave to research by stating that "there is a need to promote scientific research, taking into account the particular circumstances and priorities of each country or region", 58/

Bearing in mind the approval extended by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to the report of the Working Group of Committee I of the Congress, in which the Working Group stated it was in general agreement with, inter alia, the need "To initiate and develop further research and analysis on the interrelationships between crime and specific socio-economic issues, for example, migration, urbanization and industrialization, and socio-cultural issues such as the role of the family and schools in education, taking into account diversities in national situations and drawing upon national and regional experiences",

Noting that, in identifying a similar need for research and analysis, the New Delhi Consensus on the New Dimensions of Criminality and Crime Prevention in the Context of Development, adopted by the Interregional Preparatory Meeting for the

57/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A, para. 1 (2).

58/ Ibid., para. 1 (4).

Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 1 of the Congress, recommended that "the United Nations should continue to strengthen its research capacity", 59/

Recalling Economic and Social Council resolution 1984/45 of 25 May 1984, by which the Council approved the proposal to organize a research workshop within the framework of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and thereby created an opportunity for scholars and research workers to make an enhanced contribution to the work of the Congress,

Noting with appreciation the report of the Secretary-General on "Research in juvenile delinquency", 60/

Noting with satisfaction the invaluable contribution made by the United Nations Social Defence Research Institute, as well as by the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the Arab Security Studies and Training Centre and other international and regional organizations and centres, to the growing international and national recognition of the central importance of action-oriented research as an effective instrument for the formulation and implementation of policies for crime prevention and control,

Noting also with appreciation the results of the Research Workshop on "Perspectives in action-oriented research: youth, crime and juvenile justice", held on 27 and 28 August 1985 within the framework of the Seventh Congress, including the Workshop's recommendation to the Congress,

1. Adopts the "Principles, guidelines and priorities with respect to research on youth crime", set out in the annex below;
2. Invites the Economic and Social Council to request the Committee on Crime Prevention and Control to take appropriate action at its next session for the effective implementation of the "Principles, guidelines and priorities" at the international, regional, sub-regional and national levels;
3. Recommends to the Economic and Social Council that it should invite the General Assembly, as well as the interested States Members of the United Nations and members of the specialized agencies, to ensure funding of the research activities of the United Nations interregional and regional institutes dealing with the prevention of crime and the treatment of offenders, taking into account also the new dimensions of criminality;
4. Requests the Secretary-General to ensure that the funding agencies and programmes of the United Nations system are adequately mindful of the relevance to economic and social development of progress in crime prevention and criminal justice and to pay due regard to this linkage in the programming of their activities;

59/ A/CONF.121/IPM/5, p. 3, para. 7 (b).

60/ A/CONF.121/11.

5. Recommends to the Economic and Social Council that it should invite the General Assembly to reaffirm the urgent need to establish, with the assistance of the existing United Nations specialized units, an African regional United Nations institute for appropriate research activities and related operational actions in order to develop further the United Nations regional coverage in the field of crime prevention and criminal justice;

6. Invites the Economic and Social Council to request the Committee on Crime Prevention and Control to prepare, for approval by the Council, a proposal for the organization and preparation of research workshops to be convened as integral parts of the programme of future United Nations congresses on the prevention of crime and the treatment of offenders;

7. Requests the Secretary-General to report to the Eighth Congress on the Prevention of Crime and the Treatment of Offenders on the implementation of the present resolution.

Principles, guidelines and priorities with respect to
research on youth crime

1. Prior to development of specific strategies on youth crime, the nature and purpose of research must be clearly recognized and definitional issues, in both a legal and social context, should be clarified.
2. It should be recognized that action-oriented research has a central and indispensable role to play in the design and implementation of specific strategies on youth crime and juvenile justice.
3. The initial priority of research is to advance the overall understanding of the phenomenon in its socio-legal context, realizing that there is a direct link between understanding and the formulation of preventive policies.
4. In the light of that link, it is necessary to analyse and evaluate the various existing relationships between research and policy-making processes with a view to recommending such changes as may be necessary.
5. Sound research should develop from appropriate theories in a culturally-relevant framework, and requires the support of a solid, reliable and accurate information base.
6. For research to be action-oriented and effective it should:
 - 6.1 be defined, designed and targeted in relation to problems which confront the community, the policy-makers and practitioners of a particular socio-legal system;
 - 6.2 create intellectual conditions which enable analysis and rational problem-solving in a continuum;
 - 6.3 be cognizant of the social relativity of culturally-specific crime-prevention strategies and be able to assess their preventive potential;
 - 6.4 appreciate that policy-makers and practitioners should participate in the research process from its inception, to assist in the accumulation of information, to participate in the development of the research process,

to facilitate its interpretation and to utilize research findings, as a complementary endeavour of all the parties concerned;

6.5 produce results which can immediately be disseminated in a form which has direct relevance to policy-makers and has the potential to stimulate further action-oriented research;

6.6 be amenable to evaluation in terms of its ultimate influence on policy development.

7. Research on crime, including youth crime, should be undertaken in the context of socio-economic development and change with special attention being paid to the complex multifaceted relationship between:

7.1 rates and directions of change in social structure, which may include urbanization, migration, modes of production and distribution, socio-economic status, family structure, and crime in general, as well as specific categories of crime;

7.2 changes in values, and regulatory and control mechanisms, reflected in patterns of socialization, education, morals, religion, ideologies and law as each relates to crime.

8. Greater co-ordination, exchange of information between countries, as well as technical co-operation between developed and developing countries and among developing countries in the field of crime prevention and control, would provide a better understanding of the phenomena not only from mono-cultural, but also from inter-cultural and cross-cultural perspectives, and therefore enhance the effectiveness of policy measures.

9. With reference to contemporary crime problems in individual countries, the following areas of research and intervention appear to be especially important:

9.1 drug trafficking, drug abuse and their relationship with youth crime;

9.2 violent crime involving juveniles;

9.3 street children and deviance with special emphasis on preventive programmes;

9.4 female juvenile delinquency;

9.5 marginal groups of juveniles;

9.6 models and methods of control processes and treatment of young offenders;

9.7 provision of education and training skills and techniques essential to the exercise and implementation of research;

9.8 promotion of information and data collection methodologies and programmes, and the systematic dissemination of such information;

9.9 further strengthening of research and consultancy capacities in developing countries.

RESOLUTION 21

Development of standard minimum rules for the protection of juveniles deprived of their liberty

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

Having adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 61/

Recalling that the Standard Minimum Rules for the Administration of Juvenile Justice state that the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period,

Aware that those Rules do not fully address the conditions in which juveniles deprived of their liberty are detained,

Having in mind the large number of juveniles in penal and other closed correctional institutions throughout the world,

Recognizing that juveniles have the right to benefit from special measures and protection designed to meet their specific needs, and that deprived of their liberty, being particularly vulnerable, require such protection as a priority during and after the period when they are deprived of their liberty,

Recognizing further that the Standard Minimum Rules for the Treatment of Prisoners, 62/ although having some applicability to institutions for young people, specifically state that they do not seek to regulate such institutions,

1. Recommends that the Committee on Crime Prevention and Control should be requested to develop standard minimum rules for the treatment of juveniles deprived of their liberty;
2. Recommends that the Secretary-General should report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved in the formulation of the proposed standard minimum rules for the treatment of juveniles deprived of their liberty;
3. Also recommends that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings should consider those issues as a matter of priority.

61/ A/CONF.121/14 and Corr.1, chap. II (see also C.1).

62/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August to 3 September 1955 (United Nations publication, Sales No. 56.IV.4), annex I, sect. A.

RESOLUTION 22

Crime prevention in the context of development

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

Bearing in mind the Caracas Declaration, unanimously adopted by the Sixth United Nations Congress on Crime Prevention and the Treatment of Offenders, 63/

Reiterating once again that the problem of crime is an impediment to progress towards the achievement of an adequate quality of life for all persons,

Alarmed at the increase and gravity of crime in many parts of the world, with its negative effects on social progress,

Noting that through its social interactions crime is damaging to the all-round development of the world's nations and to peace and justice, and that its reduction represents an indispensable condition for the full enjoyment of human rights and the fundamental freedoms of individuals and peoples,

Taking note of General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, which contain the Declaration and the Programme of Action on the Establishment of a New International Economic Order,

Taking into account General Assembly resolution 36/133, which declared inter alia, that the right to development is an inalienable human right, and taking note that other forums of the United Nations have expressed that equality of opportunity for development is a prerogative both of nations and of individuals who comprise them,

Bearing in mind that the ultimate objective of development is the steady enhancement of the welfare of the entire population based on the full participation of the people in the development process and on the equitable distribution of the benefits that flow therefrom,

Aware that any policy of crime prevention and the treatment of offenders must accord the highest priority to the full realization of the development of the peoples,

Emphasizing that the basic crime prevention strategy must seek to eliminate the causes and conditions that favour crime, in close co-operation with the competent national and international bodies while fully respecting their mandates, and bearing in mind that racial discrimination including apartheid, unemployment, illiteracy and the deterioration of living conditions in certain regions of the world, in particular with regard to the grave economic situation confronting African and many other countries, and furthermore any form of violation of human rights and fundamental freedoms, constitute especially negative factors in this respect,

63/ See Sixth United Nations Congress on the Prevention of Crime and on Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A.

Bearing in mind the social implications of the heavy burden of external indebtedness on the peoples of Latin America, Asia and Africa, calling for intensified efforts by all concerned parties, including the competent international institutions, in order to find the needed solutions,

Considering that programmes of crime prevention and the treatment of offenders must be grounded in the political, economic, social and cultural realities of each country and implemented in a climate of freedom and respect for human rights, and that it is essential that the Member States should develop an effective capacity for the formulation and planning of crime prevention policies in co-ordination with their strategies for economic, political, social, and cultural development,

1. Reaffirms that crime prevention and the treatment of offenders must be examined within the context of socio-economic and political systems, social and cultural values, and social change;
2. Reaffirms the need for increased efforts of the international community and the Member States, in the context of a new international economic order and with the aim of promoting the International Development Strategy for the Third United Nations Decade for Development, in order to avoid adverse consequences in regard to the economic and social situation for crime prevention and the full achievement of human rights and an adequate development of nations;
3. Deplores the increase and gravity of crime in different parts of the world;
4. Calls on all the Member States of the United Nations to take all measures within their power in order to eliminate conditions of life that degrade human dignity and are factors relevant to crime, including unemployment, poverty, illiteracy, racial discrimination, apartheid, and social injustice;
5. Recommends that all the States promote the broadest possible participation of the people in political, social and other measures designed to prevent crime;
6. Reiterates once again that the international community must accord, or continue to accord, priority to the search for solutions in the area of crime prevention and must promote international co-operation on the basis of respect for the independence, sovereignty and territorial integrity of every State;
7. Requests that at the Eighth United Nations Congress on Crime Prevention and the Treatment of Offenders there be an examination of the "new dimensions of criminality in the context of development" on the basis of the information furnished by the Member States on the results achieved as a consequence of the implementation of the resolutions and decisions of this Congress.

RESOLUTION 23

Criminal acts of a terrorist character

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

Deeply disturbed at the prevalence of actual or threatened violent attacks, and other concerted acts of violence against innocent persons, which are addressed in accepted international instruments,

Noting in particular the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; 64/ the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, 65/ the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, 66/ the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, concluded at New York on 14 December 1973, 67/ and the International Convention against the Taking of Hostages, concluded at New York on 17 December 1979, 68/

Noting also the conclusion reached at the Interregional Preparatory Meeting for the Seventh Congress, held at New Delhi from 22 to 26 April 1985, on the topic of "New Dimensions of Criminality and Crime Prevention in the Context of Development: Challenge for the Future", that terrorist activities, including kidnapping and murder, hijacking and the taking of hostages, and the destruction of property, seriously impair freedom and the political stability of communities, 69/

Recalling General Assembly resolution 2551 (XXIV) of 12 December 1969, 2645 (XXV) of 25 November 1970, and 32/8 of 3 November 1977, in which, inter alia, the Assembly condemned acts of aerial hijacking or other interference with civil air travel through the threat or use of force,

Gravely concerned at the human, social and economic cost of such attacks, and the threat posed by such attacks to normal international intercourse, particularly in the areas of travel, commerce and diplomatic relations,

Bearing in mind the safeguards and maintenance of basic rights under ordinary legal procedures and in conformity with international human rights standards,

1. Calls upon all States to take all necessary measures to ensure full observance of the obligations contained in the relevant conventions to which they are parties, in particular the application of appropriate law enforcement measures under ordinary legal procedures, in conformity with international human rights standards;

2. Invites all States that have not yet become party to the relevant multilateral conventions to consider taking the necessary steps to do so in an expedited fashion;

64/ United Nations, Treaty Series, vol. 704, p. 219.

65/ United Nations, Treaty Series, vol. 860, p. 105.

66/ United Nations, Treaty Series, vol. 974, p. 177.

67/ General Assembly resolution 3166 (XXVIII), annex.

68/ General Assembly resolution 34/146.

69/ For the report of the International Preparatory Meeting, see A/CONF.121/IPM/5.

3. Urges all States to adopt legislation that, whenever necessary, will strengthen legal measures against those who commit violent acts encompassed by the present resolution, and to facilitate the exchange of information between States in order to improve the abilities of Governments to prevent violence, to safeguard its citizens and to respond more effectively in cases of offences contemplated in the relevant multilateral conventions;

4. Urges all States to facilitate, to the fullest extent possible, the effective application of law enforcement measures with respect to those who commit violent acts encompassed by the present resolution and to rationalize their extradition procedures and practices and other co-operative arrangements with their respective legal processes, and to avoid inappropriate exceptions;

5. Calls upon all States to take steps to strengthen co-operation, particularly in the areas of extradition and mutual legal assistance, with a view towards increasing the effectiveness of law enforcement measures in cases of offences contemplated in the relevant multilateral conventions;

6. Calls upon all States to take all appropriate measures as recommended by the International Civil Aviation Organization and as set forth in relevant international conventions to prevent violent attacks against civil aviation transport and its facilities, and to take all appropriate measures to prevent violent attacks against other forms of public transport such as civil maritime transport;

7. Encourages the International Civil Aviation Organization to continue its efforts aimed at promoting universal acceptance of and strict compliance with the international air security conventions and to strengthen measures aimed at suppressing acts of unlawful interference with civil aviation;

8. Requests that the Committee on Crime Prevention and Control consider the development of recommendations for international action to strengthen law enforcement measures, including extradition procedures and other arrangements for legal assistance and co-operation, with respect to offences encompassed by the present resolution.

RESOLUTION 24

Expression of thanks to the people and Government of Italy

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

Having met in Milan from 26 August to 6 September 1985 at the invitation of the Government of Italy,

1. Expresses its profound gratitude to the President of the Republic, the people and the Government of Italy, the Italian Inter-Ministerial Organizing Committee, the authorities of the region of Lombardy, and the civic authorities of Milan for their warm and generous hospitality, and for the excellent facilities provided, and to the Centro Nazionale di Prevenzione e Difesa Sociale for its outstanding scientific and organizational contribution to the preparations for the Congress;

2. Notes with great satisfaction the adoption of the Milan Plan of Action 70/ and requests the Secretary-General of the United Nations to ensure that the Plan receives the widest possible circulation and publicity and to prepare proposals for its implementation.

Decision. Credentials of the representatives to the Congress

At its 13th plenary meeting, on 6 September 1985, the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders approved the report of the Credentials Committee (see chap. IV, sect. C below).

70/ See section A above.

APPENDIX III

CANADIAN INTERVENTIONS

General

Speech delivered by the Head of the Canadian Delegation, the Honourable Perrin Beatty, on Monday afternoon, August 26, 1985.

Permettez-moi tout d'abord de remercier les autorités italiennes de leur chaleureux accueil. Je tiens également à remercier le Secrétaire général adjoint, Mme Shahani, et le Secrétaire exécutif du Septième Congrès des Nations Unies, M. Shikita. J'apprécie vivement cette occasion qui m'est donnée de rencontrer les représentants des divers pays qui se sont réunis ici pour mettre en commun leurs expériences et échanger leurs idées sur des questions qui nous intéressent et nous concernent tous.

Je suis très fier d'être à la tête de la délégation canadienne au Septième Congrès des Nations Unies sur la prévention du crime et le traitement des délinquants. Comme dans le cas de la participation du Canada aux congrès antérieurs des Nations Unies, le ministre du Solliciteur général du Canada a joué un rôle de premier plan dans les préparatifs en vue de notre participation au Septième Congrès. Ont également participé étroitement à ces préparatifs, bien entendu, plusieurs autres ministères fédéraux, tous les gouvernements provinciaux et territoriaux, ainsi que divers organismes non gouvernementaux et du secteur du bénévolat qui oeuvrent activement dans ce domaine. La composition de notre délégation témoigne de cette collaboration.

The UN Congresses are especially important ones for Canadians. We have inherited and imported values, beliefs, languages and cultures from every part of the world. We are, therefore, very much aware that our destiny is inextricably linked with the destinies of other people within a highly inter-dependent community of nations.

These linkages and inter-dependencies between and among peoples have long been recognized in our common pursuit of the goals of world peace and respect for human rights. Happily, there is now a growing recognition that crime prevention is not only a vital element in our pursuit of world peace and respect for human rights but also that successful crime prevention requires concerted national, regional, and international action.

It is for this reason that Canada is very pleased to see that the subject of crime prevention has been given such prominence on the congress agenda. For we too are firmly of the view that the phenomenon of transnational crime - particularly as it manifests itself in terrorism, drug trafficking and the commercial crimes of organized syndicates - makes it imperative that our strategies be developed within and through the vehicle of the United Nations and its various agencies. While Canada is very proud of its achievements in crime prevention, at both community and national levels, we

also recognize that no single nation - and indeed no regional group of nations - can expect to be able to cope successfully with the phenomenon of transnational crime. Thus, we welcome the opportunity that this congress presents to assure you, Mr. Chairman, of Canada's commitment to developing, in concert with the world community of national and the UN secretariat, more effective crime prevention strategies at the international level.

For that purpose, Canada recognizes the significance of the guiding principles as a most useful means of facilitating an effective response to dimensions of criminality both old and new. We are very impressed by the recent New Delhi consensus on the new dimensions of criminality and crime prevention in the context of development. Canada has no hesitation in recognizing that criminal justice is a significant and necessary element of social and economic justice. We look forward to collaborating with other Members States in developing a set of guiding principles that genuinely reflect the aspirations of all members of the world community.

Le Canada envisage avec plaisir la perspective de communiquer aux autres États Membres les fruits de son expérience dans le domaine de la prévention du crime. La prévention du crime est un objectif que visent depuis toujours les diverses composantes et les divers paliers du système canadien de justice pénale. Dans le passé, l'accent était mis sur la dissuasion et le châtement individuel. Dernièrement, toutefois, nous cherchons à élaborer des approches plus innovatrices à la prévention du crime, approches axées principalement sur la réduction des possibilités et la participation communautaire.

Nous sommes devenus de plus en plus convaincus de l'efficacité d'approches concrètes qui mettent l'accent sur les programmes conçus en vue de régler les problèmes communautaires locaux et visant des infractions particulières ainsi que des catégories particulières de victimes éventuelles. Dans cette optique, nous mettons l'accent sur la participation de la collectivité à la détermination des problèmes et sur le partage des responsabilités en matière de prévention du crime.

While not developed for the express purpose of preventing crime, Canada's extensive network of social, educational and welfare programs have no doubt had a profound influence on reducing crime and its impact. Like many other

nations, we are not confident of our understanding of the causal relationships between crime and the complex of social and economic factors. While we are committed to further developing our knowledge of these relationships, we have, in the interim, adopted a concrete, community-based approach in seeking innovative crime prevention policies and strategies.

Nor have we neglected efforts to make more effective use of traditional crime prevention strategies. We recognized some time ago, for example, that effective strategies for combatting crime and criminality are acutely dependent upon reliable, comprehensive information. In consequence, we have established a national centre for criminal justice statistics, which has proved an invaluable resource for facilitating more integrated approaches to criminal justice planning. In this same connection, we were honoured to be of assistance to the UN Secretariat in developing a draft criminal justice data base manual.

Canada is also very much aware of the dimensions of crime prevention that bear upon juvenile justice. As many of you already know, Canada recently enacted new legislation - the Young Offenders Act. This legislation represents a significant shift in the Canadian philosophy of juvenile justice. Essentially, for those persons between 12 and 17 inclusive, we have abandoned the therapeutic or child welfare model. In its place, we now have a more distinctively juridical model, one that holds young persons accountable for their offences, while recognizing the special needs of young persons and the larger interests of society. We look forward to discussions on the proposed standard minimum rules for the administration of juvenile justice and hope that a reasonable consensus can be reached.

Canada also acknowledges that there is a close, if imprecise, relation between a nation's commitment to crime prevention and its commitment to civil, political and legal rights. Quite simply human rights, such as the rights to life, liberty and security of the person, cannot meaningfully be enjoyed in an environment rife with crime, particularly crimes of violence. Since the last Congress, Canada has amended its constitution in order to entrench a Charter of Rights and Freedoms. The Charter reaffirms Canada's commitment to human rights and reaffirms our profound conviction that respect for human rights is an essential element of social and economic justice, which in turn are essential to effective crime prevention policies and strategies.

Finally, we would like to emphasize our appreciation that to prevent crime is to prevent victimization by crime. Canada had the honour of hosting the July 1984 Interregional Meeting on Victims. From that meeting of the committee of experts came a draft declaration on justice and assistance for victims of crime and abuse of power. We understand that the UN Secretariat and various non-governmental organizations have made significant progress in reformulating the original draft declaration, and we look forward to having an opportunity to review the various successors to the 1984 draft. Indeed, because Canada is anxious to encourage progress toward a declaration on victims, we would invite you, Mr. Chairman, to consider referring the matter to a working group, for consideration between now and Friday, when the issue will be formally on the agenda. We would not wish to be seen as pressing the suggestion, but we are mindful of the wide interest in this issue and of the relatively brief opportunity that we have had to consider the UN Secretariat working paper on victims.

Pour terminer, Monsieur le Président, permettez-moi de répéter que ce congrès nous offre une occasion unique de communiquer aux autres pays notre expérience en matière de prévention du crime et de collaborer avec eux à l'élaboration des normes et des instruments indispensables à la lutte contre le crime, tant au niveau national qu'international, ainsi qu'à l'instauration de la Justice sur les plans social et économique. Nous entendons, au cours des deux prochaines semaines, profiter pleinement de cette occasion, car nous avons beaucoup à contribuer à cette réunion de la communauté internationale et encore plus à apprendre de tous les pays ici réunis.

TOPIC I

Intervention by the Head of the Canadian Delegation, the Honourable Perrin Beatty, stressing the importance of efforts to reduce the demand for drugs and indicating Canada's support for the development of a new Convention on Illicit Traffic in Narcotic Drugs.

Mr. Chairman, Honourable Delegates,

Le Canada est heureux de participer aux discussions sur l'abus et le contrôle des drogues et de faire part aux délégués de son intérêt relatif à l'application de mesures internationales en vue de contrôler le trafic illicite des drogues.

Au cours des années, le marché illicite des drogues a donné lieu à nombre de problèmes importants, par exemple l'augmentation croissante de la consommation des drogues, et le perfectionnement du trafic de ces substances. Cet état de choses préoccupe au plus haut point non seulement le Canada mais aussi tous les autres pays. Il est évident qu'il faut adopter d'autres mesures en vue de vaincre ce fléau.

It is for these reasons that in February of this year Canada co-sponsored resolution 1,XXXI in the Commission of the Narcotic Drugs for the preparation of a new draft convention to deal with the enforcement of drug trafficking. We acknowledge that some initiatives could be accommodated through amendments to the existing conventions on narcotic and psychotropic substances. However, a new convention provides a much more efficient vehicle for implementing many of these new measures.

Accordingly, Canada continues to support the development of a new convention on illicit traffic in narcotic drugs and psychotropic substances.

While there are many initiatives to be undertaken to combat illicit drug trafficking, one measure which is of crucial importance to Canada concerns the seizure and forfeiture of the proceeds of drug transactions.

At present, Canada has legislation which makes it an offence to possess the proceeds of drug trafficking in Canada, even if the drug trafficking offence occurred in another country. Canadian courts have successfully ordered the forfeiture of the proceeds of drug-related crime and are in the process of defining the law and procedures which will assist in delineating the scope and effectiveness of the existing legislation.

Parmi les nombreuses mesures qui s'imposent pour la lutte anti-drogue, le Canada considère la saisie et la confiscation des profits des transactions relatives aux drogues comme une mesure d'importance cruciale.

En vertu des dispositions des présentes lois canadiennes, la possession des produits du trafic de la drogue constitue une infraction même si le trafic a eu lieu dans un autre pays. Les tribunaux canadiens ont réussi à ordonner la saisie des profits de crimes reliés à cette activité et définissent actuellement les lois et les procédures pertinentes afin d'en délimiter la portée et l'efficacité.

As a component of Canada's recent initiatives on drug trafficking, the national anti-drug profiteering program has been established. This program focuses on the identification and tracing of assets related to drug trafficking so as to provide evidence that enables seizure of criminal proceeds under the Criminal Code and other federal legislation. In the first two years of this program, police action resulted in the seizure of over \$20 million in assets from crimes related directly to profits or proceeds of drug trafficking.

As well, the Law Reform Commission of Canada and the Canadian Federal-Provincial Task Force on Enterprise Crime are continuing to assess and recommend further legal mechanisms which will enhance the objective of exercising control over the proceeds of crime to deprive offenders of their illicit gains.

I also wish to take this opportunity to stress that, from the Canadian perspective, the problem of drug abuse is multi-dimensional. While reduction of illicit drug supply at the source is considered essential, Canada also places great emphasis upon the need to decrease the demand for illicit drugs. In recognition of the importance of increased efforts to curb the demand for drugs, Canada also co-sponsored a draft resolution entitled Promotion of Prevention Education and Community Participation against Drug Abuse, at the 31st session of the Commission on Narcotic Drugs.

Les gouvernements fédéral et provinciaux ont entrepris des programmes pour le traitement des toxicomanes et la sensibilisation de nos concitoyens aux effets nocifs de la toxicomanie. Toutes les provinces canadiennes ont mis sur pied des programmes de prévention anti-drogue et sont dotées d'installations pour le traitement des toxicomanes. Dans un grand nombre de systèmes scolaires au pays, on a introduit des programmes d'information sur les méfaits de l'alcool et des drogues et cette pratique continue à s'étendre. On a aussi présenté un grand nombre de programmes destinés aux parents partout au pays en vue de les aider à prévenir plus efficacement la toxicomanie chez leurs enfants. On a en outre organisé une campagne nationale des médias et distribué un grand nombre de brochures de renseignements sur l'usage du cannabis et des autres drogues.

Canada foresees the need to reduce the demand for illicit drugs as a high priority and is committed to the concept of a comprehensive program of demand reduction, including public education programmes coupled with initiatives designed to develop a national consensus opposed to the use of these substances. A key focus will be on young people, as the detrimental effects of drug consumption on our youth is causing grave concern in Canada.

Before closing I would also like to take this opportunity to recognize the work of the various UN agencies involved in controlling narcotics traffic. The Canadian government has supported the UN fund for drug abuse control, which engages in anti-trafficking, anti-drug abuse activities since its inception in 1971 and reiterates its commitment to this fund. From the Canadian perspective, the continued support and utilization of the existing UN agencies designed to control drug abuse remains essential.

In conclusion, Mr. Chairman, I would like to thank you for giving Canada the opportunity to participate in this important discussion.

TOPIC II

- How can foreseeable social, demographic and economic changes be taken into account in criminal justice planning? (Intervention made by the Honourable J. Gary Lane, Minister of Justice and Attorney General of Saskatchewan, on August 26).
- What are, and what should be, the main forms of co-operation and information flow between the sectors of the criminal justice system? (Intervention made by the Honourable George R. McMahon, Minister of Justice and Attorney General of Prince Edward Island, on August 26).
- The fair treatment of women by the criminal justice system (Intervention made by Mr. Bernard G. Robinson, Commissioner of Corrections, British Columbia).
- The fair treatment of women and the compassionate treatment of female victims (Intervention made by Dr. Patricia N. Ripley of the Nova Scotia Policy Board, on August 29).
- The need to develop guidelines for the training of criminal justice personnel (Intervention made by Mr. D.C. Préfontaine of the federal department of Justice, on September 3)

How can foreseeable social, demographic and economic changes be taken into account in criminal justice planning?

Canada, in common with many other Member States represented at this Congress, has noted the importance of having reliable and valid information and statistics on criminal justice. It is very evident that before adequate planning in criminal justice systems can begin, it is necessary to have a base of information on what is presently happening within the system.

As the Canadian Position Paper on this topic makes plain, the constitutional organization of the criminal justice system in Canada can lead to complexities in determining exactly what is taking place within the system, and at what cost, and with what effect.

Canada does not yet have a complete base of regularly produced reliable official criminal justice statistics. The national statistics gathering organization, Statistics Canada, has established some five years ago a Centre for Justice Statistics, with the support and co-operation of the contributing agencies, the provinces and territories. This Centre is beginning work on the provision of data to be published regularly for all parts of the criminal justice system. At present, however, there is only limited information on crimes made known to the police, and on the outcomes of the proceedings against accused. Data on correctional institutions provide some picture of receptions, but there is no information on the effectiveness of different sentences in preventing official recidivism among different types of offenders.

So, while Canada was able at the Sixth Congress to draw to delegates' attention the extensive work that had been done to study the incidence of crime, the corresponding development of statistics which are routinely gathered as a basis for the functioning of the system is not yet complete. (For further details on the Canadian Centre for Justice Statistics, see note C-1a).

Information on costs, too, is difficult to obtain. The required information is not available in a form upon which planning decisions can be taken with any certainty as to the probable benefits and likely outcomes. Overall, then, it must be said that planning in criminal justice systems is only just beginning to receive attention in Canada.

However, a start has been made. The Provinces of Quebec, British Columbia and Saskatchewan are collaborating with the Canadian Centre for Justice Statistics in the development of the necessary statistical tools and management information systems to undertake the planning process. Other provinces are installing the necessary management information systems to support the planning process.

Because planning requires the definition of the objectives to be attained within the system, it is important to have a clear idea of the goals to be achieved overall by the criminal justice system, and thereafter, by each constituent part. The federal government, in publishing the White Paper "Criminal Law in Canadian Society", has provided a statement of the purpose of the criminal law itself. As yet, however, Canada has not developed an agreed statement of the purpose of the criminal justice system. This can be inferred in part from a study of the purpose of the law.

Given these difficulties, it is obviously not easy to foresee social and demographic changes, and to plan for their effect in criminal justice policy making. It is easier to begin to take account of economic factors which, in any event, are of greater short-term significance. The most important asset of a policy plan in this area must, however, be flexibility. Criminal justice policy must be capable of being adjusted in the short-term, to ensure that it meets the continually evolving needs of the society.

What are, and what should be, the main forms of co-operation and information flow between the sectors of the criminal justice system?

Canada particularly welcomes the opportunity to note the importance of co-operation and the flow of information among many separated entities of the criminal justice system. In Canada, with the division of responsibility between the different levels of government for different aspects of criminal justice, it is possible, but only at a superficial level, to describe a system as outlined in the Discussion Guide.

The different parts of the Canadian criminal justice system have, and rightly have, independent roles to play. The task of the police is different from that of the crown prosecutor; his task is different from that of the judge. If each actor played a part in a single system, and each had the same system objectives, the result would be neither just nor fair. In Canada, each group of actors in the criminal justice system has a separate role to play, which provides by a system of review and balance a fair and equitable criminal justice system.

Co-operation between the different agencies of the criminal justice system requires that each sub-component take account of the system requirements of the others. So, police take account of the imperatives of the prosecutorial system, which itself considers the requirements of the courts. However, each part has its own role to play; each has its own objectives. Working together provides a system of checks and balances which ensures fairness and equity for those involved in the system.

That having been said, it is important to note that information sharing has, with the aid of modern technology, been well-developed in Canada. So, the more than twelve hundred police forces in the country are linked by a information-sharing computer in a Canadian Police Information network. This describes not only stolen property, and the incidence of important crimes, but also the criminal history and personal description of Canada's active criminals. In addition, it gives an up-to-date index of outstanding warrants for the arrest of suspects, which can be looked over whenever a police officer wishes to make an enquiry. While at the local level, police officers are most frequently linked by voice radio to a base station with a computer terminal, increasing use is being made of computer terminals in police vehicles.

Several jurisdictions in Canada are experimenting with information to permit the more efficient organization of court-rooms and courthouse facilities. In some of these, it is possible for enquiries to be made by members of the public, witnesses or lawyers, to determine in which court they should appear. In addition, the progress of cases is also recorded.

Information is also extensively shared by the corrections services across Canada, which permit the monitoring of admissions and releases from custodial sentences, changes in security classification, and the granting of temporary absences or releases on parole.

Each of these systems permits information to flow among members of the same type of user - police, court administrators, or correctional administrators. The linking of these information bases has not yet become a reality, and much work requires to be done if it is believed essential to permit one entity in the system to pass information on individual cases to another sub-system.

The Fair Treatment of Women by the Criminal Justice System

Mr. Chairman,

Le Canada est heureux d'être parmi les premiers pays à prendre la parole pour appuyer la résolution du Panama sur le Traitement équitable des femmes au sein du système de justice pénale.

Au cours des dix derniers jours, les délégués canadiens ont participé à un certain nombre d'importants et utiles débats sur les types de services et programmes que nos systèmes correctionnel et judiciaire devraient offrir afin de répondre aux besoins spéciaux des femmes délinquantes. Nous estimons donc approprié que soit présentée en ce sens une résolution pouvant servir à la fois de guide et de modèle aux fins de l'élaboration d'un système correctionnel qui tient effectivement compte du rôle nouveau que les femmes ont assumé au sein de la société dans l'ensemble. Dans cette optique, le Canada se fait un plaisir d'appuyer l'invitation à promouvoir la participation accrue des femmes à tous les paliers du système de justice pénale.

It has been evident during the Congress that in the field of program development there is still much work to be done to ensure that offenders - of either sex - can be offered a range of appropriate programs. By calling on nations to implement "parity of programs" for female offenders, this resolution takes an important first step in this regard.

At the same time, incarceration is but one avenue in dealing with criminal behaviour. By exploring alternatives like community services, fine options or other types of sentencing, we may find that these options provide a more humane - and ultimately more truly rehabilitative - approach to offenders. This request is also an important component of the current resolutions and it is one which Canada heartily endorses.

Mr. Chairman, in enlightened societies, female offenders must be treated with justice and dignity. We believe that the resolution proposed by Panama will help ensure this and that is why we invite all nations to join with us in supporting this initiative.

Thank you.

The Fair Treatment of Women and the Compassionate Treatment of Female Victims.

The twin issues of the fair treatment of women within the criminal justice system and the compassionate treatment of female victims are of special concern to Canada. Within recent years, changing cultural perspectives and strong socio-economic pressures have combined to make all of us aware of the unique problems which women face before the law. As a result, our country recognizes the immediate need to develop both fair and equitable justice processes for women and a compassionate and caring support mechanism for female victims.

Canada was proud to have participated in the Sixth United Nations Congress at Caracas and to support Resolution Nine of those deliberations which specifically addressed the concerns of women and their treatment within the legal and penal systems. The message from the Caracas Conference, the recent Nairobi Conference on Women's Issues and the recent introduction of our Charter of Rights guaranteeing equality before the law make this an especially appropriate time for Canada to participate in this discussion of women and the law.

During the past five years since Caracas, Canada has made a number of initiatives to address some of the many problems which female offenders and victims have traditionally faced. These initiatives have been targeted in four specific areas:

1. regionalization
2. family contact
3. family violence/victim support
4. increased participation of women in the legal and penal systems

With your permission, Mr. Chairman, I would like to address briefly each of these areas because I believe that it is important to share in this forum as much information about our various national programs as possible.

Regionalization

For Canada, the problem posed by our geography is an enormous one. Historically, many offenders have been sentenced to facilities hundred or even thousands of miles from their home communities, thus making sustained family contact all but impossible and adding the burden of cultural and linguistic dislocation to the terms of imprisonment.

Recognizing that such a situation is both psychologically and emotionally unacceptable, the federal government has begun a program whereby offenders may be transferred to provincial institutions where they remain close to family and indigenous

traditions. Several provinces are in the process of negotiating such agreements with the Federal Government and it is to be hoped that a larger percentage of Canada's female offenders will remain in their home provinces in coming years.

Special mention should also be made here of the excellent work done co-operatively by national voluntary agencies such as the John Howard Society and the Elizabeth Fry Society in the re-orientation of offenders into the societal main stream. Within the last eighteen months the Elizabeth Fry Society has made a formal agreement with the Canadian Government to assist female inmates of our federal institution in the making of a smoother transition back to the responsibilities of family, parental and community life.

Canada is also sensitive to the fact that because a relatively small number of women come into conflict with the law, there is a compelling need for alternative programs. Our program "Women in Conflict with the Law" seeks to provide alternative programming and services. This scheme has been especially helpful in Native communities and in rural areas. Both the provinces and the Federal Government have called on the expertise of the private, voluntary agencies like the Elizabeth Fry Society to assist in the administration of this program.

Family Contact

Recognizing that female victims constitute not only those who have been directly affected by crime but embrace also the families of male offenders, both our provinces and the Federal Government have joined in the extension of humane family contact programmes. Using either the mechanism of scheduled family visitation or temporary absences, offenders are able to remain an integral part of family life and decision making. These programs have achieved a high degree of success and as a result remove many of the stresses placed upon women and mothers when husbands are taken out of the family environment for long periods.

The work release programme is another component of the rehabilitative and family assistance process. By encouraging offenders to seek gainful employment within their communities, the programmes allow offenders to contribute to spousal and familial maintenance, thus removing some of the financial strains which imprisonment imposes on wives and children.

Family Violence

Although family violence has only been recently acknowledged as a societal and criminal rather than a purely private and familial problem, this is an area where Canada has made some intensive strides. A recent federal-provincial task force on family violence studied this issue across the country and their recommendations have had an immediate impact. Now, in many Canadian provinces policy directives are in place which make the laying of charges in such cases mandatory. Improved systems of abuse reporting, particularly in the Province of Saskatchewan, greatly facilitate the monitoring of family and spousal violence.

Campaigns in education for police officers, lawyers, and correctional staff complement the numerous public awareness programs about the problem of family abuse: the response to these initiatives has been gratifying as professionals and laymen alike are anxious to obviate this social ill. A growing network of transition houses and safe-homes now make it possible for abused women and children to find temporary shelter and counsel while family problems are being resolved. This phenomenon often allows families to be reunited once appropriate therapies have been completed.

After much consultation, Canada has re-defined its laws on rape and sexual assault. Under the new act, individuals are prosecuted for crimes of assault and the court procedures for victims have become more sensitive. Many provincial and municipal police forces have created specially trained crisis response teams who can assist rape or assault victims over the first difficult hours after attack. Of particular note are the initiatives undertaken by the Royal Canadian Mounted Police to provide expert response to the trauma of child abuse.

Increased Participation

Like many countries, Canada encourages increased participation in employment by women in all stages of the justice process. At the present time, a growing number of women are becoming involved in law enforcement and the legal profession. Several provinces have set target goals for the expansion of females within their correction systems and this objective is also a commitment by our federal government.

Mr. Chairman, both the traditions of Canadian jurisprudence and the precedent of our country's history make Canada uniquely sensitive to the needs and rights of women within the justice system. By focussing today on few specific items of concern, we have attempted to highlight the real progress we are achieving in ensuring that for Canadians the terms "fairness" and "justice" assume their fullest and truest meaning.

The Need to Develop Guidelines for the Training of Criminal Justice Personnel

Mr. Chairman and Distinguished Delegates,

Canada is pleased to sponsor this draft resolution which deals with the need to develop guidelines for the training of criminal justice personnel. I would like to amend the document tabled with you A/CON. 121/C.1/L.1 as follows:

I think that it is important for all distinguished delegates to be reminded of the context in which Canada is proposing this resolution. In the working paper, CRIMINAL JUSTICE PROCESSES AND PERSPECTIVES IN A CHANGING WORLD A/CONF. 121/5, it is pointed out that criminal justice personnel must be sensitive to the ever changing nature of crime and of the differing needs of offenders.

During the past several days the critical importance of this objective has been highlighted in the many excellent interventions made by delegates from all parts of the globe. In the resolution on prosecution which we have just discussed, the need for training of prosecutors has been emphasized and it seems appropriate that this principle should be a general one which extends to all sectors of the criminal justice system including:

- police
- judges
- correctional personnel
- probation officers, etc.

Canada believes that all countries could benefit from basic guidelines on how training programmes for personnel could be established.

These guidelines could serve as valuable instruments in assisting nations with the implementation of new technologies, information systems and modern criminal justice practices.

We hope that the distinguished delegates here assembled will avail themselves of this opportunity to support this proposal which can be of benefit to all.

TOPIC III

- Intervention made by the Deputy Head of the Canadian Delegation, Mr. Fred E. Gibson, Deputy Solicitor General of Canada.

Mr. Chairman:

The inclusion of the topic of victims on the agenda of the 7th Congress is seen by Canada as a positive and progressive step in the protection of human rights and the preservation of human dignity. Since the establishment of the United Nations almost forty years ago, Canada has participated in many efforts to achieve these twin objectives through the development of appropriate covenants, conventions and other international instruments. Canadians know that these documents have the power to serve as strong weapons in the fight against injustice and dehumanization. As a result, Canada believes that the creation of a formal declaration on victims by the 7th Congress would mark a major step toward alleviating the suffering, restoring the dignity and protecting the rights of victims. Such a declaration would represent a major landmark in advancing the ideal of universal respect for the principles of human dignity and freedom.

From the many discussions we have had about victims in recent days, two things are immediately evident: first, there is an acknowledgement that the plight of the victim has too long been ignored; and second, that any attempt to define the term "victim" is fraught with legal and philosophical complexities. We must be cautious here, in this forum on crime prevention, that we do not permit our juridical concepts of victims and victimization to outrun our concepts of crime and criminality. At the same time, we acknowledge the flexibility of these terms and the need for accommodating new dimensions of criminality within our national penal legislation and within international instruments dedicated to justice and assistance for victims.

In Canada, as we have learned more about the nature of victimization and abuse of power, we have come also to appreciate the complexity and diversity of the problem and, correspondingly, to appreciate the complexity and diversity of the solutions that must be sought for these problems. One of the lessons of the Canadian experience is this: remedies for victimization and mis-use of power do not necessarily have to come through the criminal justice system. Indeed, from the Canadian perspective, the criminal justice system is a system of last resort, to be invoked only when no other forms of conflict resolution are appropriate.

With your permission, Mr. Chairman, I would like to spend a few moments highlighting some Canadian examples of our attempts to address the problems of victims of abuse of power.

The native peoples of Canada have, until recently, had less than their fair share of the social, economic and political opportunities enjoyed by the rest of Canadian society. These inequities have manifested themselves in various ways: the over-representation of native peoples in the criminal justice system; the denial to Indian women and their children of the rights and benefits of Indian status when they marry non-native men; inequitable land claims settlements. Other examples could be cited, but the point that I want to stress is that we are seeking solutions to these problems through a broad array of social, economic, political and legislative programs. We do not attempt, in other words, to resolve all of these problems with criminal justice solutions. For the problems of discrimination against native women, for example, we have sought legislative solutions to restore to them the rights and benefits that attach to Indian status. Working together with provincial and federal governments and the rest of the society at large, Canada's native peoples have been able to achieve a fuller and fairer measure of self-determination and thus, to gain a greater measure of self-respect.

As in most countries, women and children in Canada have also suffered from abuse of power on sexual, legal and cultural grounds. Canada is proud to have introduced important changes to laws on sexual assault and family violence, which permit victims to retain their dignity and humanity within the justice process.

Canadians also recognize that our minority groups need special protection and support. As a bilingual country, Canada has passed an Official Languages Act which guarantees language right to both our English and our French-speaking citizens.

Our country could not have been built without the hard work and idealism of the many victims of political and social oppression who sought their future in Canada in the decades before the First World War. Even today, one out of every five Canadian citizens is not native-born. The legacy of our heritage and this obligation to our fellow citizens of differing ethnic and cultural backgrounds mean that as a country Canada is acutely aware of its responsibility to eliminate systemic injustices -- cultural, social, political and economic.

For Canada, an important part of the process which has helped us to accomplish this goal was the recent drafting of a new constitution and the creation of a Charter of Rights and Freedoms. Our Charter of Rights and Freedoms, created by constitutional amendment in 1982, affirms our commitment to human rights and the preservation of the fundamental rights and freedoms of individuals. Specific legislation has also been passed to protect Canadians' privacy and to prevent the misuse and abuse of private information maintained by governments in administrative records. Federal and provincial human rights commissions allow victims' complaints to be heard and help victims find avenues of redress and compensation. Canada has also adapted the mechanism of class actions to ensure collective victims a procedure for redress.

For every level of government, the protection of citizens from abuse must be one of paramount concern. Where this responsibility is ignored, individuals can find no protection from exploitation. In Canada, we have in place a strong regulatory network which ensures, both in the work-place and in the market-place, that Canadians have protections against economic exploitation, exploitation of their labour, and against indiscriminate exploitation of our natural resources. Additionally, strong consumer protection legislation and regulatory at both federal and provincial levels make certain that our citizens enjoy one of the highest levels of product standards in the world. Drugs, comestibles and countless other items may be routinely used by Canadians, secure in the knowledge that their rights as consumers are being protected with vigilance and vigour.

Within the criminal justice system, police commissions, ombudsmen, correctional investigators and other review bodies have been established to prevent abuses by the criminal justice sytem and provide procedures of grievance and protection for victims of such abuse.

We recognize that the line between criminal and non-criminal victimization must shift as the socio-economic and cultural conditions of a society change. The Canadian judiciary continues to provide specific definition to the guarantees and protections provided in the Charter. Our current fundamental review of Canadian criminal law and the ongoing work of the Canadian Law Reform Commission are a major part of Canada's efforts to ensure that behaviours producing the most serious individual and social harms are indeed criminalized.

We in Canada are proud of our national programs of comprehensive medical services, unemployment insurance, welfare and social services, unemployment insurance, welfare and social services which, although not created specifically

for crime victims, soften the impact of crime. Canadians are encouraged to protect themselves against the costs of victimization through private insurance, and through participation in government sponsored programs of crime prevention. At the same time, we are encouraging greater use of restitution and other forms of reparative sanctions by the courts to order offenders to repay their victims for at least part of their losses. It is also possible in Canada for victims to seek financial compensation from offenders through civil courts.

There are many instances, however, where these programs cannot provide adequate financial compensation for the losses suffered by victims. It is for this reason, Mr. Chairman, that Canada attaches great importance to its Criminal Injuries Compensation programs which exist under federal and provincial cost-sharing agreements to provide financial assistance to compensate victims for losses caused by crimes of violence. These publicly-funded compensation programs have been in effect since the late 1960's in most provinces, and are now available in all but one Canadian jurisdictions.

Canada supports the efforts of other countries who are considering the adoption of state compensation programs. I believe my country can be justifiably proud of how these programs have helped restore some measure of dignity to victims.

As a signatory to the International Covenant on Civil and Political Rights and as a strong supporter of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Canada is committed to working with all interested nations towards ending political, economic and social oppression, thereby ensuring that men and women can live in equality, in safety and in the dignity to which each of us is entitled.

We are not complacent about our achievements toward improved justice for victims of crime and we are not underestimating the difficulty of achieving our aims. Domestically we are setting ourselves targets and developing new strategies. We welcome enthusiastically this opportunity to participate in the development of an international instrument to further these goals. We encourage all countries gathered here to seize this opportunity.

In moving towards these objectives, we would suggest that there are four premises common to those of us who are engaged in this enterprise. We believe that these four premises should be reflected in our deliberations over the next few days, and in the victims' rights declaration that we hope will emerge from those deliberations.

- (1) Victims of conventional crime are entitled to an international instrument that recognizes their rights to justice and assistance.
- (2) International instruments, including the proposed declaration on behalf of victims must be consistent with our longstanding commitment to the principle of legality.
- (3) Both our national penal legislation and our international instruments must have a capacity to adapt to emerging dimensions of criminality, and to recognize the rights of victims of those new dimensions of criminality.
- (4) The abuse of power - whether economic, social or political - is a multi-faceted phenomenon and, therefore, one that compels multi-faceted solutions.

By highlighting some of the progress we in Canada have made in ending abuses of power against consumers, native peoples, women and minorities, we hope that we have made a strong and compelling case for the need for an international declaration on victims that is consistent with the principle of legality -- a declaration which will not only complement the many fine criminal justice systems already in place around the world, but which will also enshrine basic principles of humanity and dignity, and foster a more just and equitable society for people everywhere.

TOPIC IV

- Standard Minimum Rules for the Administration of Juvenile Justice in Canada
(intervention made by Gisèle Côté-Harper on August 26).
- Canadian Remarks - Standard Minimum Rules for Juvenile Justice
(intervention made by the Honourable Ian Reid, Solicitor General of Alberta, on August 29).

Standard Minimum Rules for the Administration of Juvenile Justice in Canada

Canada is pleased to participate in discussions about the Standard Minimum Rules for the Administration of Juvenile Justice proposed by the United Nations. The administration of criminal law for adults is guided by fundamental principles of justice and it is equally important that certain standards and principles be extended to the administration of juvenile justice. Establishing minimum standards acceptable to the Member States of the United Nations for the treatment of young people accused of committing offences is an important step in ensuring justice for all youth.

Recently, extensive juvenile justice reform has occurred in Canada and new governing legislation now defines standards and policies for the administration of criminal justice for youth. The Canadian Charter of Rights and Freedoms also requires that standards be respected in the exercise of criminal justice authority over all citizens, including youth.

Most of the proposed Standard Minimum Rules are already reflected in the statutes and practices governing juvenile justice in Canada. A few of the proposed Rules, however, appear to be contrary to our Charter of Rights and Freedoms and, therefore, could not be endorsed by the Canadian delegation without some modification. For example, Rule 15 dealing with the confidentiality of the proceedings against young people suggests that the trial should be held in-camera. Our courts have already struck down a similar requirement for trials under past juvenile justice legislation as being in conflict with the guarantees of the Charter of Rights. It is suggested, therefore, that Rule 15.1 be eliminated altogether or redrafted to read, "...proceedings in juvenile cases shall be open to the public...".

Canada also maintains that the criminal justice authority to intervene in the lives of young people should not be used to achieve social welfare or mental health objectives. The needs of youth should not be a rationale for criminal justice jurisdiction to intervene, although young people must be dealt with humanely once they have entered the criminal justice system. It is our view that child protection and other social welfare legislation offer the appropriate vehicles to address the needs of youth. Some of the proposed Rules fail to adequately distinguish between the two major avenues of intervention and are, therefore, inconsistent with our "blended" model of juvenile justice underlying our legislation. For example, the United Nations' proposed Rule 18(d) states that the welfare of the juvenile shall be paramount in the consideration of the case. In Canada, if the

paramount consideration is the well-being of the youth, then it is properly a matter for child welfare legislation and not criminal justice legislation.

Mr./Madam Chairman, we have taken the liberty of drafting, for the consideration of the delegates, alternatives to the rules that pose difficulties in the Canadian context. Canada supports the principle of Standard Minimum Rules for the Administration of Juvenile Justice and would welcome the opportunity to discuss with representatives of other Member States specific proposals to alter the wording of some of the Rules that have been proposed by the United Nations. It is our belief that a consensus can be reached on the Standard Minimum Rules and, if we can be of an assistance in furthering that end, we would be pleased to offer our services.

CANADIAN REMARKS - STANDARD MINIMUM RULES
FOR JUVENILE JUSTICE

The Canadian delegation wishes to acknowledge the enormous amount of work done by the Rapporteur and the Secretariat in relation to the standard minimum rules for the administration of juvenile justice. We wish to express our appreciation and reiterate our support for the adoption of the standard minimum rules.

However, we have to emphasize our views on two issues which to Canada remain matters of concern. These concerns have previously been drawn to the attention of the Congress. They relate to rules 18(1)(a) and 22.2.

As many nations have previously mentioned, including Canada, taking a reaction to the offence that is in proportion to the needs of the juvenile should be limited and not lead to a form of abuse.

Canada has recently undergone a major juvenile justice reform to respond, in part, to the inequities of a "treatment" or "welfare" orientation.

Previously the criminal justice authority was invoked to effect essentially social welfare purposes. An offending youth was treated not as an offender but as a person requiring guidance and assistance. Young people could have found themselves in training schools from the age of 7 until the age of 21 years for minor offences on an indeterminate sentence. It is now legislated in Canada that the "needs" of young people should not be a reason to extend intervention beyond what is necessary to respond to the offence. It is important not to punish young people because of their perceived needs.

Accordingly, Canada believes that Rule 17(1)(a) which now reads:

"The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society".

Would be more appropriate if it read:

"The reaction taken shall never be more than is necessary for the specific offence committed and should, as a rule, be less than what an adult would receive in similar circumstances".

Rule 21.2 which requires that the "records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender" also poses difficulties in the Canadian context. Our new legislation includes a comprehensive scheme for the access, use and destruction of youth records. Efforts were made to ensure that those youths who had not been reinvolved in criminal activities for specified periods of time were entitled to have their records destroyed. It would be contrary to our administration of justice if all records of young people were required to be destroyed as soon as the youth became 18.

For these reasons, we recommend terminology such as the following:

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender except where expressly approved by the juvenile court on specific statute.

To sum up Mr. Chairman, notwithstanding these concerns Canada will support the standard minimum rules for Administration of Juvenile Justice.

Thank you.

TOPIC V

- Alternatives to Imprisonment
(Intervention made by Mr. Leonard Crispino of the Ontario Ministry of Correctional Services, on August 30.)
- Intervention on Human Rights and International Covenants
(Made by Mr. Svend Robinson, M.P., on August 30.)
- Operational Guidelines for Governments and Managers of Correctional Services
(Intervention made by Mr. Rhéal LeBlanc, Commissioner of the Correctional Service of Canada, on September 2.)
- In Support of the Alternatives to Imprisonment Resolution
(Intervention made by Mr. Leonard Crispino of the Ontario Ministry of Correctional Services, on September 4.)
- Independence of the Judiciary-Statement Following the Adoption of Basic Principles
(Intervention made by Mr. Fred E. Gibson, Deputy Solicitor General of Canada and Deputy Head of the Canadian Delegation, on September 6.)

Alternatives to Imprisonment

Mr. Chairman ... Distinguished Delegates ...

Canada takes great pride in addressing the topic of alternatives to imprisonment. We believe that we have placed in motion in Canada a series of initiatives which support the directions as set out in resolution 8 from the Sixth Congress - resolution which Canada proudly sponsored. We would like to share briefly with you our experiences.

As Canadian representatives noted at the 6th Congress, there has been in the last decade a concerted search for alternatives to imprisonment, particularly for offenders who are non-violent and do not pose a threat to society. The rationale for increased use of alternatives is based on the view that they can be equally effective, yet less costly, than imprisonment, and they hold more promise for the offender's reintegration into society.

Several initiatives have taken place throughout Canada in the last several years. For instance, an experiment is underway in some communities whereby the Crown may suspend the prosecution of selected offenders on the condition that they participate in a community project as an alternative to the formal criminal justice process. In these projects, informal means are used to negotiate an agreement which permits an offender who admits responsibility for the act in question to repay the victim or the community.

In the past, community service orders and restitution orders have often been used in Canada as a means for maintaining offenders, to the extent possible, within the community. Research is still ongoing to establish how these measures could be used effectively as complete sentences. Certain experiments have been conducted. Typically, these experiments are administered through community based programs, to encourage communities to take greater responsibility for the management of criminal behaviour. They also strengthen the community's acceptance of these sanctions. An area in which restitution is increasingly used as an alternative to criminal proceedings and imprisonment is that of property theft. Victimization surveys have indicated that certain categories of victims, e.g. businesses, are often very favourable to restitution as a means of dealing with theft. The appropriate order of restitution can be determined through mediation between the offender and the victim, even before the matter has been formally taken up by the criminal justice process.

The costs associated with alternative sentencing programs fall primarily within areas of provincial jurisdiction insofar as the greatest number of potential beneficiaries is composed of offenders sentenced to less than two years. In this context, considerable development of community service order programs, bail verification and supervision, and fine options, has taken place in provincial jurisdiction.

Fine option programs have been established in a number of Canadian provinces. These programs provide an alternative to incarceration for those individuals who would primarily be imprisoned for fine default. The offender performs community work service orders and thereby makes a contribution by completing a meaningful task. Concomitantly, the community agency benefits by having tasks completed that would possibly not otherwise be accomplished or would take considerably longer. In Saskatchewan, for example, where such a program has been operating since 1975, it is estimated that imprisonment for fine default has been reduced by at least one-half.

Shortly, new laws are expected to be passed which will provide a sound legislative basis for the use of programs such as fine option as separate dispositions.

Considerable experimentation is also taking place at the moment, in some cases supported by the Federal Government, on post-trial victim-offender mediation, in which a mediated settlement is communicated to a sentencing judge for incorporation in the sentence. Mention might also be given to the development, in provinces such as Ontario and British Columbia, of bail verification and supervision programs providing for the setting of realistic conditions for bail and, where necessary, providing for the community supervision as an alternative to being remanded in custody.

Particular attention by the Federal Government is now being focussed upon the specific requirements of Native people. A sentencing alternative program has been funded with the province of Saskatchewan Association of Friendship Centres to develop sentencing alternatives in that Province and to provide a model for implementation elsewhere.

With respect to community participation, a number of activities are under way to inform the public that the protection of society can in some instances, be better served through use of alternatives to imprisonment. Contributions have been made to the Church Council on Justice and Correction to secure a wider awareness and involvement of some church based communities across the country. Voluntary organizations

are also very much involved in community-based programs that can serve to reduce the use of carceral sentences. Indeed, in Canada it appears that the success of alternative measures to incarceration is, to a large degree, dependent on the existence of an active voluntary sector that can promote and develop many community-based programs.

Furthermore, correctional jurisdictions in Canada, both federally and provincially, have encouraged the use of volunteers as important support mechanisms in the delivery of correctional services. As an example of this commitment, in the Province of Ontario there are nearly 6,000 volunteers supporting the delivery of correctional programs - similar in number to the total paid correctional staff.

In part, as a result of these initiatives, Canada has achieved a good track record in the use of alternatives to imprisonment. On average, nearly 9 out of 10 sentenced offenders in the provinces of British Columbia, Alberta, Ontario and Saskatchewan are serving their sentences under community supervision (e.g. probation, community service orders, fine option, etc.) while only 1 out of 10 are held in correctional institutions. This represents a very significant shift towards the use of community alternatives when compared to the situation of twenty years ago.

It might also be noted that for those serving a sentence within correctional institutions, programs such as temporary absence provide a powerful tool for reintegration into society, continuity of employment skills as well as the attainment of educational pursuits. Canada is very proud of the high success rates of this and similar programs across the country.

Since the 6th Congress, the Canadian Federal Government, in cooperation with the provinces and the Law Reform Commission of Canada has launched a comprehensive review of the criminal law, with the aim of modernizing our criminal law making it more responsive and effective criminal law. As part of this review, correctional law will also be examined in order to consolidate, refine and reform appropriate sections. A significant element will be the search for a broader range of community alternatives.

In May 1984, the Federal Government established a Commission of Inquiry with respect to sentencing, to examine sentencing guidelines and review current sentence maxima and minima. The Commission will examine the efficiency of various possible approaches to sentencing guidelines and develop model guidelines for sentencing, taking into account the Canadian

context. There is no doubt that the work of this Commission will be much influenced by the international search for alternatives to imprisonment.

These fundamental principles concerning the value of community alternatives are exemplified in the recently introduced Young Offenders Act. This Act offers a large variety of community-based dispositions such as: discharges; fines and fine option programs; compensation and restitution orders; community service orders; orders of prohibition for forfeiture or seizure; treatment orders; probation; and other relevant orders.

Canada will explore all practical means including release policies which will allow it to respond to contemporary developments so as to bring about an orderly and judicious mix of institutional detention and treatment in the community.

We believe that these important efforts towards crime prevention and the treatment of offenders will support and be in concert with resolution 8 from the Sixth Congress of the Caracas Declaration which Canada sponsored.

August 30, 1985

DRAFT INTERVENTION ON HUMAN RIGHTS AND INTERNATIONAL COVENANTS

Mr. Chairman, we are now in the fifth day of our deliberations here in Milan. For the past week, we have been addressing such diverse issues as the equal treatment of women before the law, victims and juvenile offenders. Although the topics may appear disparate, they all revolve on one common theme or idea: the humanization of the justice process for all who are either directly or indirectly involved.

The humanization of justice is a topic which is of great concern to Canada and to all Canadians. In the historic past, our nation was built by those who sought freedom from oppression and discrimination in a new land. Today, many of our "new" Canadian have come to our country with the expectation that they will find opportunities for free expression and self-development that may not exist elsewhere. One of the most important responsibilities before our government is to assure that Canadians - regardless of background or belief - are offered these opportunities and use them as they see fit. Thus Canada has an overwhelming interest in the protection - and I may even say the extension - of civil rights and freedoms at home and around the globe. As one of the original signatories of the Declaration of Human Rights in 1948, our country feels keenly its obligation to foster international measures to halt political oppression and torture. Wherever possible, we have been prepared to work with other nations in helping them to achieve this end and since the establishment of the United Nations, we have worked enthusiastically on all such projects. We are proud of our government's support for the Centre for Study of Torture in Canada.

One such endeavour which Canada endorses is the Model Agreement on the Transfer of Foreign Prisoners. Treaties of this nature help to ensure that the hardships of prisoners can be somewhat alleviated by relieving the pressures of cultural and familial dislocation caused by incarceration abroad. When this Model Agreement is adopted by the United Nations, it will serve as a progressive option within the processes of international justice whereby the human rights of prisoners can be protected. It is Canada's wish that given the level of support for this important agreement, it may be adopted without undue delay.

As part of our commitment to the objectives of civil and political freedom, Canada was a signatory to the International Covenant on Civil and Political Rights in 1976.

Some three years later, our country voluntarily declared itself subject to article 41, which permits other signatory countries to lodge complaints about violation. Canada is also only one of 35 countries who have acceded to this optional protocol. This act was a significant one which, on the one hand reflected our nation's strong tradition of civil liberties and, on the other, presaged the 1982 amendment of our Constitution to include a Charter of Rights.

Other than the instrument of Confederation which created our country, perhaps no single document has the potential of being as important to our citizens as the Charter of Rights and Freedoms. Many of the articles within the Charter recall the freedoms of equality and legality which were enshrined in the 1984 Declaration on Human Rights. At the same time, strong guidelines for application and enforcement give Canadians a mandate to insist on its consistent application.

Sadly, many individuals around the world do not have such constitutional protection and face daily the threat of torture or even death for their beliefs or actions. Because of our strong interest in the promotion of international instruments like conventions and declarations to ensure the extension of human rights, our country participated with vigour in the drafting of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Throughout the drafting process, our view was that every avenue to ensure effective implementation of the provision should be fully explored. Canadians believe that this convention represents a positive and enlightened initiative against the pernicious threat of torture and other dehumanizing behaviours and we look forward to the day when it will be universally respected.

Canada was pleased to sign this Convention on August 23 of this year. Sadly, some countries who have signed are derelict in their obligations. We invite other nations to follow our lead in this regard to become signatories of this historic document because we believe that the international community will surely pass a milestone when such multi-national conventions serve as effective instruments in the fight against oppression.

Mr. Chairman, it is important in these deliberations that we do not adopt an indifferent attitude to the continuing need for mechanism of international conventions on human rights and freedoms. In the past four decades working through

the United Nations, much has been done to bring a common standard of justice and fairplay to every corner of the globe. But there is still much work to do and Canada is anxious to continue this task in conjunction with all interested nations so that the guarantee of full civil and political rights may one day be a world-wide reality and so that our fellow men and women will no longer walk in fear.

Operational Guidelines for Governments and Managers of Correctional Services

Mr. Chairman:

Few topics can be of as urgent and immediate concern as the establishment of guidelines for governments and managers of correctional services. This is a subject which Canada has followed closely and whose history has been of great interest to us.

In 1957, the Economic and Social Council of the United Nations approved the SMR as adopted by the First United Nations Congress on the Prevention of Crime. Over the years, subsequent Congresses have examined the SMR issue with a view to encouraging all U.N. Member States to adopt these rules. Canada has long been concerned with the just and equitable treatment of offenders and so it was with considerable enthusiasm that our country endorsed the SMR at the Fifth Congress in 1975.

Since that time, improvements in facilities in both federal and provincial jurisdictions have provided an opportunity for enhancement to ensure that the intent of the SMR is reflected in our correctional facilities across the countries. Now many of correctional practices and facilities reflect much higher standards than the minimum rules of the SMR. Canadians are justly proud of this accomplishment, especially given the fact that within our country correctional facilities fall under four jurisdictions: federal, provincial, county and municipal.

Despite this diversity, for the past ten years all new construction and renovation of correctional facilities has been carried out according to the exacting guidelines laid down in the SMR. The steady improvement of physical facilities will have a beneficial impact on inmates' services such as private family visitation, expanded workshops, modern education and training opportunities and the provision of single unit accommodation. The improvements in the living units which have already been modified have helped to reduce tension within our facilities and have had an appreciable impact on both staff and inmate morale.

Canada has long recognized the need for a wide range of special services to inmates within its correctional systems. A function of our geography and our demography means that Canadian practices must take into account the regional differences within our country as well as the special needs of our female and our native offenders. To develop this range of programs has not yet been an easy task but Canadians are rising to this challenge with enthusiasm and at the present time, our correctional practices reflect the differing requirements of regional and local practices as well as the

special needs of women, minorities and the emotionally troubled. Special provisions have been made in both federal and several provincial jurisdictions to ensure that native spiritual traditions are part of institutional programming and that opportunities are provided for native religious and spiritual practices.

Part of the means by which Canada has accomplished this heightened sensitivity to specific needs has been through the recruitment and training of high quality personnel. Strong emphasis has been placed on the development of interpersonal skills, cross-cultural awareness, sensitivity to human rights and the need for fair treatment of inmates. Basic training programs are available for all newly recruited personnel with advanced technical and managerial training for senior staff. Both the federal and provincial correctional system have adopted a personnel policy which encourages the recruitment of female officers in all levels of security institutions. It is Canada's view that female officers can be employed in virtually all posts in correctional facilities and that in the near future, staff ratios should be more reflective of those of our Canadian society.

For Canada, the endorsement of the SMR was an important step in the humanization and development of our many varied correctional systems. We invite those countries which have not yet subscribed to these principles to do so as quickly as is possible so that the basic human dignity of all prisoners will be respected.

Our country is proud of the fact that we now have in place a comprehensive system whereby inmates' grievances and complaints can be carefully investigated. We also have handbooks on inmates' rights and responsibilities which are distributed to offenders within our correctional systems so that each man or woman may better understand the type of treatment to which he or she is entitled.

For Canadians, this respect for the dignity of men and women is an integral part of our tradition. As part of our new Canadian Constitution of 1982, we incorporated a Charter of Rights and Freedoms which has come into full effect in April of this year. This Charter will continue to have a major impact on the rights of all Canadians in all aspects of their life. Instruments like our Charter of Rights and the S.M.R. help ensure that men and women - whether at liberty or in prison - receive those basic considerations which allow them to retain their dignity and humanity as individuals. It is Canada's fond hope that within the near future, the guidelines of the S.M.R. will be applied around the globe with consistent fairness and compassion.

IN SUPPORT OF THE ALTERNATIVES TO IMPRISONMENT RESOLUTION

Mr. Chairman, Canada would like to make a few short remarks in support of the resolution on "Reduction of the prison population, alternatives to imprisonment and social integration of offenders".

On Friday of last week, Canada outlined a series of initiatives which it had placed in motion in support of alternatives to imprisonment.

Canada places enormous importance in actively involving the community as a means of supporting the aims underlying the use of alternatives to imprisonment.

The community provides a vital link in any coordinated approach for the exploration and implementation of effective and efficient alternatives. We therefore find paragraph 4(e) of the resolution of particular importance if we are to make major inroads in reducing prison population, searching for alternatives to imprisonment and assisting in the social integration of offenders. Similarly, Mr. Chairman, paragraph 4(i) which speaks to the value of volunteers particularly with respect to community liaison, is an important thrust.

Mr. Chairman, in Canada we have made significant progress in the application of alternatives to imprisonment. We look forward to working with Member States in furthering the objective outlined in the resolution and we are proud to be co-sponsors of this resolution.

Thank you, Mr. Chairman

4th September 1985

September 6, 1985

INDEPENDENCE OF THE JUDICIARY - STATEMENT FOLLOWING ADOPTION
OF BASIC PRINCIPLES

Mr. President,

Canada was pleased to support this resolution and the Basic Principles on the Independence of the Judiciary.

Canada has consistently supported respect for human rights, both domestically and in international organizations. The enunciation and protection of human rights in international and domestic documents is only meaningful if those rights can be achieved and enforced. To that end, an impartial and independent judiciary is essential to the administration of justice and the protection of human rights.

In the context of the Basic Principles we also wish to make reference to the work on the independence of justice which is occurring in the Subcommittee for the Prevention of Discrimination and the Protection of Minorities.

We support the present resolution on the understanding that any further work in this area by the Committee on Crime Prevention and Control should be coordinated with the work of the Subcommittee. Such coordination should be worked out in the Economic and Social Council.

We would also like to point out that we would have preferred stronger language in operative paragraph 2 of the covering resolution, which allows governments to take into account the political, economic, social and cultural circumstances and traditions of their countries when implementing the Basic Principles. It seems to us that given the consensus reached, on the Basic Principles, paragraph 2 of the resolution goes too far in qualifying the recommendation for the implementation of these Basic Principles.

Mr. President, we wish to place these concerns on the record while joining in the consensus by which the Basic Principles were adopted.

Thank you, Mr. President

APPENDIX IV

STATEMENT MADE BY CANADA
IN THE THIRD COMMITTEE OF THE U.N. GENERAL ASSEMBLY
ON THE RESOLUTIONS OF THE 7TH CONGRESS

UNGA 40 - Third Committee

Item 98: Crime Prevention and Criminal Justice

Milan Crime Congress

Intervention by the Canadian Representative

Mr. Leo Duguay, M.P.

October 22, 1985

Mr. Chairman and distinguished Members of the Committee,

Canada is proud to have participated in the Seventh United Nations Congress in Milan which constituted a unique opportunity to share our concerns and experiences with an unprecedented number of attending countries. We are also pleased to associate ourselves with the impressive results achieved on a variety of important issues.

The United Nations Crime Congresses have always been especially important for Canadians. We have inherited and imported values, beliefs, languages and cultures from every part of the world. We are, therefore, very much aware that our destiny is inextricably linked with those of other peoples within a highly interdependent community of nations. In this context, the international instruments and resolutions adopted in Milan in the fields of crime prevention, assistance to victims, independence of the judiciary, juvenile justice and justice for women, transfer of offenders, alternatives to imprisonment, terrorism, and drug abuse are seen as major steps toward the humanization of justice. This is an objective strongly supported by Canada.

We were very pleased that the subject of crime prevention was given such prominence on the 7th U.N. Congress agenda. For we too are firmly of the view that crime prevention and fair treatment of offenders are not only vital elements in our pursuit of world peace and respect for human rights, but also that successful crime prevention and fair treatment of offenders require concerted national, regional, and international action.

C'est pourquoi, monsieur le Président, le Canada a saisi avec enthousiasme cette occasion de communiquer aux autres États membres les fruits de son expérience dans le domaine de la prévention du crime. En effet, la prévention du crime est un objectif que visent depuis toujours les diverses composantes et les divers paliers du système canadien de justice pénale. Dans le passé, l'accent était mis sur la dissuasion et le châtement individuel. Dernièrement, toutefois, nous cherchons à élaborer des approches plus innovatrices axées principalement sur la réduction des possibilités d'actes criminels et sur la participation communautaire.

Dans la recherche de nouvelles façons d'aborder la prévention du crime, nous continuerons d'appuyer le rôle vital que jouent les Nations Unies en favorisant l'échange de renseignements et de solutions à l'échelle internationale.

Convinced that effective strategies for combatting crime and criminality are acutely dependent upon reliable, comprehensive information, and aware that other Member States might benefit from the Canadian experience in developing adequate mechanisms for data collection and dissemination, we are presently examining ways of increasing our contribution to the international exchange of criminal justice information.

Canada is also very much aware of the dimensions of crime prevention which bear upon juvenile justice. We welcomed and supported the Congress resolutions in that area but expressed concern over two issues pertaining to the standard minimum rules for the administration of juvenile justice.

As pointed out in Milan, Canada recently enacted new legislation - the Young Offenders Act - which represents a significant shift in the Canadian philosophy of juvenile justice. Essentially, we now have a more distinctively juridical model, one that holds young persons accountable for their offences, while recognizing their special needs and the larger interests of society. In other words, Mr. Chairman, we do not think that the needs of young people should be a reason to extend intervention beyond what is necessary to respond to the offence. It is important not to punish young people under the guise of providing treatment for their special needs.

The other matter in the standard minimum rules for the Administration of Juvenile Justice that was of concern to Canada relates to the requirement that the records of juveniles not be used in subsequent cases involving the same offender. Our new legislation includes a comprehensive scheme for the access, use and destruction of youth records, and efforts were made to ensure that those youths who had not been reinvolved in criminal activities for specified periods of time were entitled to have their records destroyed. As emphasized at the Congress, it would be contrary to our administration of justice if all records of young people were required to be destroyed as soon as the youth became 18. Notwithstanding these reservations, we wish to reiterate our support for the progress achieved at the 7th Congress regarding justice for children throughout the world.

L'inclusion de la question des victimes parmi les sujets à l'ordre du jour du 7e Congrès a constitué, de l'avis du Canada, une initiative positive et progressiste au chapitre de la dignité humaine. Le Canada a collaboré activement à l'élaboration par le 7e Congrès d'une déclaration officielle sur les victimes, qui contribue sensiblement aux efforts

déployés pour réduire les souffrances des victimes et qui s'inscrit directement dans le sens des initiatives canadiennes en ce domaine.

The consensus reached at the Congress on the Draft Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is a significant step toward securing respect for the needs and rights of victims. We welcomed the opportunity to participate in the development of an international instrument to further these goals. The Victims Declaration represents a landmark in advancing the ideal of universal respect for the principles of human dignity and freedom.

In Canada, as we have learned more about the nature of victimization, we have come also to appreciate the complexity and diversity of the problem, and correspondingly to appreciate the complexity and diversity of the solutions that must be sought for these problems. One of the lessons of the Canadian experience is this: remedies for victimization and mi-use of power do not necessarily have to come through the criminal justice system. Indeed, from the Canadian perspective, the criminal justice system is a system of last resort, to be invoked only when no other forms of conflict resolution are appropriate.

Mr. Chairman,

I would now like to turn to the topic of the independence of the judiciary. The enunciation and protection of human rights in international and domestic documents is only meaningful if those rights can be achieved and enforced. To that end, an impartial and independent judiciary is essential to the administration of justice and the protection of human rights.

Nous sommes donc heureux, monsieur le Président, d'avoir eu l'occasion de contribuer à l'élaboration des principes fondamentaux recommandés par le Congrès concernant l'indépendance de la magistrature. Il nous paraît essentiel que partout dans le monde le droit de toute personne d'être jugée de façon impartiale soit respecté. À cette fin, les magistrats doivent être en mesure de régler les affaires dont ils sont saisis sans être l'objet d'influence, incitations, pressions, menaces ou interventions indues de la part de qui que ce soit, pour quelque raison que ce soit. Pleinement conscient de l'utilité d'ententes internationales dans la lutte contre l'injustice et la déshumanisation, le Canada estime que l'adoption à Milan des Principes fondamentaux relatifs à l'indépendance de la magistrature constitue un pas dans la bonne direction.

However, given the consensus reached at the Congress and our support for it, the resolution could have been stronger with respect to the implementation of the basic principles.

We also wish to make reference to the work on the independence of justice which is occurring in the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities. We urge that any further work in this area by the Committee on Crime Prevention and Control should be coordinated with the work of the Sub-Commission. Such coordination should be worked out in the Economic and Social Council.

Par le biais des ententes intervenues concernant nombre de préoccupations internationales dans le domaine de la justice pénale, le 7e Congrès des Nations Unies sur la prévention du crime et le traitement des délinquants comptera sans doute parmi les entreprises ayant le mieux servi la cause de la justice dans le monde. Le Canada est heureux d'avoir pu contribuer à cette réunion de la communauté internationale et surtout, d'avoir pu apprendre beaucoup de tous les pays qui s'y trouvaient réunis. Permettez-moi en terminant, monsieur le Président, de répéter combien le Canada a pu apprécier cette occasion unique de partager avec d'autres pays son expérience en matière de prévention du crime et de collaborer avec eux à l'élaboration des normes et des instruments indispensables à la lutte contre le crime, tant aux niveaux national qu'international, ainsi qu'à l'instauration de la justice sur les plans social et économique.

Thank you, Mr. Chairman and distinguished members of the Third Committee.

APPENDIX V

REPORT OF THE THIRD COMMITTEE
OF THE U.N. GENERAL ASSEMBLY



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CRIME PREVENTION AND CRIMINAL JUSTICE

Report of the Third Committee

Rapporteur: Mr. Paul-Désiré KABORE (Burkina Faso)

I. INTRODUCTION

1. At its 3rd plenary meeting, on 20 September 1985, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its fortieth session the item entitled:

"Crime prevention and criminal justice:

"(a) Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

"(b) Implementation of the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report of the Secretary-General;

"(c) Implementation of the conclusions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report of the Secretary-General"

and to allocate it to the Third Committee.

2. The Third Committee considered this item jointly with items 89, 90, 91, 95, 96 and 97 at its 16th to 23rd, 30th and 37th meetings on 18, 21, 22, 24 and 28 October and 4 and 11 November. An account of the discussion of the Committee is contained in the relevant summary records (A/C.3/40/SR.16-23, 30 and 37).

3. The Committee had before it the following documentation:

(a) Implementation of the recommendations of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report of the Secretary-General (A/40/482 and Corr.1 and 2);

(b) Implementation of the conclusions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report of the Secretary-General (A/40/751);

(c) Report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.121/22).

4. At the 16th meeting, on 18 October, the Under-Secretary-General for International Economic and Social Affairs and the Assistant Secretary-General for Social Development and Humanitarian Affairs made introductory statements.

II. CONSIDERATION OF DRAFT RESOLUTIONS

A. Draft resolution A/C.3/40/L.24

5. At the 30th meeting, on 4 November, the representative of Italy introduced a draft resolution (A/C.3/40/L.24) entitled "Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders", sponsored by Argentina, Australia, Canada, Colombia, Costa Rica, Finland, Greece, Indonesia, Italy, Morocco, the Netherlands, New Zealand, Spain, Venezuela and Yugoslavia as well as Bolivia, France and Uruguay, subsequently joined by Lebanon, Rwanda and Senegal.

6. At the same meeting, the representative of Italy orally revised operative paragraph 11 by adding the words "in particular to the developing countries" after "technical assistance".

7. At its 37th meeting, on 11 November, the Committee adopted draft resolution A/C.3/40/L.24, as orally revised, without a vote (see para. 12, draft resolution I).

B. Draft resolutions A/C.3/40/L.20, L.21, L.22 and L.23

8. The Committee had before it four draft resolutions recommended by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985:

(a) Draft resolution A/C.3/40/L.20, "United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')";

(b) Draft resolution A/C.3/40/L.21, "Declaration of Basic Principles of Justice (a) relating to victims of crime, and (b) relating to victims of abuse of power";

(c) Draft resolution A/C.3/40/L.22, "Development of standards for the prevention of juvenile delinquency";

(d) Draft resolution A/C.3/40/L.23, "Domestic violence".

9. At its 37th meeting, on 11 November, the Committee adopted, without a vote, draft resolutions A/C.3/40/L.20 (see para. 12, draft resolution II), A/C.3/40/L.21

(see para. 12, draft resolution III), A/C.3/40/L.22 (see para. 12, draft resolution IV) and A/C.3/40/L.23 (see para. 12, draft resolution V).

C. Draft resolution A/C.3/40/L.25

10. At the 30th meeting, on 4 November, the representative of Finland introduced a draft resolution (A/C.3/40/L.25) entitled "Expression of appreciation to the Government and people of Italy on the occasion of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders", sponsored by Australia, Czechoslovakia, Finland, the Philippines, Senegal and Venezuela as well as Canada and Indonesia, subsequently joined by Zaire.

11. At its 37th meeting, on 11 November, the Committee adopted draft resolution A/C.3/40/L.25 without a vote (see para. 12, draft resolution VI).

III. RECOMMENDATIONS OF THE THIRD COMMITTEE

12. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

DRAFT RESOLUTION I

Seventh United Nations Congress on the Prevention of Crime
and the Treatment of Offenders

The General Assembly,

Recalling its resolution 35/171 of 15 December 1980, in which it endorsed the Caracas Declaration, annexed to that resolution, and urged implementation of the recommendations relating to the new perspectives for international co-operation in crime prevention in the context of development adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling also its resolution 36/21 of 9 November 1981, in which the Seventh Congress was invited to consider current and emerging trends in crime prevention and criminal justice, with a view to defining new guiding principles for the future course of crime prevention and criminal justice in the context of development needs, the goals of the International Development Strategy for the Third United Nations Development Decade 1/ and the Declaration and the Programme of Action on the Establishment of a New International Economic Order, 2/ taking into account the political, economic,

1/ Resolution 35/56, annex.

2/ Resolutions 3201 (S-VI) and 3202 (S-VI).

social and cultural circumstances and traditions of each country and the need for crime prevention and criminal justice systems to be consonant with the principles of social justice,

Recalling further its resolution 39/112 of 14 December 1984, in which the Secretary-General was requested to ensure that the substantive and organizational work of the Seventh Congress was fully adequate for its successful outcome,

Emphasizing the responsibility assumed by the United Nations in crime prevention under General Assembly resolution 415 (V) of 1 December 1950, which was affirmed in Economic and Social Council resolutions 731 F (XXVIII) of 30 July 1959 and 830 D (XXXII) of 2 August 1961, and in the promotion and strengthening of international co-operation in this field in accordance with General Assembly resolutions 3021 (XXVII) of 18 December 1972, 32/59 and 32/60 of 8 December 1977, 35/171 and 36/21,

Bearing in mind the theme of the Congress, "crime prevention for freedom, justice, peace and development", and the importance of preserving peace as a condition for development and international co-operation,

Welcoming the fact that the Congress, in accordance with General Assembly resolution 39/112, paid particular attention to the question of illicit drug trafficking,

Alarmed by the growth and seriousness of crime in many parts of the world, including conventional and non-conventional criminality, which have a negative impact on development and the quality of life,

Considering that crime, particularly in its new forms and dimensions, seriously impairs the development process of many countries, as well as their international relations,

Noting that the function of the criminal justice system is to contribute to the protection of the basic values and norms of society,

Aware of the importance of enhancing the efficiency and effectiveness of criminal justice systems,

Noting that to limit effectively the harm caused by modern economic and unconventional crime, policy measures should be based on an integrated approach, the main emphasis being placed on the reduction of opportunities to commit crime and on the strengthening of norms and attitudes against it,

Aware of the importance of crime prevention and criminal justice, which embraces policies, processes and institutions aimed at controlling criminality and ensuring equal and fair treatment for all those involved in the criminal justice process,

Mindful that the incorporation of crime prevention and criminal justice policies in the planning process can help to ensure a better life for people

throughout the world, promote the equality of rights and social security, enhance the effectiveness of crime prevention, especially in such spheres as urbanization, industrialization, education, health, population growth and migration, housing and social welfare, and substantially reduce the social costs directly and indirectly related to crime and crime control by ensuring social justice, respect for human dignity, freedom, equality and security,

Convinced that due attention should be paid to crime prevention and criminal justice and the related processes, including the fate of victims of crime, the role of youth in contemporary society and the application of United Nations standards and norms,

Determined to improve regional, interregional and international co-operation and co-ordination to achieve further progress in this area, including effective and full implementation of the resolutions of the Seventh Congress,

Having considered the report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 3/ the report of the Secretary-General on the implementation of the recommendation of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 4/ and the report of the Secretary-General on the implementation of the conclusions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 5/ all submitted in pursuance of resolution 39/112,

1. Expresses its satisfaction with the report of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and with the preparatory work carried out by the Committee on Crime Prevention and Control, as the preparatory body for the Congress, at its seventh and eighth sessions and by the regional and interregional preparatory meetings convened in co-operation with the regional commissions, interregional and regional crime prevention institutes and interested Governments;

2. Takes note of the report on the implementation of the resolutions of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and of the Secretary-General's report on the conclusions of the Seventh Congress;

3. Approves the Milan Plan of Action annexed to the draft resolution adopted by consensus by the Seventh Congress, as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice;

3/ A/CONF.121/22.

4/ A/40/482 and Corr.1 and 2.

5/ A/40/751.

4. Recommends the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order for national, regional and international action, as appropriate, taking into account the political, economic, social and cultural circumstances and traditions of each country on the basis of the principles of the sovereign equality of States and of non-interference in their internal affairs;

5. Endorses the other resolutions unanimously adopted by the Seventh Congress;

6. Invites Governments to be guided by the Milan Plan of Action in the formulation of appropriate legislation and policy directives and to make continuous efforts to implement the principles contained in the Caracas Declaration and other relevant resolutions and recommendations adopted by the Sixth Congress, in accordance with the economic, social, cultural and political circumstances of each country;

7. Also invites Member States to monitor systematically the steps being taken to ensure co-ordination of efforts in the planning and execution of effective and humane measures to reduce the social costs of crime and its negative effects on the development process, as well as to explore new avenues for international co-operation in this field;

8. Invites the Committee on Crime Prevention and Control, at its ninth session, to review the Milan Plan of Action, the resolutions and recommendations unanimously adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and their implications for the programmes of the United Nations system and to make specific recommendations on the implementation thereof in its report to the Economic and Social Council at its first regular session of 1986;

9. Requests the Economic and Social Council to examine, at its first regular session of 1986, the report of the Committee on Crime Prevention and Control and the recommendations of the Seventh Congress for further implementation of the Milan Plan of Action in order to provide, within the United Nations system, overall policy guidance on crime prevention and criminal justice, and to undertake periodically the review, monitoring and appraisal of the Milan Plan of Action;

10. Urges the United Nations system, the regional and interregional institutes in the field of crime prevention and the treatment of offenders and other non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the recommendations of the Seventh Congress;

11. Urges also the Department of Technical Co-operation for Development of the Secretariat and the United Nations Development Programme to give their full support to projects of technical assistance, in particular to developing countries, in the field of crime prevention and criminal justice and to encourage technical co-operation among developing countries;

12. Requests the Secretary-General to make all efforts to translate into action, as appropriate, the relevant recommendations and policies stemming from the Milan Plan of Action and the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order and to provide adequate follow-up of the other resolutions and recommendations unanimously adopted by the Seventh Congress;

13. Also requests the Secretary-General, in his report to the Committee on Crime Prevention and Control, to initiate a review, as a matter of urgency, of the functioning and programme of work of the United Nations in the field of crime prevention and criminal justice, including the United Nations regional and interregional institutes, paying special attention to improving the co-ordination of relevant activities within the United Nations in all related areas in order to establish priorities and ensure the continuing relevance and responsiveness of the United Nations to emerging needs, and to submit the final report to the Economic and Social Council at its first session in 1987;

14. Further requests the Secretary-General to circulate the report of the Seventh Congress to Member States and intergovernmental organizations in order to ensure that it is disseminated as widely as possible, and to strengthen information activities in this field;

15. Requests the Secretary-General to submit to the General Assembly, at its forty-first session, a report on the measures taken to implement the present resolution;

16. Decides to include in the provisional agenda of the forty-first session the item entitled "Crime prevention and criminal justice".

DRAFT RESOLUTION II

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

The General Assembly,

Bearing in mind the Universal Declaration of Human Rights, 6/ the International Covenant on Civil and Political Rights 7/ and the International Covenant on Economic, Social and Cultural Rights, 7/ as well as other international human rights instruments pertaining to the rights of young persons,

Also bearing in mind that 1985 was designated the International Youth Year: Participation, Development, Peace and that the international community

6/ Resolution 217 A (III).

7/ See resolution 2200 A (XXI), annex.

has placed importance on the protection and promotion of the rights of the young, as witnessed by the significance attached to the Declaration of the Rights of the Child, 8/

Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 24 August to 5 September 1980, 9/ which called for the development of standard minimum rules for the administration of juvenile justice and the care of juveniles, which could serve as a model for Member States,

Recalling also Economic and Social Council decision 1984/153 of 25 May 1984, by which the draft rules were forwarded to the Seventh Congress, through the Interregional Meeting of Experts on Youth, Crime and Justice, held at Beijing from 14 to 18 May 1984, 10/

Recognizing that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in conditions of peace, freedom, dignity and security,

Considering that existing national legislation, policies and practices may well require review and amendment in view of the standards contained in the rules,

Considering further that, although such standards may seem difficult to achieve at present in view of existing social, economic, cultural, political and legal conditions, they are nevertheless intended to be attainable as a policy minimum,

1. Notes with appreciation the work carried out by the Committee on Crime Prevention and Control, the Secretary-General, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and other United Nations institutes in the development of the Standard Minimum Rules for the Administration of Juvenile Justice;

2. Takes note with appreciation of the report of the Secretary-General on the draft Standard Minimum Rules for the Administration of Juvenile Justice; 11/

8/ Resolution 1386 (XIV).

9/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

10/ See "Report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic IV: youth, crime and justice" (A/CONF.121/IPM/1).

11/ A/CONF.121/14 and Corr.1.

3. Commends the Interregional Meeting of Experts at Beijing for having finalized the text of the rules submitted to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders for consideration and final action;
4. Adopts the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh Congress contained in the annex to the present resolution, and approves the recommendation of the Seventh Congress that the Rules should be known as "the Beijing Rules";
5. Invites Member States to adopt, wherever this is necessary, their national legislation, policies and practices, particularly in training juvenile justice personnel, to the Beijing Rules and to bring the Rules to the attention of relevant authorities and the public in general;
6. Calls upon the Committee on Crime Prevention and Control to formulate measures for the effective implementation of the Beijing Rules, with the assistance of the United Nations institutes on the prevention of crime and the treatment of offenders;
7. Invites Member States to inform the Secretary-General on the implementation of the Beijing Rules and to report regularly to the Committee on Crime Prevention and Control on the results achieved;
8. Requests Member States and the Secretary-General to undertake research and to develop a data base with respect to effective policies and practices in the administration of juvenile justice;
9. Requests the Secretary-General and invites Member States to ensure the widest possible dissemination of the text of the Beijing Rules in all of the official languages of the United Nations, including the intensification of information activities in the field of juvenile justice;
10. Requests the Secretary-General to develop pilot projects on the implementation of the Rules;
11. Requests the Secretary-General and Member States to provide the necessary resources to ensure the successful implementation of the Beijing Rules, in particular in the areas of recruitment, training and exchange of personnel, research and evaluation, and the development of new alternatives to institutionalization;
12. Requests the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to review progress made in the implementation of the Beijing Rules and of the recommendations contained in the present resolution, under a separate agenda item on juvenile justice;
13. Urges all relevant organs of the United Nations system, in particular the regional commissions and specialized agencies, the United Nations institutes for the prevention of crime and the treatment of offenders, intergovernmental organizations and non-governmental organizations to

collaborate with the Secretariat and to take the necessary measures to ensure a concerted and sustained effort, within their respective fields of technical competence, to implement the principles contained in the Beijing rules.

ANNEX

United Nations Standard Minimum Rules for the Administration
of Juvenile Justice (The Beijing Rules)

Part one. General principles

1. Fundamental perspectives

- 1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.
- 1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.
- 1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.
- 1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.
- 1.5 The manner of implementation of these rules shall proceed in the context of economic, social and cultural conditions prevailing in each Member State.
- 1.6 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

Commentary

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible

/...

extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular Rules necessarily to be different from the manner adopted in other States.

2. Scope of the Rules and definitions used

- 2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.
- 2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:
 - (a) A juvenile is a child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult;
 - (b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal system;
 - (c) A juvenile offender is a young person who is alleged to have committed or who has been found to have committed an offence.
- 2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:
 - (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
 - (b) To meet the needs of society;
 - (c) To implement the following Rules thoroughly and fairly.

Commentary

The Standard Minimum Rules are deliberately formulated in such a way as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child. 12/

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the juvenile offender, who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation with a view to the optimal implementation of these Standard Minimum Rules, both legally and practically.

3. Extension of the Rules

- 3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.
- 3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.
- 3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

12/ See also the Convention on the Elimination of All Forms of Discrimination against Women (resolution 34/180); the Declaration of the World Conference to Combat Racism and Racial Discrimination (Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978 (United Nations publication, Sales No. E.79.XIV.2), chap. II); the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55); the Standard Minimum Rules for the Treatment of Prisoners (United Nations publication, Sales No. E.56.IV.4), annex I, sect. A.); the Caracas Declaration (resolution 35/171, annex); and rule 9.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the administration of juvenile justice to cover:

(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness etc.) (rule 3.1);

(b) Juvenile welfare and care proceedings (rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

4. Age of criminal responsibility

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

Commentary

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, can a child, by virtue of her or his individual discernment and understanding, be held responsible for essentially anti-social behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

/...

Commentary

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just desert in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reaction (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to a wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here too the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

6. Scope of discretion

- 6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.
- 6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.
- 6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

Commentary

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.22.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international Standard Minimum Rules, which cannot possibly cover all differences in justice systems.

7. Rights of juveniles

- 7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Commentary

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments. (See also rule 14.) The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human Rights ^{13/} and in article 14.2 of the International Covenant on Civil and Political Rights. ^{14/}

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

^{13/} See resolution 217 A (III).

^{14/} See resolution 2200 A (XXI), annex.

8. Protection of privacy

- 8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.
- 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

9. Saving clause

- 9.1 Nothing in these Rules shall be interpreted as precluding the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

Commentary

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards - such as the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights 14/ and the International Covenant on Civil and Political Rights; and the Declaration of the Rights of the Child and the draft convention on the rights of the child. 15/ It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. 16/ (See also rule 27.)

15/ See Official Records of the Economic and Social Council, 1985, Supplement No. 2 (E/1985/22), chap. I, sect. A, draft resolution VI.

16/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1).

Part two. Investigation and prosecution

10. Initial contact

- 10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.
- 10.2 A judge or other competent official or body shall, without delay, consider the issue of release.
- 10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

Commentary

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners. 17/

The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9.3.)

17/ The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (see First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.1956.IV.4). In its resolution 663 C (XIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules and endorsed, inter alia, the recommendations on the selection and training of personnel for penal and correctional institutions and on open penal and correctional institutions. The Council recommended that Governments should give favourable consideration to the adoption and application of the Standard Minimum Rules and should take the other two groups of recommendations as fully as possible into account in the administration of penal and correctional institutions. The inclusion of a new rule, rule 95, was authorized by the Economic and Social Council in resolution 2076 (LXII) of 13 May 1977. The text of the Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations is contained in Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1).

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

11. Diversion

- 11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.
- 11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.
- 11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.
- 11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Commentary

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making - by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.2 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Convention concerning the Abolition of Forced Labour. 18/) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority" may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure etc.).

12. Specialization within the police

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

Commentary

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

18/ Convention No. 105, adopted on 25 June 1957 by the General Conference of the International Labour Organisation at its fortieth session.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally as an instrument for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

13. Detention pending trial

- 13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
- 13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- 13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners.
- 13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

Commentary

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young

detainees to be addressed (for example females or males, drug addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example of arrest etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Part three. Adjudication and disposition

14. Competent authority to adjudicate

- 14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council etc.) according to the principles of a fair and just trial.
- 14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself/himself freely.

Commentary

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. Competent authority is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to refuse to answer, the right to have the last word in a hearing, the right to appeal etc. (see also rule 7.1).

15. Legal counsel, parents and guardians

- 15.1 Throughout the proceedings the juvenile shall have the right to be represented by her or his legal adviser or to apply for free legal aid where there is provision for such aid in the country.
- 15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

Commentary

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile - a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude toward the juvenile; hence, the possibility of their exclusion must be provided for.

16. Social inquiry reports

- 16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

Commentary

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most cases involving legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board for this purpose. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

- (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;
- (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Commentary

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

- (a) Rehabilitation versus just desert;
- (b) Assistance versus repression and punishment;
- (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
- (d) General deterrence versus individual incapacitation.

The conflict between these approaches is especially pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven.

It is not the function of standard minimum rules for the administration of juvenile justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular under subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, it encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in subparagraph 17.2 is in accordance with article 6.5 of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ^{19/} as well as the draft convention on torture and other cruel, inhuman or degrading treatment or punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

^{19/} Resolution 3452 (XXX).

18. Various disposition measures

18.1 A large variety of dispositions shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

- (a) Care, guidance and supervision orders;
- (b) Probation;
- (c) Community service orders;
- (d) Financial penalties, compensation and restitution;
- (e) Intermediate treatment and other treatment orders;
- (f) Orders to participate in group counselling and similar activities;
- (g) Orders concerning foster care, living communities or other educational settings;
- (h) Other relevant orders.

18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

Commentary

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proven successful thus far, in different legal systems. On the whole they represent promising options that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10.1 of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that

the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

19. Least possible use of institutionalization

- 19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

Commentary

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("least period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

20. Avoidance of unnecessary delay

- 20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Commentary

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

21. Records

- 21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.
- 21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

22. Need for professionalism and training

- 22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.
- 22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Commentary

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it

is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth United Nations Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

Part four. Non-institutional treatment

23. Effective implementation of disposition

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

Commentary

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries a juge d'exécution des peines has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

24. Provision of needed assistance

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

Commentary

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

25. Mobilization of volunteers and other community services

- 25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

Commentary

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

Part five. Institutional treatment

26. Objectives of institutional treatment

- 26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.
- 26.2 Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may require because of their age, sex and personality and in the interest of their wholesome development.
- 26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- 26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by

/...

no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, 20/ and against the background of the Declaration on the Elimination of Discrimination against Women 21/ and the Convention on the Elimination of All Forms of Discrimination against Women.

20/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. A, para. 1.6.

21/ Resolution 2263 (XXII).

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

27. Application of the United Nations Standard Minimum Rules for the Treatment of Prisoners

- 27.1 The United Nations Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.
- 27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

Commentary

The Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations were among the first to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, the Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify the existing Standard Minimum Rules on the Treatment of Prisoners according to the particular characteristics of institutions for juvenile offenders within the scope of standard minimum rules for the administration of juvenile justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the specific varying needs of their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelates to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

28. Frequent and early recourse to conditional release

- 28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

- 28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

Commentary

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

29. Semi-institutional arrangements

- 29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.

Part six. Research, planning, policy formulation
and evaluation

30. Research as a basis for planning, policy formulation
and evaluation

- 30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.
- 30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.
- 30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.
- 30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

Commentary

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning with the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end,

there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

DRAFT RESOLUTION III

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

The General Assembly,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power, 22/

Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

1. Affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;
2. Stresses the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;
3. Adopts the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;
4. Calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavour:

22/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4).

(a) To implement social, health (including mental health), educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;

(b) To promote community efforts and public participation in crime prevention;

(c) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power;

(d) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;

(e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;

(f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;

(g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;

(h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;

5. Recommends that, at the international and regional levels, all appropriate measures should be taken:

(a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;

(b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;

(c) To render direct aid to requesting Governments designed to help them to curtail victimization and alleviate the plight of victims;

(d) To develop ways and means of providing recourse for victims where national channels may be insufficient;

6. Requests the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;

7. Also requests the Secretary-General to make use of the opportunities, which all relevant bodies and organizations within the United Nations system offer, to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;

8. Further requests the Secretary-General to promote the objectives of the Declaration, in particular by ensuring its widest possible dissemination;

9. Urges the specialized agencies and other entities and bodies of the United Nations system, relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration.

ANNEX

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as 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.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Social assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims of abuse of power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violation of national criminal laws but

that constitute violations of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

DRAFT RESOLUTION IV

Development of standards for the prevention of juvenile delinquency

The General Assembly,

Recalling resolution 4 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 24 August to 5 September 1980, 23/ which called for the elaboration of a set of standard minimum rules for the administration of juvenile justice and for the care of juveniles,

Noting that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 24/ are limited to the administration of juvenile justice and the assurance of legal guarantees in respect of young persons in conflict with the law,

Mindful of the need to develop national, regional and international strategies for the prevention of delinquency among the young,

Recognizing that the prevention of juvenile delinquency includes measures for the protection of juveniles who are abandoned, neglected, abused and in marginal circumstances and, in general, those who are at social risk,

23/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

24/ Resolution _____, annex.

Recognizing further the existence of a large number of young persons who are not in conflict with the law but who are at social risk,

Acknowledging that one of the basic aims of the prevention of juvenile delinquency is the provision of requisite assistance and a range of opportunities to meet the varying needs of the young, especially those who are most likely to commit crime or to be exposed to crime, and to serve as a supportive framework to safeguard their proper development,

1. Takes note with appreciation of the work undertaken by the United Nations institutes for the prevention of crime and the treatment of offenders and the regional commissions in the field of crime prevention;

2. Also takes note with appreciation of the working paper prepared by the Secretariat on youth, crime and justice; 25/

3. Endorses the recommendations contained in the report of the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Beijing from 14 to 18 May 1984; 26/

4. Requests the Secretary-General and Member States to take the necessary steps to establish joint programmes in the field of juvenile justice and the prevention of juvenile delinquency with the United Nations Social Defence Research Institute, the United Nations regional institutes for the prevention of crime and the treatment of offenders, the Arab Security Studies and Training Centre at Riyadh and other national and regional institutes, and with the assistance of regional commissions and national correspondents, which would include, inter alia, the following activities:

(a) To study the situation of juveniles at social risk and to examine the relevant policies and practices of prevention within the context of socio-economic development;

(b) To intensify efforts in training, research and advisory services for the prevention of juvenile delinquency;

5. Invites Member States to adopt distinct measures and systems appropriate to the interest of juveniles at social risk;

6. Calls upon the Economic and Social Council to request the Committee on Crime Prevention and Control, with the assistance of the United Nations institutes for the prevention of crime and the treatment of offenders, regional commissions and specialized agencies, to develop standards for the prevention of juvenile delinquency, which would assist Member States in

25/ A/CONF/121/7.

26/ A/CONF.121/IPM.1, sect. II.

formulating and implementing specialized programmes and policies, emphasizing assistance and care and the active involvement of the community, and to report to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the progress achieved in the development of the proposed standards, for review and final action;

7. Requests that the prevention of delinquency among the young should be regularly considered by the Committee on Crime Prevention and Control and that it should be considered by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, under a separate agenda item;

8. Urges all relevant entities within the United Nations system to collaborate with the Secretary-General in taking appropriate measures to ensure the implementation of the present resolution.

DRAFT RESOLUTION V

Domestic violence

The General Assembly,

Recalling Economic and Social Council resolution 1984/14 of 24 May 1984 on violence in the family,

Recalling also resolution 9 adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which called for the fair treatment of women by the criminal justice system, 27/

Bearing in mind the recommendations made on the subject of domestic violence by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held at Nairobi from 15 to 26 July 1985, 28/

Having regard to the Declaration on the Rights of the Child, 29/ in particular to article 9 concerning the protection of the child against exploitation, neglect and cruelty, and the Convention on the Elimination of All Forms of Discrimination against Women, 30/

27/ See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

28/ For the report of the World Conference, see A/CONF.116/28 and Corr.1-4.

29/ Resolution 1386 (XIV).

30/ Resolution 34/180.

Mindful of the important role of the family in ensuring the proper development of the young and their integration into the mainstream of society, and in preventing delinquency,

Mindful further of the social aspects of domestic violence and of the great importance of emphasizing and developing appropriate methods of conflict resolution between the parties involved,

Recognizing that abuse and battery in the family are critical problems that have serious physical and psychological effects on individual family members, especially the young, and jeopardize the health and survival of the family unit,

Recognizing further the adverse effects of exposure to domestic violence, especially at an early stage of human development, and the incalculable harm thereof,

Convinced that the problem of domestic violence is a multifaceted one which should be examined from the perspective of crime prevention and criminal justice in the context of socio-economic circumstances,

Convinced also of the necessity to improve the situation of the victims of domestic violence,

Concerned that the abuse of alcohol, narcotic drugs and psychotropic substances may be an exacerbating condition of domestic violence and that such exacerbating effects should be further examined,

1. Takes note with appreciation of the report of the Secretary-General on the situation of women as victims of crime; 31/
2. Invites Member States concerned to take specific action urgently in order to prevent domestic violence and to render the appropriate assistance to the victims thereof;
3. Requests the Secretary-General to intensify research on domestic violence from a criminological perspective to formulate distinct action-oriented strategies that could serve as a basis for policy formulation and to report thereon to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;
4. Requests the Economic and Social Council to invite the Committee on Crime Prevention and Control to examine the problem of domestic violence;
5. Urges all relevant United Nations bodies, agencies and institutes to collaborate with the Secretary-General in ensuring a concerted and sustained effort to combat this problem;

6. Invites the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the problem of domestic violence under a separate agenda item dealing with domestic violence;

7. Invites Member States to adopt specific measures with a view to making the criminal and civil justice system more sensitive in its response to domestic violence, including the following:

(a) To introduce, if not already in place, civil and criminal legislation in order to deal with particular problems of domestic violence, and to enact and enforce such laws in order to protect battered family members and punish the offender and to offer alternative ways of treatment for offenders, according to type of violence;

(b) To respect, in all instances of the criminal proceeding, starting with the police investigation, the special and sometimes delicate position of the victim, in particular in the manner in which the victim is treated;

(c) To initiate preventive measures, such as providing support and counselling to families, in order to improve their ability to create a non-violent environment, emphasizing principles of education, equality of rights and equality of responsibilities between women and men, their partnership and the peaceful resolution of conflicts;

(d) To inform the public, as necessary, through all available channels, about serious acts of violence perpetrated against children, in order to create public awareness of this problem;

(e) To deliver appropriate, specialized assistance to victims of domestic violence, as an integral part of social policy;

(f) To provide, as a temporary solution, shelters and other facilities and services for the safety of victims of domestic violence;

(g) To provide specialized training and units for those who deal in some capacity with victims of domestic violence;

(h) To initiate or intensify research and collect data on the background, extent and types of domestic violence;

(i) To make legal remedies to domestic violence more accessible and, in view of the criminogenic effects of the phenomenon, in particular on young victims, to give due consideration to the interests of society by maintaining a balance between intervention and the protection of privacy;

(j) To ensure that social welfare and health administration systems are more intensely engaged in providing assistance to victims of familial violence and abuses, and to make all efforts to co-ordinate social welfare and criminal justice measures.

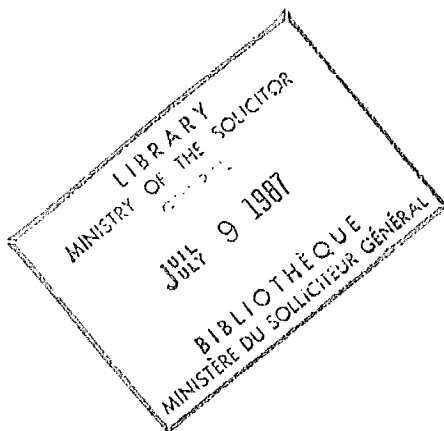
DRAFT RESOLUTION VI

Expression of appreciation to the Government and people
of Italy on the occasion of the Seventh United Nations
Congress on the Prevention of Crime and the Treatment
of Offenders

The General Assembly,

Taking into account the significance and the results of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, from 26 August to 6 September 1985, 32/

Expresses its deep appreciation to the Government and people of Italy for acting as host to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.



32/ For the report of the Congress, see A/CONF.121/22.

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HV 6010 U54c 7th/1985 c.2	United Nations Congress on the Prevention of Crime and the Treatment of Offenders (7th: 1985: Milan, Italy). Report of the Canadian delegation.	
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	<i>HANZ B. Van De Alben</i>	

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U54c Crime and the Treatment
7th/1985 of Offenders (7th : 1985:
c.2 Milan, Italy).

Report of the
Canadian delegation.

