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EIGHTH UNITED NATIONS CONGRESS ON THE  
PREVENTION OF CRIME AND THE TREATMENT  
OF OFFENDERS

REPORT OF THE INTERREGIONAL PREPARATORY MEETING FOR THE EIGHTH  
UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE  
TREATMENT OF OFFENDERS ON TOPIC 5: "UNITED NATIONS NORMS  
AND GUIDELINES IN CRIME PREVENTION AND CRIMINAL JUSTICE:  
IMPLEMENTATION AND PRIORITIES FOR FURTHER  
STANDARD SETTING"

Vienna, 27 June-1 July 1988

U.S. Department of Justice  
National Institute of Justice

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CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
<b>RECOMMENDATIONS</b>		
A. Draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials .....		3
B. Draft Basic Principles on the Role of Lawyers .....		7
C. Draft Model Agreement on Transfer of Proceedings in Criminal Matters .....		10
D. Draft Model Agreement on Transfer of Supervision of Offenders Who Have Been Conditionally Sentenced or Conditionally Released .....		14
E. Implementation of United Nations Standards and Guidelines in Crime Prevention and Criminal Justice .....		17
F. Draft Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials .....		20
G. Draft Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary .....		22
H. Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions .....		25
 <u>Chapter</u>		
I. ATTENDANCE AND ORGANIZATION OF WORK .....	1-10	31
A. Date and venue .....	1	31
B. Attendance .....	2	31
C. Opening of the Meeting .....	3-8	31
D. Election of officers .....	9	32
E. Adoption of the agenda and organization of work ..	10	33
II. REPORT OF THE DISCUSSION .....	11-50	34
A. Implementation of existing standards and priorities for further standard setting .....	11-32	34
B. Formulation of new standards and procedures in priority area .....	33-50	37
III. ADOPTION OF THE REPORT AND CLOSING OF THE MEETING ....	51-59	41
 <u>Annexes</u>		
I. List of participants .....		43
II. List of documents .....		46



UNITED NATIONS

GENERAL  
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ENGLISH, RUSSIAN, SPANISH ONLY

EIGHTH UNITED NATIONS CONGRESS ON THE  
PREVENTION OF CRIME AND THE TREATMENT  
OF OFFENDERS

REPORT OF THE INTERREGIONAL PREPARATORY MEETING FOR THE EIGHTH  
UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE  
TREATMENT OF OFFENDERS ON TOPIC 5: "UNITED NATIONS NORMS  
AND GUIDELINES IN CRIME PREVENTION AND CRIMINAL JUSTICE:  
IMPLEMENTATION AND PRIORITIES FOR FURTHER  
STANDARD SETTING"

Vienna, 27 June-1 July 1988

Corrigendum

Page 12, paragraph 9, line 1

For requesting read requested

Page 13, paragraph 11, line 1

For requesting read requested

## RECOMMENDATIONS

The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 5: "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting", discussed and adopted the following draft instruments for national and international action which it recommended for consideration by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings, through the Committee on Crime Prevention and Control (draft instruments A, B, C and D) and the Economic and Social Council, through the Committee on Crime Prevention and Control (draft instruments E, F, G and H).

### A. Draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Whereas the work of law enforcement officials is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials play a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights 1/ and reaffirmed in the International Covenant on Civil and Political Rights, 2/

Whereas the Standard Minimum Rules for the Treatment of Prisoners 3/ provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty, 4/

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials, 5/

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights, 6/

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invites Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomes this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration should be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace, and to the importance of their qualifications, training and conduct,

The basic principles listed below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice and should be brought to the attention of law enforcement officials including prison officials, lawyers, judges, prosecutors, members of the executive and the legislature and the public in general.

#### General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations strictly limiting the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms continuously under review.
2. With a view to minimizing the harmful effects involved in the use of force or firearms, Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, bearing in mind the desirability of eventual exclusion of means capable of causing death or injury for persons.
3. The development and deployment of non-lethal weapons should be carefully evaluated in order to minimize the risk of injury to uninvolved bystanders and suspected offenders, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force or firearms.
5. In those circumstances where the lawful use of force or firearms is unavoidable, law enforcement officials shall exercise restraint in the use of such force or firearms and in any event shall act in proportion to the legitimate objective to be achieved.
6. Whenever the use of force or firearms is unavoidable, law enforcement officials shall in all cases minimize damage and shall respect and preserve human life.
7. Law enforcement officials who resort to the use of force or firearms shall ensure that assistance and medical aid is rendered to any injured or affected persons at the earliest possible moment.
8. Where injury or death is caused by the use of force or firearms by law enforcement officials, they shall report the incident promptly to their superiors.
9. Governments shall ensure that arbitrary or abusive use of force or firearms by law enforcement officials is punished as a criminal offence under their law.
10. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these Basic Principles.

### Special provisions

11. Law enforcement officials shall not use firearms against persons except in necessary self-defence or defence of others against the immediate threat of death or serious injury, or to prevent the perpetration of a serious crime involving grave danger to the community, or to arrest a person presenting such a danger, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal force may only be used when strictly unavoidable in order to protect life.

12. Under the circumstances provided for under principle 11, law enforcement officials shall identify themselves as law enforcement officials and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed.

13. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry and use firearms and the types of firearms and ammunition officially issued by the competent authorities;

(b) Ensure that firearms are appropriate to the situation so as to prevent, as far as practicable, the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Specify the warnings to be made in the case of use of firearms;

(f) Provide a system of compulsory reporting whenever law enforcement officials resort to the use of firearms in the performance of their duty.

### Policing unlawful assemblies

14. In accordance with the principles embodied in the Universal Declaration of Human Rights <sup>1/</sup> and the International Covenant on Civil and Political Rights, <sup>2/</sup> Governments and law enforcement agencies and officials shall recognize that everyone has the right to participate in lawful and peaceful assemblies.

15. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force, or, where that is not practicable, restrict such force to the minimum necessary, always respecting the provisions of these principles.

16. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable. In particular, law enforcement officials shall not use firearms in such cases, except in self-defence or in the defence of others against the immediate threat of death or serious injury.

### Policing persons in custody or detention

17. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

18. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in necessary self-defence or defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 11.

19. The preceding Principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, 3/ particularly rules 33, 34 and 54.

### Qualifications, training and counselling

20. Governments and law enforcement agencies shall ensure that all law enforcement officials have appropriate ethical, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Those law enforcement officials who are required to carry firearms should be selected by proper screening procedures.

21. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the techniques of persuasion, negotiation and mediation, as well as to scientific means, with a view to limiting the use of force or firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

22. Governments and law enforcement agencies shall provide stress counselling to law enforcement officials who are involved in situations where force or firearms are used.

### Reporting and review procedures

23. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in Principles 8 and 13(f). Every case shall be thoroughly examined to determine whether the use of force or firearms was authorized and justified under the circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for independent administrative review and judicial control, including those responsible for prosecution.

24. Persons subjected to the use of force or firearms or their legal representatives shall have the right to initiate the independent administrative review and the judicial control procedures referred to in principle 23.

25. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they could reasonably be expected to be aware that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force or firearms and they do not take all measures in their power to prevent, suppress or report such use.

26. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these Basic Principles, refuse to carry out an order to use force or firearms, or who report such use of force or firearms by other officials. Obedience to superior orders shall be no defence if law enforcement officials knew or could have been reasonably expected to know that the orders to use force or firearms resulting in the death or serious injury of a person were unlawful and had a reasonable opportunity to refuse to follow them.

B. Draft Basic Principles on the Role of Lawyers

Whereas the peoples of the world affirm in the Charter of the United Nations, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights 1/ enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights 2/ proclaims, in addition, the right to be tried without undue delay and the right to fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights 2/ recalls the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedom,

Whereas the Standard Minimum Rules for the Treatment of Prisoners 3/ recommend that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards Guaranteeing Protection of Those Facing the Death Penalty 7/ reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with Article 14 of the International Covenant on Civil and Political Rights, 2/

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from improper restrictions and infringements, providing legal services to all in need of them and co-operating with governmental and other institutions in furthering the ends of justice,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in its resolution 18, 6/ recommends that Member States should provide for the protection of practising lawyers against undue restrictions and pressures in the exercise of their functions,



Whereas the Seventh United Nations Congress requests the Secretary-General to provide interested Member States with all the technical assistance needed to attain the above objective and to encourage international collaboration in research and in the training of lawyers,

Whereas the Economic and Social Council, in its resolution 1986/10, section XII, requests the Committee on Crime Prevention and Control and invites the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to pay special attention in their research and training programmes to the role of lawyers,

Whereas the General Assembly, in its resolution 41/149, welcomes the above recommendation made by the Council,

Having considered the work of the General Assembly on the Draft Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 8/ and of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities on the Draft Universal Declaration on the Independence of Justice, 9/

The basic principles given below, formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be taken into account and respected by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers, judges, prosecutors, members of the executive and the legislature as well as the public in general.

#### Access to lawyers and legal services

1. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Governments shall ensure the provision of funding and other resources for legal services to be provided to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.
3. It is the responsibility of Governments and professional associations of lawyers to promote programmes aimed at informing the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.
4. It is the duty of Governments to ensure that all persons charged with criminal offences, or arrested, detained or imprisoned, are promptly informed by the competent authority of their right to be represented and assisted by a lawyer of their own choice.
5. All such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have lawyers assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

6. Governments shall further ensure that all persons arrested, detained or imprisoned, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

7. Arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement or other officials.

8. The guarantees contained in this Principle may not be restricted or suspended save temporarily in exceptional circumstances to be specified by law, and without prejudice to the guarantees contained in any other Principle, provided that such measures are strictly required by the exigencies of the situation and indispensable for the maintenance of security and order. Such restrictions or suspensions shall be limited in extent and duration to those exigencies and shall be subject to prompt judicial review.

#### Qualifications and training

9. Governments, educational institutions and professional associations of lawyers shall ensure that lawyers have appropriate education and training, including awareness of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. It is the duty of Governments and professional associations of lawyers to ensure that there is no discrimination with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments and professional associations of lawyers should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

#### Guarantees for the functioning of lawyers

12. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall at all times act in accordance with the law and established professional standards and ethics.

13. Governments shall ensure that lawyers are able to perform their professional functions without hindrance or improper interference.

14. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in order to enable lawyers to provide effective legal assistance to their clients. Such access shall be provided at the earliest appropriate date and, in criminal proceedings, not later than at the beginning of the trial stage.

15. Governments shall ensure that all communications and consultations between lawyers and their clients are confidential and, in criminal

proceedings, are inadmissible as evidence against the client unless they are connected with a continuing or contemplated crime. This protection of the confidentiality of lawyer-client communications shall be extended to lawyers' partners, employees, assistants and agents, as well as files and documents.

16. It is the responsibility of Governments to ensure that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action or defence taken in accordance with established professional duties, standards and ethics. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

17. Lawyers shall not be identified to their prejudice with their clients or their clients' causes as a result of discharging their functions.

#### Professional associations of lawyers

18. Lawyers shall be free to form and join self-governing professional associations to represent their interests, to promote their continuing education and training and to protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

19. Professional associations shall establish codes or principles of professional conduct for lawyers in accordance with national law and custom and recognized international standards and norms.

20. Professional associations of lawyers shall co-operate with Governments to ensure that all persons have effective and equal access to legal services and that lawyers are able, without hindrance or improper interference, to counsel, assist and represent their clients in accordance with the law and established professional standards and ethics.

#### Disciplinary proceedings

21. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing.

22. Disciplinary proceedings against lawyers shall be brought before a disciplinary body which consists of, or includes, lawyers among its members, or before a court, and should be subject to judicial review.

23. All disciplinary proceedings shall be determined in accordance with law and the established standards and ethics of the legal profession.

### C. Draft Model Agreement on Transfer of Proceedings in Criminal Matters

#### Preamble

The \_\_\_\_\_ and the \_\_\_\_\_

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, based on the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

Believing that such co-operation should further the ends of justice, the social resettlement of offenders and the interests of the victims of crime,

Bearing in mind that the transfer of proceedings in criminal matters contributes to the effective administration of justice and to reducing conflicts of competence,

Aware that the transfer of proceedings in criminal matters can help to avoid pre-trial detention and thus reduce the prison population,

Convinced, therefore, that the transfer of proceedings in criminal matters should be promoted,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Have agreed as follows:

#### I. THE TRANSFER OF PROCEEDINGS

1. When a person is suspected of having committed an offence under the law of a Contracting Party, that Party may, if the interests of the proper administration of justice so require, request another Contracting Party to take proceedings in respect of this offence.

2. A Party shall ensure that it establishes the necessary jurisdiction enabling it to take proceedings at the request of another Party in respect of the offence, if jurisdiction does not already exist under national law.

3. A request for proceedings shall be made in writing and shall contain or be accompanied by the following information:

- (a) The authority presenting the request;
- (b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
- (c) The original or a copy of the criminal file or other information on the results of investigations;
- (d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;
- (e) Reasonably exact information on the identity and domicile of the suspect.

4. The competent authorities of the requested State shall examine what action to take on the request to take proceedings in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the requesting State.

## II. DUAL CRIMINALITY

5. Requests to take proceedings can be complied with only if the act on which the request is based would be an offence if committed in the territory of the requested State.

## III. GROUNDS FOR REFUSAL\*

6. If the requested State refuses acceptance of a request for transfer of proceedings, it shall communicate the reasons for refusal to the requesting State. Acceptance may be refused where:

- (a) The suspected person is not a national of the requested State or is not ordinarily resident in that State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;
- (d) The offence is regarded by the requested State as being of a political nature.

## IV. THE POSITION OF THE SUSPECTED PERSON

7. The suspected person may express to either State his or her interest in the transfer of the proceedings. Similarly, such interest may be expressed by the suspected person's legal representative or close relatives.

8. The requesting States shall, if practicable, allow the suspected person to present his or her views on the matter before a request to take proceedings is made, unless that person has absconded or otherwise obstructed the course of justice.

9. If the competence of the requesting State is exclusively based on the provision in paragraph 2 of this Agreement, that State shall, before taking a decision on the request to take proceedings, allow the suspected person to present his or her views on the matter.

## V. THE RIGHTS OF THE VICTIM

10. The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

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\*This article gives an illustrative list of grounds for refusal. States, when negotiating on the basis of this Model Agreement, may wish to add other grounds for refusal or conditions to this list, e.g. relating to the nature or gravity of the offence or to the protection of fundamental human rights or consideration of public order.

VI. THE EFFECT OF THE TRANSFER OF PROCEEDINGS ON THE REQUESTING STATE  
(Ne bis in idem)

11. Upon acceptance by the requesting State of the request to proceed against the alleged offender, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that moment on, the requesting State shall refrain from further prosecution of the same offence.

VII. THE EFFECTS OF THE TRANSFER OF PROCEEDINGS ON THE REQUESTING STATE

12. The proceedings transferred upon agreement shall be governed by the law of the requested State. When charging the suspected person under its law, the requested State shall make the necessary adjustment with respect to particular elements in the legal description of the offence. Where the competence of the requested State is based on the provision in paragraph 2 of this Agreement, the sanction pronounced in that State shall not be more severe than that provided by the law of the requesting State.

13. As far as compatible with the law of the requested State, any act with a view to proceedings or procedural requirements that is performed in the requesting State in accordance with its law shall have the same validity in the requested State as if it had been performed in or by the authorities of that State.

14. The requested State shall inform the requesting State of the decision taken as a result of the proceedings; to this end a copy of any final decision shall be transmitted to the requesting State.

VIII. PROVISIONAL MEASURES

15. When the requesting State announces its intention to transmit a request for transfer of proceedings, the requested State may, upon a specific request made for this purpose by the requesting State, apply all such provisional measures, including provisional detention and seizure, as could be applied under its own law if the offence in respect of which transfer of proceedings is requested had been committed in its territory.

IX. THE PLURALITY OF CRIMINAL PROCEEDINGS

16. When criminal proceedings are pending in two or more States against the same suspected person in respect of the same offence, the States concerned shall conduct consultations to decide which of them alone should continue the proceedings. An agreement reached thereupon shall have the consequences of a request for transfer of proceedings.

X. COSTS

17. Any costs incurred by a Contracting Party because of a transfer of proceedings shall not be refunded, unless otherwise agreed by both the requesting and requested States.

## XI. FINAL PROVISIONS

18. This Agreement is subject to ratification. The instruments of ratification shall be exchanged as soon as possible in

19. This Agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

20. Either Contracting Party may denounce this Agreement by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

Done at \_\_\_\_\_ on \_\_\_\_\_ 19.. in (duplicate) in the \_\_\_\_\_ and \_\_\_\_\_ languages (both) (all) texts being equally authentic.

### D. Draft Model Agreement on Transfer of Supervision of Foreign Offenders Who Have Been Conditionally Sentenced or Conditionally Released

#### Preamble

The \_\_\_\_\_ and the \_\_\_\_\_

Desirous of further strengthening international co-operation and mutual assistance in criminal justice, based on the principles of respect for national sovereignty and jurisdiction and of non-interference in internal affairs of States,

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

Bearing in mind that the transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

Aware that the supervision in the offender's home country rather than the enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released foreign offenders in their State of ordinary residence,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Have agreed as follows:

#### I. TRANSFER OF SUPERVISION

1. This Agreement shall be applicable if, according to a final court decision, a person has been found guilty of an offence and has been:

- (a) Placed on probation without sentence having been pronounced;
- (b) Given a suspended sentence involving deprivation of liberty;
- (c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

2. The State where the decision was taken (sentencing State) may request another State (administering State) to take responsibility for applying the terms of the decision, including enforcement in the event of revocation (transfer of supervision).

3. A request for the transfer of supervision shall be made in writing and be accompanied by the original or a copy of any decision referred to in the preceding provision.

4. The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

#### II. DUAL CRIMINALITY

5. Requests for transfer of supervision can be complied with only if the act on which the request is based would be an offence if committed in the territory of the administering State.

#### III. GROUNDS FOR REFUSAL\*

6. If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

- (a) The sentenced person is not ordinarily resident in the administering State;
- (b) The act is an offence under military law, which is not also an offence under ordinary criminal law;
- (c) The offence is in connection with taxes, duties, customs or exchange;

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\*This Section provides an illustrative list of grounds for refusal. States, when negotiating on the basis of this Model Agreement, may wish to add other grounds for refusal or conditions to this list, for example, relating to the nature or gravity of the offence, the protection of fundamental human rights or considerations of public order.



(d) The offence is regarded by the administering State as being of a political nature;

(e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of the lapse of time.

#### IV. THE POSITION OF THE SENTENCED PERSON

7. Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting State shall inform the offender or his or her close relatives of their possibilities under this Agreement.

#### V. THE RIGHTS OF THE VICTIM

8. The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular their rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

#### VI. THE EFFECTS OF THE TRANSFER OF SUPERVISION ON THE SENTENCING STATE

9. The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall suspend the competence of the latter State to enforce the sentence.

#### VII. THE EFFECTS OF THE TRANSFER OF SUPERVISION ON THE ADMINISTERING STATE

10. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

11. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law, without, however, going beyond the limits imposed by the sentencing State.

#### VIII. REVIEW, PARDON AND AMNESTY

12. The sentencing State alone shall have the right to decide on any application for a reopening of the case.

13. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other law.

#### IX. INFORMATION

14. The Contracting Parties shall keep each other informed insofar as it is necessary of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any decisions which may be relevant in this respect.

15. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

#### X. COSTS

16. Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed between the sentencing State and the administering State.

#### XI. FINAL PROVISIONS

17. This Agreement shall be applicable to the supervision of offenders sentenced either before or after its entry into force.

18. This Agreement is subject to ratification. The instruments of ratification shall be deposited as soon as possible in \_\_\_\_\_.

19. This Agreement shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

20. Either Contracting Party may denounce this Agreement by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

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

\_\_\_\_\_  
Done at \_\_\_\_\_ on \_\_\_\_\_ 19.. in (duplicate) in the \_\_\_\_\_ and \_\_\_\_\_ languages (both) (all) texts being equally authentic.

#### E. Implementation of United Nations Standards and Guidelines in Crime Prevention and Criminal Justice

The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 5: "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting",

Calling attention to 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, unanimously adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 10/

Also calling attention to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") recommended by the Seventh Congress for adoption by the General Assembly, 11/ as well as the safeguards guaranteeing the rights of those facing the death penalty, 7/ the Code of Conduct for Law Enforcement Officials, 4/ the Basic Principles on the Independence of the Judiciary, 12/ the Standard Minimum Rules for the Treatment of Prisoners, 3/ and the Model Agreement on the Transfer of Foreign Prisoners 12/ adopted by the Congress,

Recognizing the important role the United Nations has played in the development of those standards and guidelines in crime prevention and criminal justice through its quinquennial congresses on the prevention of crime and the treatment of offenders and the Committee on Crime Prevention and Control,

Acknowledging the valuable contribution of the United Nations to those endeavours, through its activities in the field of human rights, based on the Universal Declaration of Human Rights, 1/ the International Covenant on Economic, Social and Cultural Rights, 2/ the International Covenant on Civil and Political Rights 2/ and other instruments,

Recalling General Assembly resolutions 40/146 of 13 December 1985, 41/149 of 4 December 1986 and 42/143 of 7 December 1987 on "Human rights in the administration of justice",

Recalling also Economic and Social Council resolution 1987/53 of 28 May 1987 on the review of the functioning and programme of work of the United Nations in crime prevention and criminal justice,

Welcoming the steps initiated by the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna and the United Nations Centre for Human Rights to ensure even closer co-operation, including preparations for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as noted with appreciation by the General Assembly in its resolution 42/143 on human rights in the administration of justice,

Welcoming in particular the fact that focal points have been created within the Centre for Social Development and Humanitarian Affairs and the United Nations Centre for Human Rights to monitor the human rights aspects of the administration of justice within various programmes and to provide, as appropriate, advice on co-ordination and other relevant issues,

Convinced of the need for further co-ordinated and concerted action by the Centre for Social Development and Humanitarian Affairs and the United Nations Centre for Human Rights, as evidenced, inter alia, by Commission on Human Rights resolutions 1988/33 on human rights in the administration of justice, 1988/40 on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, 1988/45 on administrative detention without charge or trial and 1988/68 on summary or arbitrary executions,

1. Encourages the continuing development of strategies for the practical implementation of United Nations standards and guidelines in crime prevention and criminal justice and of measures to assist Member States, at their request, in their implementation, as well as in evaluating their impact and effectiveness, in particular through the advisory services of the Department of Technical Co-operation for Development, the United Nations Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs, including:

(a) Adopting in national legislation and practice and fully implementing United Nations standards and guidelines, and making them available to all persons concerned;

(b) Designing realistic and effective mechanisms for implementation, including reporting systems;

(c) Increasing, as far as possible, the level of support to technical co-operation and advisory services for the more effective implementation of standards and guidelines, either directly or through international funding agencies, such as the United Nations Development Programme, particularly when developing countries include specific projects in their country programmes;

(d) Devising other measures to promote the observance of the principles embodied in United Nations instruments, including educational and promotional activities, the support of the mass media and increased community involvement;

(e) Preparing a compilation of all existing United Nations standards and guidelines in crime prevention and criminal justice, and publication of these in a form similar to the United Nations publication Human Rights: A Compilation of International Instruments; 3/

(f) Preparing proposals for the Eighth United Nations Congress on procedures and actions at national, regional and international levels to implement United Nations norms and standards in crime prevention and criminal justice;

2. Also encourages intensified co-operation between the United Nations and its interregional and regional institutes in crime prevention and criminal justice, special attention to be paid, inter alia, to:

(a) Strengthening, as far as possible, substantive support to the institutes;

(b) Application of United Nations instruments in their research and training programmes, including the development of appropriate curricula and training materials based on those instruments;

(c) Provision of technical assistance to Member States upon request;

3. Emphasizes the urgent need to strengthen the role of the Committee on Crime Prevention and Control in overseeing, evaluating and following up the implementation process, including:

(a) Keeping under review the application of existing standards;

(b) Assisting the General Assembly, the Economic and Social Council and other United Nations bodies and related entities, as appropriate, through the preparation of reports and recommendations relating to their work;

(c) Fostering more active inter-sessional involvement of its members, inter alia, through the designation of resource persons from members of the Committee who are willing to work on priority topics;

4. Further emphasizes that consideration should be given to the establishment of pre-sessional working groups of the Committee on Crime Prevention and Control to:

- (a) Prepare certain items for its discussions;
- (b) Oversee the elaboration of questionnaires to be used for the reporting system;
- (c) Examine in depth the replies and reports received from Governments and other relevant sources, including non-governmental organizations;
- (d) Identify general problems that may impinge on the effective implementation of standards and recommend viable solutions with practical action-oriented proposals based on the principles of international co-operation and solidarity;

5. Notes with appreciation that the United Nations continues to give special attention to standard-setting work in priority areas, in pursuance of the mandates of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

6. Recognizes the importance of developing diversified funding strategies, including recourse to voluntary and mixed multilateral and bilateral contributions for specific projects, and of strengthening the involvement of United Nations development agencies, including the United Nations Development Programme, in carrying out the tasks mentioned in the preceding paragraphs;

7. Acknowledges the significant role of the regional commissions, the specialized agencies and other organizations of the United Nations system, as well as intergovernmental and non-governmental organizations, including professional associations concerned with promoting United Nations standards and guidelines in crime prevention and criminal justice;

8. Decides to draw the attention of the Committee on Crime Prevention and Control and the regional preparatory meetings for the Eighth United Nations Congress, as well as the Congress itself, to the issues raised in the present recommendation.

F. Draft Guidelines for the Effective Implementation of  
the Code of Conduct for Law Enforcement Officials

I. Application of the Code

A. General principles

- 1. The principles embodied in the Code shall be reflected in national legislation and practice.
- 2. In order to achieve the aims and objectives set out in article 1 of the Code and its Commentaries, the definition of "law enforcement officials" shall be given the widest possible interpretation.
- 3. The Code shall be made applicable to all law enforcement officials, regardless of their jurisdiction.
- 4. Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code and other basic texts in human rights.

B. Specific issues

1. Selection, education and training. The selection, education and training of law enforcement officials shall be given prime importance. Governments shall also promote education and training through a fruitful exchange of ideas at the regional and interregional levels.

2. Salary and working condition. All law enforcement officials shall be sufficiently remunerated and their working conditions shall be adequate.

3. Discipline and supervision. Effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

4. Complaints by members of the public. Particular provisions shall be made, within the mechanisms mentioned under 3 above, for the receipt and processing of complaints against law enforcement officials by members of the public, and the existence of these provisions shall be made known to the public.

II. Implementation of the Code

A. At the national level:

1. The Code shall be made available to all law enforcement officials and competent authorities in their own language.

2. Governments shall disseminate the Code so as to ensure that the principles and rights contained therein become known to the public in general.

3. In considering measures to promote the application of the Code, Governments shall organize symposia on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.

B. At the international level:

1. Governments shall inform the Secretary-General of the United Nations at appropriate intervals, at least every five years, on the extent of the implementation of the Code.

2. The Secretary-General shall prepare periodic reports on progress made with respect to the implementation of the Code, drawing also on observations and on the co-operation of specialized agencies and relevant intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council.

3. As part of the information mentioned in 2 above, Governments shall provide to the Secretary-General copies of abstracts of laws, regulations and administrative measures concerning the application of the Code, any other relevant information on its implementation, as well as information on possible difficulties in its applications.

4. The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate.

5. The Secretary-General shall disseminate the Code and the present Guidelines and make them available to all States and intergovernmental and non-governmental organizations concerned in all official languages of the United Nations.

6. The United Nations, as part of its advisory services and technical co-operation and development programmes, shall:

(a) Make available to Governments requesting them the services of experts and regional and interregional advisors to assist in implementing the provisions of the Code;

(b) Promote national and regional training seminars and other meetings on the Code and on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.

7. The United Nations regional institutes shall be encouraged to organize seminars and training courses on the Code and to carry out research on the extent to which the Code is implemented in the countries of the region and the difficulties encountered.

G. Draft Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary

Procedure 1

All States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice. No judge shall be appointed or elected for purposes, or be required to perform services, that are inconsistent with the Basic Principles.

Procedure 2

The Basic Principles shall apply to all judges, and, as appropriate, to lay judges, where they exist.

Procedure 3

States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of the respective country. Judges, lawyers, members of the executive, the legislature, and the public in general, shall be informed in the most appropriate manner of the content and the importance of the Basic Principles so that they may promote their application within the framework of the justice system. In particular, States shall make the text of the Basic Principles available to all members of the judiciary.

Procedure 4

In implementing principles 7 and 11 of the Basic Principles, States shall pay particular attention to the need for adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to case-loads, providing the courts with necessary support staff and equipment, and providing judges with appropriate personal security, remuneration and emoluments.

#### Procedure 5

States shall promote or encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its independence.

#### Procedure 6

In accordance with Economic and Social Council resolution 1986/10, section V, Member States shall inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced and difficulties or obstacles encountered in their implementation at the national level and the assistance that might be needed from the international community.

#### Procedure 7

The Secretary-General shall prepare independent quinquennial reports to the Committee on Crime Prevention and Control on progress made with respect to the implementation of the Basic Principles, on the basis of the information received from Governments under procedure 6, as well as other information available within the United Nations system, including information on the technical co-operation and training provided by institutes, experts and regional and interregional advisors. In the preparation of those reports the Secretary-General shall also enlist the co-operation of specialized agencies and the relevant intergovernmental organizations and non-governmental organizations, in particular professional associations of judges and lawyers, in consultative status with the Economic and Social Council, and take into account the information provided by such agencies and organizations.

#### Procedure 8

The Secretary-General shall disseminate the Basic Principles, the present implementing procedures and the periodic reports on their implementation referred to in Procedures 6 and 7, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of those documents.

#### Procedure 9

The Secretary-General shall ensure the widest possible reference to and use of the text of the Basic Principles and the present implementing procedures by the United Nations in all its relevant programmes as well as the inclusion as soon as possible of the Basic Principles in the United Nations publication entitled Human Rights: A Compilation of International Instruments, 3/ in accordance with Economic and Social Council resolution 1986/10, section V.

#### Procedure 10

As part of its technical co-operation programme, the United Nations, in particular the Department for Technical Co-operation and Development and the United Nations Development Programme, shall:

(a) Assist Governments, at their request, in setting up and strengthening independent and effective judicial systems;



(b) Make available, to Governments requesting them, the services of experts and regional and interregional advisors on judicial matters to assist in implementing the Basic Principles;

(c) Enhance research concerning effective measures for implementing the Basic Principles, with emphasis on new developments in this area;

(d) Promote national and regional seminars, as well as other meetings at professional and non-professional levels, on the role of the judiciary in society, the necessity for its independence, and the importance of implementing the Basic Principles to further these goals;

(e) Strengthen substantive support to the United Nations regional and interregional research and training institutes for crime prevention and criminal justice, as well as other entities within the United Nations system concerned with implementing the Basic Principles.

#### Procedure 11

The United Nations regional and interregional research and training institutes for crime prevention and criminal justice, as well as other concerned entities within the United Nations system, shall assist in the implementation process. They shall pay special attention to ways and means of enhancing the application of the Basic Principles in their research and training programmes, and to providing technical assistance upon the request of Member States. For this purpose, the United Nations institutes, in co-operation with national institutions and intergovernmental and non-governmental organizations concerned, shall develop curricula and training materials based on the Principles and the present implementation procedures, which are suitable for use in legal education programmes at all levels, as well as in specialized courses on human rights and related subjects.

#### Procedure 12

The regional commissions, the specialized agencies and other entities within the United Nations system as well as other concerned intergovernmental organizations shall become actively involved in the implementation process. They shall inform the Secretary-General of the efforts made to disseminate the Basic Principles, the measures taken to give effect to them and any obstacles and shortcomings encountered. The Secretary-General shall also take steps to ensure that non-governmental organizations in consultative status with the Economic and Social Council become actively involved in the implementation process and the related reporting procedures.

#### Procedure 13

The Committee on Crime Prevention and Control shall assist the General Assembly and the Economic and Social Council in following up the present implementation procedures, including periodic reporting under Procedures 6 and 7 above. To this end, the Committee shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for them. The Committee shall, in this context, make specific recommendations, as appropriate, to the General Assembly and the Economic and Social Council and any other relevant United Nations human rights bodies, on further action required for the effective implementation of the Basic Principles.

#### Procedure 14

The Committee on Crime Prevention and Control shall assist the General Assembly, the Economic and Social Council and any other relevant United Nations human rights bodies, as appropriate, with the presentation of recommendations relating to reports of ad hoc inquiry commissions or bodies, with respect to matters pertaining to the application and implementation of the Basic Principles.

#### H. Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

##### The Economic and Social Council,

Recalling that article 3 of the Universal Declaration of Human Rights 1/ proclaims the right to life, liberty and security of person,

Bearing in mind that article 6 of the International Covenant on Civil and Political Rights 2/ 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 or her life,

Also bearing in mind the comments of the Human Rights Committee on the right to life as provided in article 6 of the International Covenant on Civil and Political Rights, 2/

Stressing that extra-legal, arbitrary and summary executions contravene the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights,

Mindful that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in resolution 11 on extra-legal, arbitrary and summary executions, 6/ called 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;

Mindful also that the Economic and Social Council, in its resolution 1986/10, section VI, requested the Committee on Crime Prevention and Control at its tenth session in 1988 to consider the question of extra-legal, arbitrary and summary executions with a view to elaborating principles on the effective prevention and investigation of such practices,

Recalling also that the General Assembly in its resolution 33/173 expressed its deep concern at reports from various parts of the world relating to enforced or involuntary disappearances and called upon Governments, in the event of such reports, to devote appropriate measures to search for such persons and to undertake speedy and impartial investigations,

Emphasizing that the General Assembly in its resolution 42/144 strongly condemned once again the large number of summary or arbitrary executions, including extra-legal executions, that continued to take place in various parts of the world,

Noting that the General Assembly in the same resolution recognized the need for closer co-operation between the United Nations Centre for Human Rights, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs and the Committee on Crime Prevention and Control in an effort to bring to an end summary or arbitrary executions,

Aware that effective prevention and investigation of extra-legal, arbitrary and summary executions require the provision of adequate financial and technical resources,

1. Recommends that the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, annexed to the present resolution, which have been formulated to assist Member States in their task of ensuring the effective prevention and investigation of extra-legal, arbitrary and summary executions, shall be taken into account and respected by Governments within the framework of their national legislation and practices, and shall be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Government and the public in general;

2. Requests the Committee on Crime Prevention and Control to keep this matter under constant review, including implementation of the Principles, taking into account various socio-economic, political and cultural circumstances in which extra-legal, arbitrary and summary executions occur;

3. Invites Member States that have not yet ratified or acceded to international instruments that prohibit extra-legal, arbitrary and summary executions, including the International Covenant on Civil and Political Rights and its optional Protocol, 2/ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 13/ to become party to these instruments;

4. Requests the Secretary-General to include the Principles in the United Nations publication entitled Human Rights: A Compilation of International Instruments; 3/

5. Requests the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to give special attention in their research and training programmes, to the present Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions as well as to the International Covenant on Civil and Political Rights, 2/ the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 3/ the United Nations Code of Conduct for Law Enforcement Officials, 4/ the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 14/ and other international instruments relevant to the question of extra-legal, arbitrary and summary executions.

Annex

DRAFT PRINCIPLES ON THE EFFECTIVE PREVENTION AND  
INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances such as a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.
5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made immediately available to their relatives and lawyer or other persons of confidence.
7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. These inspectors shall have unrestricted access to all persons in such places of custody, and to all their records.
8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such

practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are suspected to occur, shall co-operate fully in international investigations on the subject.

#### Investigation

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural deaths, accidental deaths, suicides and homicides.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the necessary authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

#### Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by such officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation, within a reasonable period of time.

Notes

- 1/ General Assembly resolution 217 A (III).
- 2/ General Assembly resolution 2200 A (XXI), annex.
- 3/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1), section G.29.
- 4/ General Assembly resolution 34/169, annex.
- 5/ A/CONF.121/IPM.3, para. 34.
- 6/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.
- 7/ Economic and Social Council resolution 1984/50, annex.
- 8/ A/C.6/42/L.12.
- 9/ E/CN.4/Sub.2/1985/18/Add.5/Rev.
- 10/ See Seventh United Nations Congress on the Prevention of Crime ..., chap. I, sect. A.
- 11/ Ibid., sect. C.
- 12/ Ibid., sect. D.
- 13/ General Assembly resolution 39/46, annex.
- 14/ General Assembly resolution 40/34, annex.

## I. ATTENDANCE AND ORGANIZATION OF WORK

### A. Date and venue of the Meeting

1. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic 5: "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting", was the fifth of a series of interregional meetings, each convened to discuss one of the substantive agenda items of the Eighth Congress to be held in 1990, in accordance with Economic and Social Council resolution 1987/49 of 28 May 1987 and General Assembly resolution 42/59 of 30 November 1987. The Meeting was held at Vienna from 27 June to 1 July 1988.

### B. Attendance

2. The Meeting was attended by participants from different regions of the world and observers from Member States, United Nations bodies and intergovernmental and non-governmental organizations. A list of participants is given in annex I.

### C. Opening of the Meeting

3. The Interregional Preparatory Meeting was opened by the Director-General of the United Nations Office at Vienna and Secretary-General of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Director-General pointed out that the present expert meeting was concerned with the humanization of criminal justice, which had been an issue of prime concern to the Organization since its foundations. The attainment of that goal was possible only when the citizens of all countries were assured of a just legal order within a just social order. An equitable social order depended as much on freedom from victimization by crime as an equitable legal order depended on freedom from arbitrary and oppressive crime control and abuse of power.

4. The United Nations had played a crucial role in the development of a number of standards through its quinquennial United Nations congresses on the prevention of crime and the treatment of offenders and the Committee on Crime Prevention and Control. Standard-setting work in priority areas continued, as mandated by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan, Italy, in 1985. While United Nations norms and guidelines in crime prevention and criminal justice were gradually being developed and had already been successfully implemented by numerous countries, there still existed major discrepancies in their effective application in many parts of the world. One of the principal objectives of the present meeting was, therefore, to explore methods for more effective implementation and follow-up of United Nations norms and guidelines already agreed upon.

5. Once again, the Secretary-General observed, it was demonstrated that there existed close links between the United Nations programme in crime prevention and criminal justice and the issue of human rights. Focal points had been created within both programmes to strengthen co-operation even further and to maximize effectiveness of work. The Director-General also acknowledged the valuable endeavours and support of non-governmental organizations active in the subject areas to be discussed.



6. The Chairman of the Meeting noted that the humanization of justice was a constant concern of the international community. At first glance it seemed inconsistent to speak of "humanizing justice", since justice as such should always be humane, equitable and widely accessible, thus being the best means of maintaining peace and harmony between nations. The Chairman pointed out that despite advancements in other areas, above all in technology, those ideals had not yet been achieved. The United Nations had been created first and foremost to eliminate war and its underlying causes, which all too often included discrimination on grounds of colour, race, religion and sex, and continued its fight for those noble ideals. Part of that constant fight was the humanization of justice, a goal pursued by the United Nations through its quinquennial congresses on the prevention of crime and the treatment of offenders as well as through regional and interregional institutes in crime prevention and criminal justice and other activities, such as the present meeting.

7. The representative of the Committee on Crime Prevention and Control observed that the meeting would make a valuable contribution both to the preparations for topic 5 of the Eighth Congress and to the work of the Committee at its forthcoming session. He shared the view expressed by the Director-General that special emphasis should be placed on the implementation of existing norms and guidelines. A systematic programme for their promotion depended on the availability of additional financial and human resources as well as intensified regional co-operation and technical assistance and advisory services. There was also a need to strengthen the role of the Committee in overseeing, evaluating and following-up the implementation process.

8. The Chief of the Crime Prevention and Criminal Justice Branch emphasized that one of the basic concepts underlying the present topic was the responsiveness of the criminal justice system to the protection of human rights and human freedom. Of all human rights, the most basic was to be free from arbitrary violence, whether emanating from Government officials, terrorists or criminals. Since their power was greater than that of any individual, Governments had a special responsibility to protect their citizens through a fair system of justice. The standards and guidelines to be reviewed by the Meeting formed a set of policy rules, the moral significance of which reflected the crucial consciousness-raising role of the Organization. In order to ensure the implementation of existing standards, it was necessary to devise new and concerted strategies to bridge the gap between lofty pronouncements and the concrete and often grim realities of people throughout the world.

#### D. Election of the officers

9. The Meeting elected the following officers by acclamation:

Chairman:	Jorge Montero (Costa Rica)
Vice-Chairmen:	Cicero Campos (Philippines) Roland Miklau (Austria) Mphanza P. Mvunga (Zambia)
Rapporteur:	Horst Luther (German Democratic Republic)
Chairman Working Group I:	Cicero Campos
Chairman Working Group II:	Mphanza P. Mvunga

E. Adoption of the agenda and organization of work

10. The following agenda was adopted:

1. Adoption of the agenda and organizational matters;
2. Implementation of existing standards, e.g. Standard Minimum Rules for the Treatment of Prisoners, Code of Conduct for Law Enforcement Officials, Basic Principles of Justice for Victims of Crime and Abuse of Power, Basic Principles on the Independence of the Judiciary, and priorities for further standard-setting:
  - (a) Progress achieved and difficulties encountered;
  - (b) Technical co-operation and advisory services;
  - (c) Regional co-operation;
  - (d) Research projects;
  - (e) The role of the Committee on Crime Prevention and Control;
3. Formulation of new standards and procedures in priority areas:

Working Group I

- (a) Draft Principles on Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
- (b) Draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- (c) Varenna Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials;
- (d) Procedures for the Effective Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;

Working Group II

- (a) Basic Principles on the Role of Lawyers;
  - (b) Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary;
  - (c) Model Agreement on Transfer of Proceedings in Criminal Matters;
  - (d) Model Agreement on Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released;
4. Adoption of the report.

## II. REPORT OF THE DISCUSSION

### A. Implementation of existing standards

11. In their opening remarks, participants stressed that the implementation of existing standards should receive priority attention. At the same time, there was praise for the presentation and analysis of the issues covered in the Discussion Guide (A/CONF.144/PM.1) which had been prepared for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as for all working papers submitted to the Meeting.

12. There was agreement that the implementation of United Nations norms and guidelines in crime prevention and criminal justice should receive priority attention and be promoted at all levels. Some participants observed that the implementation of such norms and guidelines was primarily a national responsibility although support could be provided through seminars and advisory services. In that connection the participants were informed of the United Nations programme in crime prevention and criminal justice and human rights and the activities of regional institutes and non-governmental organizations.

13. The United Nations Special Rapporteur on Impartiality and Independence of the Judiciary, Jurors and Assessors and the Independence of Lawyers emphasized the overriding need for continuous co-operation and co-ordination among different United Nations bodies as well as greater recognition and acknowledgement of the valuable inputs provided by those bodies and non-governmental organizations. He pointed out that he had submitted his final report and study to the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1985, together with an elaborate draft declaration which included detailed sections on judges, jurors, assessors and lawyers.

14. The Interregional Advisor in Crime Prevention and Criminal Justice described his experiences regarding the application of United Nations norms and guidelines in different countries and observed that in some regions there was insufficient knowledge of United Nations instruments. As the efforts of the regional institutes for crime prevention and control had shown, international co-operation played a crucial role in implementing United Nations standards and norms in the respective regions. In the light of that success, there was a strong need for enhanced regional co-operation and support combined with a high level of technical assistance and technical advisory services, for the benefit of the region concerned.

15. Referring to the recent resolutions adopted by the General Assembly and the Commission on Human Rights on continuing co-operation and co-ordination in programmes related to the issues of human rights, crime prevention and criminal justice, the representative of the United Nations Centre for Human Rights suggested that the various technical advisory services carried out by the United Nations Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna could be co-ordinated with a view to undertaking joint programmes.

16. It was pointed out that the newly created United Nations African Institute for the Prevention of Crime and the Treatment of Offenders would have an important role to play in the implementation of standards. A recent seminar held under the auspices of the Institute revealed that many Governments had no machinery to translate the standards into national legislation.

17. Mention was also made of the training programme of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). It was observed that more than 100 workshops, courses and seminars had been held, covering topics ranging from human rights in the administration of justice to the analysis of legislation in countries of the region. Recent research at the Institute was concentrating on the rights of pre-trial detainees, alternatives to imprisonment, the systems of misdemeanors and fines, depenalization, and criminality and social classes in Latin America and the Caribbean. The rights of minors and the independence of the judiciary were also of major concern to ILANUD, and programmes of assistance were described.

18. Some countries did not dispose of the machinery to translate international standards into national legislation or practice. It was pointed out that even in developed countries the translation of the standards into national law was sometimes cumbersome, and that complications were involved in reporting on existing national practices to the United Nations. Further details were given on interaction with Member States in order to increase response rate to implementation reviews.

19. On the issue of priorities for further standard setting, the view was expressed that the United Nations should concentrate on a few standards dealing with the more urgent problems, such as overcrowding in prisons and delayed justice. It was also noted that a conceptual distinction should be made between the development of new standards in areas of major international concern and the elaboration of implementation procedures for existing standards. There was also a need for the establishment of more effective monitoring mechanisms.

20. The representative of the International Criminal Police Organization emphasized the importance of training programmes. He stated that during symposia for directors of police training schools, discussions had been held on the question of police ethics. His organization was disseminating to its national central bureaux the Code of Conduct for Law Enforcement Officials and the draft Principles for the Use of Force and Firearms by Law Enforcement Officials.

21. The code of conduct for law enforcement officials in the Asian and Pacific region was described. It was stressed that the first obligation of law enforcement officials was to uphold the rights of citizens. Police effectiveness was based on the relationship between the police and the community and force should only be used as a last resort.

22. References were made to the reforms taking place in the Union of Soviet Socialist Republics in connection with the perestroika process: a new penal code was being developed, the independence of the judiciary and lawyers strengthened, and the presumption of innocence and others rights reaffirmed. As noted by one observer, the changes had already achieved a profound effect. During 1984, one half of those sentenced for committing a crime were deprived of their liberty, while in 1988 only thirty per cent were imprisoned.

23. The view was expressed that the United Nations standards should be more widely distributed, and that monitoring mechanisms should be established for all standards in order to acquaint officials with those provisions and thus increase the speed of their implementation. In that regard it was recommended to consolidate existing standards in the field of crime prevention and criminal justice into one single publication.

24. In view of the fact that prisons remained closed institutions, it was suggested that all prisoners should be treated with the respect due to their inherent dignity and value as human beings and that the United Nations Standard Minimum Rules for the Treatment of Prisoners should be fully implemented. The International Council for Adult Education, on behalf of ten non-governmental organizations in consultative status with the Economic and Social Council, agreed to submit to the tenth session of the Committee on Crime Prevention and Control specific recommendations to that effect which would stress the importance of education.

25. It was pointed out that the same provisions of a universally agreed standard often received divergent interpretations under different legal systems. In that connection, specific suggestions were made as to how the reporting system might be improved and it was proposed that questions should focus on principal issues on which Governments should be requested to comment. The translation of United Nations standards into national practice was a complex matter; similarly it was difficult to report on the relationship of specific national codes to United Nations guidelines. In that context, there was a proposal for closer collaboration with regional intergovernmental organizations, such as the Council of Europe.

26. With reference to the effectiveness of the current monitoring system, it was noted that present procedures and resources did not permit either the Committee or the Secretariat to monitor the implementation of standards. Implementation in general had, however, become more rapid in recent years, especially in the case of the latest standards adopted, and was attributable to the fact that more and more high-level policy-makers had been attending congresses.

27. It was stressed that there was a need for practical assistance to maintain the independence of judges who were under pressure not only as a result of threats and actual violence but also because of inadequate salaries and resources. In that connection, bilateral co-operation and support from international organizations and professional associations was desirable in order to introduce new technologies and improve methods of work. Once again, it was pointed out that the basic United Nations standards were frequently unknown and should be more widely publicized. Governments should concentrate on the implementation of existing standards and should develop strategies for their practical application.

28. Emphasis was given to the role of enlightened citizens, ombudsmen and grievance mechanisms in guaranteeing the observance of international standards and it was agreed that public education campaigns should be organized and governmental investigatory machinery established to enable individuals to complain of violations.

29. It was further reported that the German Democratic Republic had recently abolished capital punishment which had not been applied for many years, thus becoming the thirty-second abolitionist State. Mention was also made of a recent amnesty in the same country which had included 25,000 prisoners. Attention was also drawn to the Draft Code on Crime against Peace and Security of Mankind as an important instrument in the area of effective prevention of the gravest forms of criminality as well as to the need for the further humanization of criminal justice.

30. Emphasis was given to the vital role of an independent judiciary as well as to the imperative of unrestricted access to lawyers and legal services. In some States, organized crime endangered the entire system and justice

officials were under pressure in the exercise of their functions, or in some instances assassinated. Conversely, other States had witnessed a revival of the rule of law and respect for fundamental freedoms.

31. Mention was also made of the significant role of indigenous systems and forms of social control, such as the traditional community groups existing in many developing countries. While a variety of methods were applicable in different situations of conflict resolution, full attention should continue to be paid to the preservation of cultural identity, the respect of the rule of law and the need to harmonize traditional forms of social control with the contemporary criminal justice principles normally applicable in a modern State.

32. At the conclusion of its deliberations, the meeting considered a draft recommendation on "Implementation of United Nations standards and guidelines in crime prevention and criminal justice", which was further elaborated with a view to reflecting the various issues raised during the discussion.

#### B. Formulation of new standards and procedures

33. The meeting established two working groups to elaborate new standards. Working Group I considered the Draft Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Draft Guidelines for the More Effective Implementation of the Code of Conduct for Law Enforcement Officials, as contained in annex I and II of document E/AC.57/1988/8. There was consensus that the term "use of firearms" meant the actual discharge of a firearm rather than merely carrying or drawing it or pointing it at a person.

34. The Working Group considered and revised the Draft Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, contained in the annex to document E/AC.57/1988/5. The relevance of the new draft instruments to the prevention of such practices continued to be stressed.

35. Finally, the Working Group considered the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power with a view to promoting its wider implementation. Several participants referred to the fact that the Declaration was a relatively new document and it might be premature to propose a definitive mechanism for its application. In an effort to advance the implementation of the provisions of the Declaration, however, several steps could be considered with a view to their further elaboration by the Committee on Crime Prevention and Control, also drawing on the "Procedures for the Effective Implementation of the Declaration", prepared by an ad hoc Committee of Experts at the International Institute of Higher Studies in Criminal Sciences, held at Siracusa, Italy, in 1986, and further endorsed by an international symposium on crime prevention and criminal justice, held at Milan, Italy, in 1987, and on proposals of the National Association of Victims Support Schemes of the United Kingdom.

36. Participants agreed that effective implementation of the Declaration should also be based on action at the international level. In that context, the dissemination and exchange of information on the question of assistance to victims was the first priority. All relevant United Nations bodies and offices dealing with the issues of criminal justice and human rights should be involved in the process. The Human Rights Committee observed that wider dissemination and publicization of the International Covenant on Civil and Political Rights could be helpful in increasing the awareness of existing redress mechanisms available to victims. The Optional Protocol to the Covenant, which provided for the right to individual complaints, represented a forceful tool in that respect. In several of its decisions, the Human Rights Committee had encouraged Governments to reconsider their legislation concerning assistance

to victims. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power should be another tool in the same process.

37. The United Nations and its network of crime prevention and criminal justice institutes, as well as intergovernmental and non-governmental organizations and Member States, should be further involved in reviewing progress achieved in the implementation of the Declaration. Economic and Social Council resolution 1986/10 requesting the Secretary-General to prepare reports to that effect, was welcomed by the Meeting. The reports should be based, inter alia, on information provided by Governments on the dissemination of the Declaration, and its incorporation into national legislation, and could include information on technical co-operation and training as well as activities carried out by the specialized agencies and intergovernmental and non-governmental organizations.

38. On the subject of technical co-operation, participants underlined the need for assistance to Governments in setting up a comprehensive system to provide support for victims. The Organization should also strengthen available advisory services for the implementation of the Declaration, and promote seminars and training courses at the national, regional and international level through its network of interregional and regional institutes in crime prevention and criminal justice.

39. The United Nations regional commissions, specialized agencies and other bodies as well as intergovernmental and non-governmental organizations, should also contribute to enhancing the implementation process by paying more attention in their work to issues related to the provision of assistance to victims.

40. The Secretary-General should disseminate the text of the Declaration in as many languages as possible to ensure a wide publication of the problems of victims of crime and abuse of power.

41. It was agreed that research at the national and international levels should be carried out on the plight of victims and should include innovative solutions. Results should continue to be shared among Member States since the achievements of one Member State could greatly enhance results in other States. Studies of unreported crimes would determine the level of victimization and identify the needs of victims and ways of making services available to them.

42. If the needs of victims were to be appropriately met, it was important to monitor the implementation of the Declaration by individual criminal justice agencies. In a number of countries, those agencies were not sufficiently aware of victims' rights. In addition to relevant legislation and regulations addressing the victims' rights, there should be appropriate education and training of criminal justice officials, in particular the police which was the first agency to come into contact with a victim. Similarly, other organizations should review their policies and practices to ensure as much help as possible for victims, and to prevent secondary victimization, namely victimization by institutions including prisons.

43. State compensation should be available, as a right, to all those who suffered significant impairment of physical or mental health as a result of criminal victimization. However, since many countries had limited resources available to meet the needs of the victims, voluntary contributions were essential.

44. The view was expressed that Governments should enhance their efforts to establish mechanisms which would enable victims to obtain compensation through formal or informal procedures as called for in the Declaration. Some Governments still needed to secure an appropriate participation of victims in those procedures, in particular by allowing the victims to present their views at appropriate stages of the proceedings, providing assistance to victims throughout the legal process, and protecting their privacy and safety from intimidation or retaliation.

45. It was observed that in some cases there might be a dilemma between the choice of an alternative to imprisonment or other punishment on the side of the offenders and the legitimate interests of the victims on the other side. Under no circumstances should the position of the victims be worsened if alternative measures were applied to the offender.

46. Several participants referred to widespread victimization resulting from the abuse of power which could be overcome simply by incorporating into national laws international norms proscribing abuses of power, as defined in the Declaration. It was essential to secure their application in the judicial practice and provide avenues for redress. In that connection, human rights committees and other national organizations could play a crucial role in making the Declaration a living reality.

47. A major concern was that of collective victimization, which occurred repeatedly in certain regions as a result of environmental disasters, politically motivated victimization of ethnic groups or other similar phenomena. The participants agreed that protection against collective victimization needed greater attention at both the national and international levels. The Committee on Crime Prevention and Control should examine further that question in preparation of the Eighth Congress.

48. Working Group II considered and revised the Draft Basic Principles on the Role of Lawyers (E/AC.57/1988/15, annex) and the Draft Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (E/AC.57/1988/4, annex). It was agreed that the Draft Model Agreement on the Transfer of Proceedings in Criminal Matters (E/AC.57/1988/6, annex) and the Draft Model Agreement on the Transfer of Supervision of Foreign Offenders who have been Conditionally Sentenced or Conditionally Released (E/AC.57/1988/7, annex) were valuable documents which had succeeded in finding a common denominator acceptable to the international community. They contained the dual objective of providing a summary of principles accepted by the international community on the one hand, and assisting in the factual process of negotiations on concrete bilateral or multilateral conventions on the other hand.

49. Working Group II welcomed the constructive approach of the two draft models and emphasized that specific bilateral and multilateral conventions could transform optional rules into mandatory ones or regulate issues which had not been included in the model agreements. Comments on the possible applications of model agreements would be useful to the Committee on Crime Prevention and Control. The following questions would deserve particular attention:

(a) Draft Model Agreement on the Transfer of proceedings in Criminal Matters: difficulties facing common law countries in establishing jurisdiction for crimes committed abroad, as required by the Draft Model Agreement; introduction of a general rule for the transfer of proceedings for certain categories of crimes such as traffic offences;



(b) Draft Model Agreement on the Transfer of Supervision of Foreign Offenders who have been Conditionally Sentenced or Conditionally Released: consent of the offender; waiver from conditions and measures imposed by the court of the sentencing State and authorization of the court of the administering State to impose such conditions;

(c) Both model agreements: consideration of the requirement of dual criminality not as a precondition for the transfer, but as an optional ground for refusal; translation of the request for transfer and of the supporting documents into an agreed common language.

50. The text of the two draft models, as subsequently approved by the Plenary, is contained in the recommendations.

### III. ADOPTION OF THE REPORT AND CLOSING OF THE MEETING

51. At the final session the Working Group chairmen introduced their reports with the revised text of the new standards. These were unanimously approved and are reflected in the recommendations.

52. The Rapporteur introduced the draft report which emphasized the United Nations activities in the field of crime prevention, particularly the Committee on Crime Prevention and Control and the interregional and regional institutes in crime prevention and criminal justice, as well as intergovernmental and non-governmental organizations, including professional associations. The effective implementation of United Nations standards required their wide dissemination by Member States in various languages. Such a step would be a valuable contribution to the humanization of criminal policies and penal sanctions, and was especially pertinent on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights in 1988.

53. The draft report was unanimously adopted.

54. The observer from Cuba reaffirmed the offer of his Government to host the Eighth Congress at Havana, and informed the Meeting of a new penal code which would come into force in the near future in his country. The Cuban Ministry of Justice, in co-operation with the United Nations, was organizing a Latin American Seminar on Computerization later in 1988.

55. In his closing statement, the Director for Social Development of the Centre for Social Development and Humanitarian Affairs, said the results of the Meeting were significant not only with regard to crime prevention and criminal justice but also to many other United Nations activities. A more humane justice system was needed which included less repressive crime prevention methods. An insufficient awareness of existing international norms and the lack of adequate resources contributed to the difficulties encountered. It was necessary for the international community to combine efforts and to undertake a number of challenging tasks in the field of crime prevention and criminal justice. The Eighth Congress must, therefore, develop a system of norms and guidelines that were dynamic, conceptually modern, and responsive to the high standards of accountability in the field of human rights. The beginnings were there, he said, but there was still a long way to go; efforts were worth continuing because politically the subject matter enjoyed the strongest international consensus and encountered the least amount of controversy. What remained crucial, the Director noted, was the relationship between the setting of standards and implementation on the one hand and action at the national and international levels on the other. As long as international standards were not adequately incorporated into national legislation, he said, and as long as every justice administration, every court, every prison did not possess a compendium of international norms and guidelines, there could hardly be talk of even being close to the satisfactory implementation of United Nations standards.

56. Effective implementation at the international level called for the strengthening of the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, the Committee on Crime Prevention and Control, and interregional and regional institutes on crime prevention and criminal justice; the expansion of advisory services; the establishment of an adequate information network; the expansion of inter-agency co-operation; and increased contacts with non-governmental organizations. The reassuring results of the Meeting were testimony to the positive trends towards the desired objectives, the Director concluded.

57. The representative of the Committee on Crime Prevention and Control pointed out that the Meeting had made a significant achievement by finalizing important legal documents. The Committee's work would be facilitated as it could now be confident that it had before it for its consideration "professional and secure" texts.

58. The Chief, Crime Prevention and Criminal Justice Branch observed that commitment, dedication and hard work had characterized the interregional meetings, which could be termed as the first round of preparations for the Eighth Congress. It was greatly appreciated that non-governmental organizations had become increasingly involved in the preparatory work. He expressed the hope that participants at the Meeting would assist their Governments in preparing national legislation that was more effective and just, and promoted the fundamental human rights principles espoused by the United Nations. It was not enough to incorporate laws into national policies; the understanding of those laws had to be instilled in the hearts and minds of the general public.

59. The Chairman, in closing the Meeting, commended the spirit of co-operation and goodwill shown by participants and expressed the hope that they would continue to fight for the best interests of their countries and of the United Nations as a whole.

Annex I

LIST OF PARTICIPANTS

Participants invited by the Secretary-General

Cicero Campos (Philippines), Chairman, National Police Commission, Office of the President

Attila Hlavathy (Hungary), Head of Division for International Relations, Chief Public Prosecutor's Office of the Hungarian People's Republic

George Liundi (United Republic of Tanzania), Commissioner, Law Reform Commission

Giovanni Longo (Italy), Supreme Court Justice, Secretary-General, International Union of Judges

Horst Luther (German Democratic Republic), Professor, Humboldt University

Nazeer Ahmed Malik (Pakistan), Director-General, Bureau of Police Research and Development

Roland Miklau (Austria), Director-General, Legislative Department, Ministry of Justice

Jorge Montero (Costa Rica), Director, United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, former Minister of Justice

Mphanza P. Mvunga (Zambia), Attorney General

Julio Prado Vallejo (Ecuador), President, Human Rights Committee

Committee on Crime Prevention and Control

Dusan Cotic (Yugoslavia), Supreme Court Justice

States Members of the United Nations  
represented by observers

Austria, Canada, Colombia, Cuba, German Democratic Republic, Germany, Federal Republic of, Philippines, Spain, Thailand, Union of Soviet Socialist Republics

Institutes

United Nations Social Defence Research Institute (UNSDRI), Rome, Italy

Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI)

Intergovernmental organizations

Council of Arab Ministers of Justice

International Criminal Police Organization (INTERPOL)

Muslim World League

Non-governmental organizations

Airport Associations Co-ordinating Council

American Correctional Association

Amnesty International

Arizona State University

Caritas Internationalis

Friends World Committee for Consultation

International Abolitionist Federation

International Association of Judges

International Association of Democratic Lawyers

International Association of Senior Police Officers

International Centre for Sociological Penal and Penitentiary Research and Studies

International Commission of Jurists

International Council for Adult Education

International Federation of Social Workers

International Human Rights Internship Programme

International Institute of Humanitarian Law

League of Arab States

Medical Women's International Association

Minnesota Lawyers International Human Rights Committee

National Association of Victims Support Schemes of the United Kingdom

Regional Council on Human Rights in Asia

Union Internationale des Syndicats de Police

Union of Arab Lawyers

Third World Academy of Sciences

World Safety Organization

United Nations Secretariat

Margaret J. Anstee, Director-General of United Nations Office at Vienna and Head of Centre for Social Development and Humanitarian Affairs, Secretary-General of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Henryk J. Sokalski, Director, Social Development Division, United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs

Eduardo Vetere, Chief, Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs

Pedro David, Interregional Adviser in Crime Prevention and Criminal Justice, Department of Technical Co-operation for Development

Horst Keilau, Chief, Prevention of Discrimination Unit, Centre for Human Rights (UNCHR), United Nations Office at Geneva

Kurt Neudek, Social Affairs Officer, Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs

Slawomir Redo, Social Affairs Officer, Crime Prevention and Criminal Justice Branch, United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs

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Laxmi Mall Singhvi, United Nations Special Rapporteur on Impartiality and Independence of the Judiciary, Jurors and Assessors and the Independence of Lawyers

Annex II

LIST OF DOCUMENTS

A. Basic documents

A/CONF.144/PM.1	Discussion guide for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
E/AC.57/1988/4	Note of the Secretary-General on implementation of the Basic Principles on the Independence of the Judiciary
E/AC.57/1988/6	Preliminary report of the Secretary-General on a Model Agreement on the Transfer of Criminal Proceedings
E/AC.57/1988/7	Preliminary report of the Secretary-General on a Model Agreement on the Transfer of Supervision of Foreign Offenders who have been Conditionally Sentenced or Conditionally Released
E/AC.57/1988/8	Report of the Secretary-General on progress made with respect to the implementation of the Code of Conduct for Law Enforcement Officials
E/AC.57/1988/15	Note of the Secretary-General on Draft Basic Principles on the Role of Lawyers
CONFERENCE ROOM PAPER NO. 1	Provisional agenda
CONFERENCE ROOM PAPER NO. 2	Proposed schedule of work
CONFERENCE ROOM PAPER NO. 3	List of documents
CONFERENCE ROOM PAPER NO. 4	Compilation of relevant United Nations documents
CONFERENCE ROOM PAPER NO. 5	Provisional list of participants
CONFERENCE ROOM PAPER NO. 6	Draft Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

CONFERENCE ROOM  
PAPER NO. 7

Draft Measures for Implementation of  
the Declaration of Basic Principles of  
Justice for Victims of Crime and Abuse  
of Power

CONFERENCE ROOM  
PAPER NO. 8

Statement by the National Association  
of Victims Support Schemes on the  
United Nations Declaration of Basic  
Principles of Justice for Victims of  
Crime

CONFERENCE ROOM  
PAPER NO. 9

S. Amos Wako, "Inception and  
development of the mandate of the  
Special Rapporteur on Summary or  
Arbitrary Executions"

B. Background documents

A/CONF.121/IPM.3

Report of the Interregional Preparatory  
Meeting for the Seventh United Nations  
Congress on the Prevention of Crime and  
the Treatment of Offenders on topic 5:  
"Formulation and application of United  
Nations standards and norms in criminal  
justice (Varennia, Italy, 24-28  
September 1984)

A/CONF.121/15 and Add.1

Implementation of the United Nations  
Standard Minimum Rules for the  
Treatment of Prisoners

Report of the International Expert  
Meeting on "United Nations and Law  
Enforcement", held under the auspices  
of the United Nations (Baden, Austria,  
16-19 November 1987)