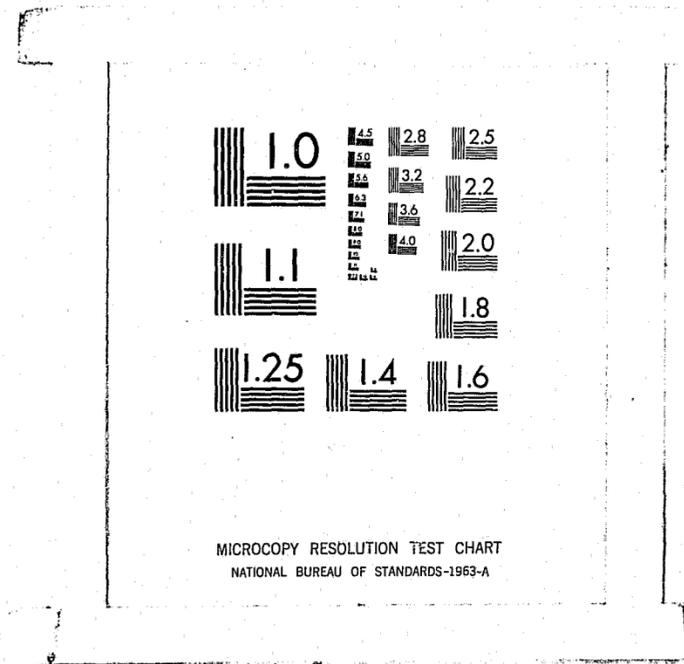


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~~CRIME AND THE ABUSE OF POWER: OFFENCES AND OFFENDERS
BEYOND THE REACH OF THE LAW?~~

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INTRODUCTION

1. Events of recent years seem to bear out Lord Acton's maxim that "Power tends to corrupt, and absolute power corrupts absolutely." ^{1/} Yet the manifestations and processes which might warrant this statement must be analysed to sift out the elements that may lead to this conclusion, draw up a balance-sheet reflecting the evidence at hand and derive the implications for action.

2. That a potentially controversial topic such as "crime and the abuse of power" has been selected for discussion at a United Nations world congress on crime prevention is testimony to a changing climate. Until recently, the main focus of criminologists, national authorities and the international criminal justice community, which shares their priorities, has been on the control of so-called "street crime". Occasional attempts to take up matters of increasing concern, such as corruption, particularly in the developmental context, were deemed risky and unlikely to yield fruitful results. Serious infringements of human rights, amounting to genocide in some countries, were argued to be within the internal jurisdiction of Member States, some of whose populations have suffered immeasurably as a result of this tenet.

3. The increased internationalization of work, trade, transport and communication, and the growing interdependence of the world in every aspect of human life, all indicate that abuses of economic and political power can transcend national frontiers and are thus of common concern. A greater consciousness of the need to safeguard fundamental human rights makes flagrant violations an urgent matter for all. A declared aim of the international development strategy for the 1980s and the new international economic order is to bring about more equitable relations between and within countries in the quest for greater social and economic justice. National development is no longer seen merely in terms of a higher gross national product, but, rather, as being aimed at "the constant increase of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits thereof", with a view to promoting human dignity and a better quality of life.

4. That these objectives are still far from being realized remains a fact of life. Thus processes which perpetuate inequities and imbalances and divert the gains of development assume particular significance, as do ways of offsetting them.

5. This perspective guides the consideration of the topic. The broader context in which it unfolds cannot be ignored. Yet a sharp enough focus must be sought to yield productive results and avoid the dangers that such a discussion entails. To do this is one of the major challenges facing the Congress.

^{1/} Lord Acton, Historical Essays and Studies, appendix, London, 1907.

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I. SCOPE AND FOCUS

6. Previous United Nations congresses on the prevention of crime and the treatment of offenders have often served as the vanguard for the articulation of emergent concerns, pointing out the way for future consideration and action. To an increasing extent, these congresses have stressed the relationship between development, social change and crime, and underlined the need for comprehensive and integrated planning to minimize negative side-effects of economic growth. The Fifth Congress, held at Geneva in 1975, considered such questions as the new forms and dimensions of crime, including "Crime as business" and its negative effects on development, and the "Economic and social consequences of crime: new challenges for research and planning" (see A/CONF.56/7). Some estimates of the cost of crime, especially economic crime, were cited. In considering the high costs of crime, which "hit most severely the weaker members of society, permitting the powerful to commit crimes with impunity", the Congress noted that the "concern had expanded beyond the fears engendered by ordinary crimes of assault and theft to the serious effects of illegal activities of business and trading enterprises and the corruption of public officials", and that "The consequences for the community of certain economic crimes heretofore overlooked by some systems of control might be much more serious than the effect of traditional petty criminality on which the apparatus of criminal justice had concentrated." 2/

7. Deliberations on criminal legislation, judicial procedures and other forms of social control in crime prevention, emphasized that

"In addition to the dark number of offenders who escaped all official detection, there were numbers of 'gilded' criminals - namely those who had political power and wielded it with impunity when injuring citizens and the community for the benefit of their oligarchy, or who possessed an economic power that was being developed to the detriment of the community as a whole. The offences of those criminals were comparable to those of certain criminal justice functionaries who violated the law by abuse of their power and remained unpunished because of that power. Such offences might range from bribery and corruption to torture of persons in custody." 3/

8. These expressions of concern led to the selection of the present topic for intensive consideration, in the hope of developing appropriate, multipronged preventive and corrective strategies. The problem is urgent: these kinds of offences and offenders characteristically victimize large groups of citizens, often

2/ Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1-12 September 1975 (United Nations publication, Sales No. E.76.IV.2 and corrigendum), chap. II, paras. 304, 305 and 318.

3/ Ibid., para. 143. See also S. C. Versele, "Le chiffre doré de la délinquance" (paper prepared for the Workshop on Justice and Politics of the European Consortium for Political Research, held at Louvain from 8 to 13 April 1976), which provided the conceptual framework for this topic.

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entire segments of the population, and in such ways that the harm to the individual is virtually unidentifiable. The perpetrators are often shielded by their power and privilege from prosecution and punishment and, indeed, "some of the most damaging antisocial acts /are/ not yet legally defined as crimes in some jurisdictions". 4/ Thus, the term "beyond the reach of the law" has to be understood in two senses: first in the sense of acts that are not criminal or illegal according to existing laws, but are nevertheless harmful to society, and secondly, in the sense of acts that are already covered by legal prohibitions but are still beyond the reach of the law-enforcement process, owing to the selective and differential application of the law.

9. Even in the case of acts already covered by legal prohibitions, the offences committed are usually not reflected in crime statistics, because of non-detection, non-reporting, non-prosecution or preferential treatment by the criminal justice process. Such behaviour thus remains hidden in the unknown "gilded" /as opposed to "dark"/ figure of crime. But criminologists, criminal justice specialists, social reformers and others concerned, including the public at large, seem to an increasing extent to be questioning the validity of the traditional focus on conventional offences perpetrated by small-scale offenders, often operating from a position of initial disadvantage compounded by the selective operation of the machinery of justice itself. 5/

10. The relationship of crime and its differential treatment by the power structure is central to the consideration of this topic. The Interregional Preparatory Meeting of Experts on this topic agreed that protracted discussion on the definitions of power would serve little purpose. Those who subscribe to different definitions of power may support similar prevention or control strategies for dealing with specific types of behaviour. The main distinction would seem to be in terms of the legitimate and illegitimate uses of power, particularly as related to the criminal justice system. Legitimate power is invariably derived from the mandate of the people for the purpose of serving the community - both in terms of the constitutional and legislative authority of government officials and bureaucratic functionaries in the public or political sphere, and in terms of the economic power exercised by business enterprises, such as corporations, which owe their legal status to the laws of the State.

4/ Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders ..., para. 309.

5/ A recent study, carried out on a representative sample of 60,000 persons points to increased public recognition of the social and material harm caused by so-called "white-collar" crime, especially when committed by those in high places. It concludes that such grave crime is as serious as violent crime and other forms of "street" crime, or more so, "affecting everybody, the body politic", and that it deserves more serious sanctions. It suggests that elective officials should take notice of these public perceptions, "fitting the punishment to the crime in a more rational and equitable manner", particularly since the United States Supreme Court has tied decisions in this respect to community standards or community sentiments. (Marvin E. Wolfgang, "Crime and punishment", New York Times, 2 March 1980, p. E.21).

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11. In the socio-political context, the power enjoyed by officials and individuals in both the public and private spheres may be understood as "the faculty of imposing one's will upon persons, institutions, organizations, groups and the community at large so that they do abstain from doing, or accept something directly or indirectly". ^{6/} Power is essential to the operation of society and is meant to be used in a legitimate manner for this purpose, but it can be abused. Since the focus of the preparatory meetings was on the possible differential treatment by the machinery of justice, the "abuse of power" may be considered to include both (a) the use of power to avoid the imposition or application of legal sanctions or controls on certain types of behaviour which may occur at high levels of the socio-economic and political order, and (b) its use to avoid the prosecution of offenders in high positions, even for ordinary offences.

12. The preparatory meetings agreed that the definitions of crime for that topic should not be restricted to matters dealt with by criminal law and that violations of the law by powerful individuals and institutions handled through civil or administrative action should also be included. To illustrate the importance of rejecting too narrow a conception of "crimes of the powerful", it was pointed out that only rarely were criminal sanctions imposed for them, and that the traditional criminal law was often too inflexible or too fettered by precedent to cope with the rapidly changing economic and technological realities of modern organizations.

13. It was noted, though, that too broad a view of offences beyond the reach of the law could overstep the mandate of criminal justice experts, moving their activities out of the specific and into the political area. Yet, as the regional meetings suggested, attention must be given to the prevention of behaviour related to abuses of power that are particularly harmful in certain countries and are covered insufficiently or not at all by existing penal codes. While it is necessary to distinguish criminal or illegal conduct from conduct that is merely unethical or undesirable, at times this is problematical as some acts are not illegal precisely because those with power have failed to pass laws prohibiting them or have used their power to prevent the passage of such laws. The criminal justice community was said to have a responsibility in acknowledging inadequacies in the law it enforces, even if in day-to-day practice it may have no choice but to follow the instructions of the legislature.

^{6/} Report of the interregional preparatory meeting of experts on this item of the provisional agenda of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at United Nations Headquarters from 9 to 13 July 1979 with the co-operation of the Ford Foundation and Yale University, p. 4. See also Manuel López-Rey, "Crime and the abuse of power: offences and offenders beyond the reach of the law?" (paper prepared for the meeting). Other definitions have been offered for the concept of power, for example, that it is "the power to define" (Nils Christie, Lolita Aniyar de Castro), "the capacity of some persons to produce intended and foreseen effects on others" (Bertrand Russell, Dennis Wrong) or "the possibility of realizing one's will in spite of the resistance of others" (Max Weber, Klaus Tiedemann). See also Dennis Wrong, "Power: Its Forms, Bases and Uses" (New York, Harper and Row, 1979).

14. In any event, it is necessary, as the preparatory meetings underlined, to delineate the framework and limit the scope of the topic, as it encompasses such a wide range of acts. Since the number and variety of abuses of power are far too great to be considered exhaustively by the Congress, the preparatory meetings suggested that the Congress should, instead, focus on a selected number of solutions or policies, each one of which might be applicable to a variety of abuses of power. Evidently, the proposed policies have to take into account the different kinds of abuses. To facilitate the task and the discussion, it was agreed that a distinction should be made between abuses of economic and of public power but that the linkages between them should be explicitly considered. This scheme has been followed; the overlap between the different categories is recognized, as is their possible mutual reinforcement, sometimes to the point of outright collusion.

II. TYPES OF CRIMES RELATED TO ABUSES OF POWER

15. There are a number of typologies for classifying crimes involving the abuse of power. To identify them all and to describe their features would be an impossible task. Moreover, such an exhaustive list would not necessarily clarify the subject matter, since the nature and number of abuses vary with the prevailing socio-economic and political conditions. Although it is widely agreed that the effects of the abuse of power in both developing and developed countries are serious, not all related criminality can be considered of equal significance to all countries in the various regions.

16. As the preparatory meetings noted, the power that is abused can be either private or public. Abuse of political power can be for economic gain or for the advancement of improper political goals. Abuse of economic power can be for political ends harmful to society or for economic gain. Means and goals can be differentiated: abuse of power can have corrupt goals, while corrupt means can achieve laudable goals. Finally, it is important to distinguish between abuses involving negligence and recklessness and those causing intentional harm. Of course, the different categories overlap, giving rise to many different configurations.

17. The principal interlinked forms of abuse singled out by the preparatory meetings include bribery and corruption, a problem that has attracted increasing attention in both developing and developed countries. Such abuses can be direct or can take a more subtle form, for example, such as bribes not offered directly, but through intermediaries. Like many kinds of offences, they can be of foreign or domestic origin or both. In either case, their perpetrators may form a large category, including powerful economic groups and State officials.

18. Countries in the different regions are concerned with such economic abuses as tax, credit and customs fraud, misappropriation and embezzlement, currency violations, real estate swindles and land speculation, abuse of public grants, environmental pollution and other damage, smuggling, violation of labour regulations, organized crime, etc. Developing countries, particularly, are concerned about overpricing and transfer-pricing by powerful trading partners, the establishment of monopolies and other practices in restraint of trade, illegal flight of capital, exploitation of labour, offences against the patrimony, fraudulent sales, including those of unsafe products, adulterated food and obsolete or hazardous drugs, and various acts that constrain or distort development.

19. Offences involving the abuses of economic power can be committed by individuals or juridical persons. A variety of means obtain, which usually involve elements of deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge of illegal circumvention; they tend also to rely on the ignorance, carelessness or acquiescence of the victims. 7/ Various typologies and catalogues of such offences

7/ Various analysts have stressed these characteristics, which include the notion of "non-violence" of means, though not of effects. See, for example, H. Edelhertz, The Nature, Impact and Prosecution of White-Collar Crime (Washington, DC, Government Printing Office, 1977); Leszek Lernell, "Crime and the abuse of power: offences and offenders beyond the reach of the law?" (paper prepared for the interregional preparatory meeting on this topic), and G. di Gennaro and E. Vetere, "Economic crime: problems of definition and research perspectives" (paper presented to the First European Symposium on Economic Crime, held in Rome in October, 1977). /...

have been suggested: for example, by the Council of Europe in a recent basic research questionnaire circulated among its Member States, 8/ and by socialist authors. 9/ Such activities require the maintenance of false accounts and documentation, unrecorded receipts, keeping of different sets of accounts for tax evasion and currency violations. In the domestic market, intentional bankruptcies, illegal payments, kickbacks, fraud of creditors, and misappropriation of socialized property represent forms of abuse of economic power. The abuse of economic power occurs most glaringly in the contacts between producers, intermediaries in the distribution network and the mass of consumers; it contravenes the public good for special advantage.

20. The threat which such activities pose to national viability is recognized in the measures against them in various countries, for example, the socialist countries, especially when deemed a usurpation of communal property and challenge to the prevailing value system. In some countries, (e.g. African ones) they are viewed as a continuation of a long-standing victimization process: (See A/CONF.87/BP.4.)

21. Various countries seem particularly concerned with the following abuses of public power: torture, maltreatment, apartheid, persecution of political dissidents, elimination of political opponents by official or semi-official institutions, abuses of office, infringements of the right to privacy, etc.

22. Abuses of public power can be categorized in various ways, including international and national abuses; the former involve the violation of norms of international law, such as the United Nations Charter, which call for peaceful co-existence among States; the abuse of national public power infringes the legal basis of peaceful co-existence among citizens. Abuse of public power also comprises crimes against the public administration committed by those carrying out public functions, which harm or jeopardize the structure or proper operation of public institutions or services. Such acts may cause serious damage whether by infringing individual rights or countering widespread legitimate interests.

23. A distinction was made at the Latin American preparatory meeting between an excess of power and an abuse of power: the first, consisting of a deplorable overstepping of authority, often circumstantial, by the agents of power, and their

8/ Council of Europe, European Committee on Crime Problems, Select Committee on Economic Crime, "Preliminary draft report" (Secretariat memorandum by the Directorate of Legal Affairs at Strasbourg dated 19 February 1980).

9/ See, for example, USSR All-Union Institute for the Study of the Causes of Delinquency and Elaboration of Measures for Crime Prevention, Criminology (Moscow, 1976) and the Hungarian National Group, International Association of Penal Law, Prestuplenya sovershennye v khode khoziaistvennoi deiatel'nosti /Economic crime/: International Round-Table Conference, Szeged, 2-6 October 1978 (Budapest, 1979). /...

lack of co-ordination; the second, involving the deliberate use of power for specific aims that could not be legitimately justified, since they were often for the exclusive benefit of power itself, for the maintenance of a political régime or of an unjust social and economic system. The institutional abuse of power had aroused particular concern. ^{10/} Reference could also be made to the unjustified enrichment of high public officials who, protected by their positions, undertook all manner of business, favoured their protégés and received donations or improper "commissions".

24. The most powerful offenders and most serious types of crime have been addressed in the draft Code of Offences against the Peace and Security of Mankind which includes war crimes and other acts of aggression, genocide, torture, enslavement, deportation or persecution on social, political, racial, religious or cultural grounds by the authorities of a State or by private individuals acting at the instigation of or with the toleration of authorities. In their comments on the draft Code, Governments and other bodies have called for the inclusion also of other acts harmful to humanity, such as mass or preventive detention, and terrorist acts contravening United Nations conventions and agreements.

III. FACTORS CONTRIBUTING TO ABUSE OF POWER AND ITS EFFECTS

A. Contributory factors

25. A variety of factors combine to make power a probable vector for criminality. Their interfaces and configurations will vary, depending on the socio-economic and political context. Under the opportunity theory of crime, substantial power is held to provide substantial opportunities to engage in profitable crimes validating the maxim that "power corrupts". In identifying the causes of crimes involving an abuse of power, it can be noted that, while these might in some cases involve personal greed or personality defects, in most they are rooted in intimately interlocked social, economic and political conditions which facilitate such criminality. These conditions may need to be altered. In certain cases, the regional meetings saw the criminal abuse of power as being connected with the structure of society and the organization of the State. In many developing countries, abuses of power used to be linked to foreign domination; in some cases various forms of domination, especially by powerful trading partners, have tended to persist, contributing to inequitable and exploitative relationships.

26. One facilitating condition is a cultural emphasis on material success and power as sources of status within a society. Such goals are shared by developed and developing nations alike, although the intensity with which they are pursued and the means by which they are sought vary from one type of society to another. When the legitimate use of power does not provide access to desired material goods and political goals, power may be abused to attain them. Raised expectations also of kinsmen and ethnic groups, the spread of the "consumer society", increasing poverty, unemployment and job insecurity, exacerbated by rapid population growth, strengthen

^{10/} See, for example, S. C. Versele, "La violence institutionnelle", presented to the XXIIIrd International Course of Criminology, held at Maracaibo, Venezuela, from 28 July to 3 August 1974.

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the temptation to use managerial and public position or political opportunity for illicit short-cuts to the "good life". ^{11/}

27. Developing countries usually lack the enforcement resources of wealthy countries for the maintenance of commercial standards. Exploitation becomes more likely when controllers of corporations are not ultimately answerable to the host countries. The powerful often face a variety of contradictory pressures, some of which pull them in the direction of the abuse of power. Such conflicts, whether they involve material gain or political profit, can create a sense of moral confusion and ambiguity and lead to the development of "situational ethics" used to justify the abuse of power in the name of expediency. The faint borderline between unethical practice and criminality can become even more blurred in this context, so that there appears to be little difference between "what is legal and ethical, what is legal but unethical, and what is illegal and unethical". ^{12/} Just as individual criminal personality structures exist, so do criminogenic organizational structures, including those without adequate financial record systems and lines of accountability. The organizational perspective encompasses more than the simplistic assertion that the drive for profits is the source of all corporate crime: it reveals hierarchies of goals, including the goal of organizational stability or survival. Changing market conditions, especially in economic crises or other kinds of adversity, may impel corporations to respond in ways that are of a criminal nature. ^{13/} Technological advances make it easier to commit sophisticated, massive frauds (for example, computer crime) and to escape detection.

28. Legal conditions can also influence the forms of crime. The level and direction of law enforcement and regulatory activity may discourage certain kinds of law-breaking while encouraging others. Powerful enterprises often use their power to shape the legal and other environments in which they operate. While the wanton abuse of power by those wielding it is not a rarity, powerful persons or entities more often break societal rules to achieve goals they cannot attain through legitimate means.

29. A major reason for the spread of white-collar (or, more properly, "gilded") crime is that penalties are relatively light, often only fines, written off as a business risk and passed on to consumers through price increases. Most companies

^{11/} See also Muamba Kanama, La criminalité dans les institutions publiques au Zaïre (Faculté des Sciences juridiques, politiques et sociales de l'Université de Lille, 1976), p. 104.

^{12/} John E. Conklin, Illegal but Not Criminal: Business Crime in America (Englewood Cliffs, New Jersey, Prentice-Hall, 1977).

^{13/} See also Ronald G. Kramer, "Corporate crime: an organizational perspective" (paper presented at the Conference on Trends and Problems in Research and Policy Dealing with Economic Crime, held at the State University of New York at Potsdam from 7 to 9 February 1980).

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can finally settle out of court on lenient terms, often by consent decrees and the corporate defendant's promise "never to do again what it denied it did in the first place". ^{14/}

30. In rural areas, villagers are often victimized by fictitious land registration and co-operative loan schemes. Such illegal activities seem to be deeply entrenched in the village system in various areas, in spite of the controls which local village councils seek to impose. A massive increase in the quality of local administration would seem to be necessary to curtail and prevent such abuse, which may wipe out the scant means of the members of the community who have fallen prey to it.

31. Abuse of public power can arise from a public official refusing to act when he or she has a duty to do so (non-feasance) or from the deliberate commission of an act in violation of the law. There may be non-enforcement of the law because the offender is sheltered or protected, or because the act by its very nature is hard to detect and prosecute owing, for example, to evidentiary requirements. Also the law may not be enforced because of the inefficiency of the system (de facto non-enforcement) or negligence, or because an official (for example a prosecutor) possessing a discretionary power to act decides not to do so (de jure non-enforcement) because of political pressure, bribery, or out of a desire to protect a fellow high official. Whatever the form, the intent and effect of an abuse of power are to use the authority of an office to advance some private gain at the expense of the public good as defined in a statute or in a programme objective.

32. Power exercised by public organs or officials affect the rights, status and duties of persons. Sensitivity to its uses and possible abuses must be greater when it is exercised by law enforcement and criminal justice personnel and by executive (including local government) bodies or agents, for example, inspectors, customs and judicial officials and police authorities. These bodies or officials, particularly, can, in the course or under the guise of performing their duties, commit crimes against the dignity of the person or for economic gain. Immunity might then arise from the lack of legislation or from the absence of punitive sanctions at the national or international levels, or from the offenders being, by virtue of political power or protection, beyond the reach of the judicial or law enforcement agencies. Such crimes may even be justified by doctrines of "state of subversive danger" or "state of war". In such cases there might be a general suppression of civil and political liberties, and institutionalized violence in the form of arbitrary arrests, disappearance of persons, kidnapping, torture, and murder. The preparatory meetings noted that abuses of that nature were particularly prevalent under autocratic régimes, in which established legal protections and defences also tended not to work because the judicial system itself was subverted by the ruling group for the purpose of preventing or frustrating legal challenges to its arbitrary use of power. Furthermore, even under more normal conditions, violations of civil liberties and human rights do occur, for instance in the case of police brutality,

^{14/} David Pauly et al. "Crime in the suites: on the rise", Newsweek, 3 December 1979, p. 119.

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including the use of torture in order to procure evidence from suspects. "Scapegoating" can focus the abuse of public power on vulnerable population groups who have no adequate means of recourse.

33. The selective operation of criminal justice, an instrument of the power structure, allows some literally to get away with murder, while ordinary offenders often pay a disproportionate price. A number of studies and even cursory analysis reveal the differential sentencing of the strong and the weak, reflected in most prison populations. ^{15/} Calls for "law and order" are too often made by tainted politicians against petty street criminals, a pattern which cannot but breed cynicism and erode confidence in a criminal justice system in which a double standard obviously prevails.

34. The attitude of the public has, in the past, mirrored the differential operation of the criminal justice system; it has been either relatively unaware or more tolerant of offences at high levels of the social ladder and motivated by the fear of visible "street crime". Even if aware and indignant, the public is often too poorly organized to take effective action against the abusers of power, especially in countries which lack an organized consumer or trade union movement, or an organized political opposition. Although the public may tolerate or acquiesce in certain abuses of power, the more typical situation is for the public to condemn such abuses but to feel powerless to do anything about them. Being victimized by the abusers of power often reinforces this sense of powerlessness. Publicity about acts of corruption and other abuses in a number of countries has forced people to face the problems at hand, and served as a catalyst for governmental and public reaction: whether real change results remains to be seen.

B. Effects

35. In the pervasiveness and perniciousness of their effects, crimes committed through the abuse of power cause far greater damage than the entire repertoire of conventional, so-called "street" crimes. A recent study of corporate crime in the United States notes that "illegal corporate behaviour causes more social harm than

^{15/} Jeffrey Reiman, The Rich Get Richer and the Poor Get Prison (New York, Wiley, 1979). See, for example, Manuel López-Rey, Criminología. (Madrid, Aguilar, 1978); Juan Manuel Mayorca, Criminalidad de la Burguesía (Caracas, Italgráfica, 1977); Pierre Lascoumes, Justice pénale et délinquance d'affaires (Paris, Ministère de la Justice, Service d'études pénales et criminologiques, 1979); and I. K. Minta, "Crime and the abuse of Power: the control of international economic crimes in African countries" (paper submitted to the interregional preparatory meeting on topic III). The analysts conclude that usually only the "small fry" get caught, while high-level criminality receives relatively minor attention.

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any other type of criminal behaviour". 16/ Such crimes may pose a greater threat to life and health than those caused by traditional "street" crimes: in one country, for instance, over 100,000 deaths a year are attributed to occupationally-related diseases, the majority of which are caused by the disregard of government health and safety laws, as compared with an average of 18,000 murders and non-negligent manslaughters per year reported during the 1970s. 17/

36. Thus, the facts do not support the belief that organizational crimes are not violent: violence in the place of work is related to organizational wrong-doing. A reasonable conclusion is that "far more persons are killed through corporate criminal activities than by individual criminal homicides; even if death is an indirect result, the person still died". 16/

37. Not only the employee but also the general public is victimized by an environment made unsafe by certain corporate acts or omissions. Their potential impact can range from environmental catastrophes, such as nuclear plant accidents or the collapse of an improperly built dam, to the critical or chronic effects of industrial pollution. The manufacture or sale of unsafe harmful products, including obsolete or unproven drugs, is a cause of significant harm, sometimes even death, to their users, particularly in developing countries, where they are often exported due to the less stringent regulations in those countries. 18/

38. Economic crimes also exact a tremendous financial cost, estimated at up to 231 billion dollars annually in the United States of America (see A/CONF.56/7) and

16/ Marshall B. Clinard and Peter C. Yaeger, Illicit Corporate Behavior, (Washington, DC, National Institute of Criminal Justice and Law Enforcement, 1979).

17/ In another, the death rate among workers from employment-related cancer is estimated to be double that of the general population. See Charles Reasons, "Crime and the abuse of power: offences and offenders beyond the reach of the law?" (prepared for the Solicitor-General of Canada, 1 March 1979), p. 25; see also Joel Swartz, "Silent killers at work", and G. Geis, in M. D. Ermann and R. J. Ludman, Corporate and Governmental Deviance (New York, Oxford University Press, 1978); Elliott Leyton, Dying Hard: the Ravages of Industrial Carnage (Toronto, McClelland and Stewart, 1975); and John Braithwaite and Barry Condon, "On the class basis of criminal violence", in Paul R. Wilson and John Braithwaite, eds., Two Faces of Deviance: Crimes of the Powerless and the Powerful (St. Lucia, University of Queensland Press, 1978), pp. 232-251. A recent study has sought to derive testable hypothesis concerning corporate violence, defined as "behaviour producing an unreasonable risk of physical harm to consumers, employees or other persons as a result of a deliberate decision-making by corporate executives or culpable negligence on their part", J. Monahan, R. W. Novaco and G. Geis, "Corporate violence: research strategies for community psychology", in T. R. Sarbin, ed., Challenges to the Criminal Justice System (New York, Human Sciences Press, 1980).

18/ See, for example, papers submitted to the Conference on the Exportation of Hazardous Industries to Developing Countries, held in New York on 2 and 3 November 1979, and B. Ehrenreich, "If there are no side-effects, this must be Honduras" in "Corporate crime of the century" (paper submitted to the Conference). A bill is currently before the United States Congress to impose penalties for non-disclosure by "business entities and personnel of serious concealed dangers in products and business practices".

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over twice the total budgets of the Ministries of the Interior, Justice and Health combined in France; 19/ in Sweden, 10 per cent of the gross national product is said to escape tax - a figure probably considerably higher in some other countries; 20/ in the Union of Soviet Socialist Republics it was estimated through sample surveys that misappropriations currently ranked high among the various types of crime (up to 20 per cent) and had not shown any notable sign of decrease; the authorities stressed "the necessity of a decisive struggle against misappropriations, embezzlements and similar phenomena inherited from the past". 21/ In the Federal Republic of Germany, the damage resulting from collusive tendering in the construction industry has been estimated at about 7 billion marks annually; for tax fraud, 5.5 billion marks annually; for bankruptcies (of which 50 per cent were judged to be fraudulent) several billions of marks, and for unpaid cheques and bills of exchange, 2 billion marks per annum. 22/ A study of illicit practices in the European Economic Community revealed that 50 per cent of all scrap imports were faked imports, some 30 per cent of the subsidized scrap not existing at all. 23/ The contagious effects of this kind of criminality have been revealed in criminal investigations that have shown entire industries following fraudulent practices whenever possible, and citizens too, subsequently imitating the acts of powerful wrongdoers.

39. While the range of violations may be wider in developed countries, patterns of power abuse in developing countries may have more serious negative national impacts, particularly in view of the poverty and inequalities which they may exacerbate, as well as other deprivations they may inflict. 24/

40. One of the most flagrant practices is overpricing. It is reported, for example, that the tranquilizers Librium and Valium were sold in Colombia at 65 times the price proposed on the European market; yet the offence was so difficult to prosecute as an economic one (illicit prices), that it had to be prosecuted as a tax or foreign exchange offence, as a result of which 17 companies were sentenced to a fine of about 2 million pesos. Overpricing rates of between 30 and

19/ Réponses à la violence: Rapport du Comité présidé par Alain Peyrefitte. (Paris, Documentation française et Presses Pocket, 1977, p. 229).

20/ Council of Europe, op. cit., p. 6. Another source estimates the losses from tax evasion and the outflow of capital at 10 to 40 billion Swedish kroner yearly. Sten Hekscher, "Modern ekonomisk brottslighet", Modern economic criminality, Nordisk Tidsskrift for Kriminalvidenskab, vol. 67, No. 1, 1979-80, pp. 27-36.

21/ See USSR All-Union Institute for the Study of the Causes of Delinquency and Elaboration of Measures for Crime Prevention, Criminology (Moscow, 1976).

22/ Klaus Tiedemann, "Combating economic crimes in the Federal Republic of Germany - with special regard to organized forms of economic criminality" (paper prepared for the interregional meeting of experts on this topic).

23/ Mireille Delmas-Marty and Klaus Tiedemann, "La criminalité, le droit pénal et les multinationales", La Semaine juridique, 4 January 1979, p. 2935 ff.

24/ See also Leon Sheleff, "International white collar crime"; K. Tiedemann, Multinationale Unternehmen und Strafrecht: Missbrauch von Wirtschaftlichen Macht. Cologne, Heymann, 1979, and Lernell, op. cit.

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700 per cent in the price for drugs have also been documented in several other Latin American countries. 25/

41. Nearly all developing countries complain of the enormous financial losses suffered because of manipulations of transfer-prices. 26/ This practice, which usually involves a hidden foreign exchange offence as well as tax evasion, engaged in by transnational corporations, contributes to the loss of funds sorely needed for development purposes. The Government of Ghana has estimated that such practices, involving the over-invoicing of imports and under-invoicing of exports, cost the equivalent of 50 to 60 million cedis a year lost in foreign exchange. 27/

42. Transfer-pricing and other activities harmful to the developing countries take advantage of differences in national legislations to maintain a semblance of legality in such operations. They also profit from the absence of, or loop-holes in, the legislations of developing countries to avoid local prosecution, as might be the case at home. Thus, their real extent may be extremely difficult to determine, 28/ especially in view of the widespread practice of double-accounting, for example to minimize local tax liability.

43. In a substantial number of cases, obsolete machinery has been exported to developing countries as new at a very high cost. "Transfer of technology" agreements often turn out to be a vehicle for the exportation of inappropriate technology which may hamper rather than promote local technological development. A wide range of restrictive business practices are often built into such agreements, including tied purchase clauses and control of decision-making in relation to production, distribution, etc.

44. The adverse effects of economic malpractices on the embattled economies of many developing countries include not only the loss of actual cash or property (in cases of theft and misappropriation of funds, for instance, but also the loss of foreign exchange in the inflated prices paid for tainted transactions, as well

25/ R. J. Barnet and R. E. Müller, Global Reach: the Power of Multinational Corporations (New York, Simon and Schuster, 1974).

26/ See, for example, R. F. Plasschaert, Transfer Pricing and Multinational Corporations: an Overview of Concepts, Methods and Regulations (London, European Centre for Study and Information on Multinational Corporations, Saxon House, 1979), pp. 96-97; I. K. Minta, op. cit.; and G. Ramos, "Delincuencia de cuello blanco a nivel supra-nacional", (Maracaibo, University of Zulia Institute of Criminology, 1979).

27/ S. K. B. Asante, then Deputy Attorney-General of Ghana, speaking on 26 February 1976 at the Conference on the Regulation of Transnational Corporations, held at Columbia University, New York.

28/ Though a study conducted in Nigeria was not able to find evidence from official figures of the systematic use of transfer pricing in the form of over-pricing of imported raw materials, interviews revealed unanimous agreement that transfer pricing mechanisms were being employed extensively to disguise capital flows out of Nigeria, and that "people are leaving this country with suitcases full of money". See Thomas J. Biersteker, "International capital movements and domestic capabilities in Nigeria", in Distortion or Development: Contending Perspectives on the Multinational Corporation (Cambridge, Massachusetts, and London, M.I.T. Press, 1978), p. 88-89.

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as currency trafficking and illegal transfers of foreign exchange. Thus, vital resources available to a country are considerably reduced through high-level crime; the whole country paying a high price through economic stringency and impaired development performance. 29/ In addition to the costs imposed on labour, consumers, investors or taxpayers (or on other corporations), economic crime is detrimental to the efficiency and stability of economic and political institutions. 30/ Whatever the material costs of acts related to abuses of power, their non-monetary costs are far greater still, in both moral and social integration terms: the damage to the social fabric may be irreparable. 31/

45. The abuse of public power does not lend itself to assessment in terms of its material effects on society. There is no doubt, however, that its cost is vast. It has to be counted in terms of inefficiency, public frustration and loss of faith in the government. Indirectly it impedes the wholesome development and the cohesiveness of society. Abuse of public power also represents a breach of confidence, not only in the sense of the "abus de confiance" (punishable under the French Penal Code as a violation of the personal sense of trust in the veracity of individuals serving in public offices or enterprises), but also as a breach of social confidence of the population in the functioning of the entire system. Abuses of public power may undermine the legitimacy of the government, thus giving rise to instability, the overthrow of rulers, and harm to the societal and moral unity of a nation. They may also serve as justification for conventional crimes by the masses and for political terrorism.

46. At the same time, the prevention of the broad participation of the people in decision-making and in the benefits of development have contributed to the marginalization of entire segments of the population, 32/ and sometimes to the suppression of entire peoples. Inadequate, differential wage scales and denial of basic rights can raise levels of frustration from hopeless apathy to violent protest; counter-violence and other forms of official repression can create a spiral of escalation, whose result is bloodshed and, perhaps, civil war.

29/ See also Minta, op. cit., V. Pandeya, Social and Economic Offences in India, UNAFBI Resource Materials No. 15, 1978, pp. 204-209; and Gopal C. Dorai, "Economic crime: its nature and dimensions for South Asia".

30/ Research on how such crime affects inflation and the economy has been urged by Congressman John Conyers, Chairman of the Subcommittee on Crime of the Judiciary Committee of the House of Representatives of the United States Congress, who has called for the co-operation of the Congress's Joint Economic Committee in this regard.

31/ At the inaugural session of the Venezuelan Organizing Committee for the Sixth Congress, the Minister of Justice cited a statement by the President of Venezuela to the effect that the social threat of such acts (administrative corruption, smuggling, monopolies, profiteering, destruction of the natural environment, speculative price manipulation, cheating on quality standards etc.) was greater than that imposed by street-fighting and robbery. (See El Nacional, dated 15 January 1980).

32/ See, for example, the proceedings of the Ninth International Congress on Social Defence, held at Caracas from 3 to 7 August 1976, which dealt with the subject of social marginality and justice.

47. Injustices deriving from internal domination within States by groups wielding political, economic and/or social power, as for instance in the case of apartheid, represent flagrant abuses of power. These, though "legitimized" by the national laws drafted by the powerful minority, contravene United Nations human rights instruments and internationally accepted norms of equality and respect for human dignity. Massive persecutions can - as in the case of the Hitler régime - result in the death of millions. Those who abuse power are able, by that very capability, to shield themselves from accountability while committing their damaging acts.

48. Corruption can have particularly pervasive effects. Some analysts claim that widespread corruption actively promotes development, ^{33/} but this has been challenged by others, who point out that it tends, ultimately, to foster inertia and inefficiency, slowing down the movement towards modernization. ^{34/} While the effects of such abuses may be contained in developed countries, where there usually are some systems of checks and balances, their consequences for developing countries may be far-reaching, seriously undermining national viability and growth. As one analyst notes, "the general prevalence of corruption in their midst, to such an extent as to have a direct bearing on economic and social development, as well as on the stability of their Governments, is felt in most Asian countries". ^{35/} The use of "speed" money to "oil" the machinery, far from accelerating bureaucratic procedures, on the contrary, usually adds to the inefficiency and delays suffered by those who do not pay such bribes. In revenue cases, corruption usually tends to favour those belonging to middle or upper income groups and thus adds to the regressive tax structure of many developing countries, the funds going mostly to conspicuous consumption instead of developmental investments. ^{36/}

49. Inflated transaction costs, through bribery, corruption or other abuses, increase the cost of living. This affects the bulk of the low-income population in a particularly vicious manner while those in high places amass wealth through illegal means. The supportive relationship required for corruption (for example, intermediaries) make it contagious; in some areas "syndicated" corruption has even kept victims under control by the abuse of police power and gangster violence. Elsewhere, organized crime in other forms is exacting its toll. Foreign aid has sometimes been diverted and found its way to black markets, although some agencies build management controls into assistance projects. The cumulative effect has been to undermine the process of national growth, loosen social cohesion, erode confidence in the law and public institutions and promote self-interest at the expense of society as a whole.

^{33/} J. S. Nye, "Corruption and political development: a cost-benefit analysis", American Political Science Review, vol. LXI, No. 2 (June 1967), pp. 617-627.

^{34/} See, for example, Gunnar Myrdal, Asian Drama: an Inquiry into the Poverty of Nations (New York, Twentieth Century Fund, 1968) and Manuel López-Rey, "The expansion and distribution of crime: corruption", in Crime: an analytical appraisal (New York, Praeger, 1973).

^{35/} V. N. Pillai, "Crime and the abuse of power: offences and offenders beyond the reach of the law - some Asian aspects" (paper prepared for the interregional meeting of experts on this topic).

^{36/} A. T. Rafique Rahman, "Bureaucratic corruption in Asia" (paper prepared for the interregional meeting of experts on this topic).

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IV. DEVELOPING MORE EFFECTIVE POLICIES FOR THE PREVENTION AND CONTROL OF THE ABUSE OF POWER

50. The forms of offences involving the illegal abuse of power are almost unlimited, as are their ramifications. Specific manifestations and major concerns will vary with national circumstances and particular socio-economic and political systems. They may depend on the stage of development and range of opportunities for such acts, presenting various configurations in different contexts. To remain at the descriptive level could be endless and unproductive. To analyse the dynamics of such abuses may be more relevant, yet hardly conclusive. It would, then, seem preferable to focus on the action to be taken in terms of the major problem areas that exist.

A. Abuse of economic power

51. The relationship of crimes and other noxious acts involving abuses of power to the source of this power is clearly evident in the case of so-called "economic crimes". The structure, patterns and means of such crimes will, of course, depend on a country's type of economy and political philosophy. Certain activities that are pivotal to market economies are illegal in the centrally planned economies: for example, private initiatives to establish large-scale enterprises, attempted competition in business, strikes, international contacts by private businessmen etc. Conversely, certain economic activities that are central to socialist economies are illegal in capitalist systems: for example, economic monopolies and price-fixing. The different ideological meanings of a particular type of economic behaviour and related value judgements are also apparent in relations between developed and developing countries and the interests operating in each: what multinational companies based in developed countries may view as utilization of the untapped potential of the developing world to mutual advantage, the latter may consider to be exploitation and appropriation of its indigenous wealth.

52. If polarizations are to be avoided, the relativity of perspectives must be stressed at the outset. But this should not of itself thwart efforts to find a common ground and identify issues and principles which, with appropriate adaptations, would be helpful to countries throughout the world. The very nature of abuses of economic power makes it likely for them to transcend national frontiers, particularly with the continued expansion of international trade. Thus, co-operative solutions to the problem of abuses of economic crime would seem essential.

1. National policies for the prevention and control of abuses of economic power

(a) The law as an instrument of social control

53. While the declared objective of the law has usually been the protection of the national economy, sometimes through stringent dispositions, in many countries the existing legal provisions have not served as an effective instrument of social control. The idea of deterrence, based on the assumption that legal proscriptions will have a crime-inhibiting effect on the citizenry, particularly where there is

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an element of choice, presumably operates in most economic offences. Yet this has often not been the case: the reasons are manifold as must be the corrective strategies.

54. A basic problem has been the frequent misuse of the law, including both its overuse and underuse and, above all, its failure to keep pace with ever-changing needs. The multiplicity and intricacy of legislative dispositions regarding certain areas of activity have been a source of abuse by unscrupulous operatives able - with appropriate "expert" help - to take full advantage of them and of the difficulty of proving guilt. The dispersion of many provisions regarding economic infractions, which usually figure in specific legislation rather than in penal codes, tends to let them be taken advantage of by those who see such crimes as "artificial". In some areas, legislation imported from abroad and unsuited to local conditions and rapidly changing circumstances, has contributed to the problem.

55. At the same time, the mechanisms and use of power in themselves add to the selectiveness of the law: many economic infractions are handled - at least initially - under administrative and civil law, rather than criminal legislation (although penal sanctions for non-compliance may be foreseen as a subsequent recourse). Power also plays a role in the operation of the regulatory mechanisms: those to be regulated often play a significant part in determining the regulatory standards and procedures adopted. The frequent cross-over of personnel from regulatory agencies to the areas under their jurisdiction accentuates this problem and weakens enforcement efforts.

56. The review and revision of national legislations pertaining to abuses of economic power has been suggested as a twofold process: a partial decriminalization of less serious offences and, at the same time, a more incisive focus on more serious acts which cause significant harm to the community. ^{37/} Where loop-holes still exist, particularly in developing countries - and are taken advantage of by powerful trading partners - such loop-holes need to be closed and existing provisions modernized and enforced. Continuous efforts are needed to proscribe noxious acts which are not yet criminalized but should be, in accordance with some international frame of reference. The preparatory meetings agreed that criminal law was traditionally created in order to deal with conventional crime, and that the development of a new body of doctrines for criminal law appeared to be necessary. Those doctrines should be adapted to the changing world situation and to the characteristics of offences involving abuses of economic power, ^{38/} such as corporate crime, especially in regard to matters of culpability, criminal responsibility and the burden of proof.

^{37/} Mireille Delmas-Marty, "Criminality and paracriminality: the example of transnational corporations" (paper prepared for the interregional meeting of experts on this topic).

^{38/} See, also, the article entitled "Se requiere modernizar la legislación sobre delitos económicos" in El Nacional of Caracas, dated 15 January 1980, referring to the call by the President of Venezuela and the Minister of Justice for the modernization of laws relating to economic crimes and other abuses of power; and Mayorca, op. cit.

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(b) The burden of proof

57. Many sophisticated economic crimes require advanced systems of intelligence and technology, and use means of organization which render detection and proof extremely difficult. Deception and the destruction or concealment of evidence aggravate the problem of furnishing evidence and proof. Offences involving abuses of economic power are frequently unreported because they tend to be invisible, the victims not even realizing that they have been abused (though the cumulative harm may be great), or feeling they have no adequate recourse. Detection is problematical, since the means used in committing offences of this kind are generally the same as those used in legitimate business transactions; may involve acts of omission, rather than commission; investigation of them may be very technical, time-consuming and costly, requiring multiple types of specialized expertise.

58. In corporate offences, the problems are still more complicated. In the rare instance when a case actually reaches the criminal justice system, although many legal violations and other abuses may occur, the chances are that the overburdened, understaffed and ill-prepared judicial systems in most countries will be a poor match for companies disposing of vast means and batteries of astute and experienced lawyers and accountants. Even when action is initiated, it can suffer from endless delays because of technicalities and successive appeals. When prosecution is delayed, victimization often continues unless the behaviour can be deterred or interrupted prior to adjudication. The legal means, consistent with justice, for enjoining such continued victimization pending adjudication must be developed. Similarly, changes in the criminal justice system that would ensure swifter and surer justices should be encouraged, ^{39/} with the proper procedural guarantees, to avoid the loss of the moral authority and public support of sanctions which undue delays entail. To remedy the situation, trained teams need to be developed, specializing in the investigation, prosecution and adjudication of economic crimes, to include investigation specialists, ex-jurists and experts from the field of economics, accounting, management etc., as well as specially trained prosecutors and judges. ^{40/}

^{39/} See also "Human rights in the administration of justice: draft guidelines for expeditious and equitable handling of criminal cases" (E/AC.57/34). Specific measures to improve prosecutions in cases of this kind have been suggested, for example, by increasing "pre-trial reciprocal discovery", i.e., pre-trial disclosure of evidence between the defence and the prosecution in order to expedite trials. See "Economic Offences" (recommendations of the American Bar Association, Section of Criminal Justice, Committee on Economic Offences, 1978).

^{40/} Special units to deal with economic crime have been established in a number of countries, for example, in Australia, Belgium, France, the Federal Republic of Germany, Japan and the United States of America. See Council of Europe, op. cit.; Barry R. Kinchington, "The detection, investigation and prosecution of corporate crime" (Australian paper on this topic, submitted in 1979); W. C. Clifford, "White-collar and corporate crime: the modern challenge to Commonwealth criminal justice systems" (1977); and N. D. Dick and R. S. Cavanaugh, "A hard-hitting white-collar crime unit of the U.S. Government", Police Chief, May 1980, pp. 26-28.

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(c) Criminal responsibility

59. The problems of determining criminal intent and placing criminal responsibility are among the most troublesome in dealing with economic crimes, especially those involving organizations. The principle societas delinquere non potest, still prevailing in most Roman law countries, implies that only natural persons can be held criminally liable, though an increasing number of exceptions are being made and certain countries have come to recognize the principle of collective liability. Yet modern penal codes continue to focus criminal responsibility on individuals rather than on organizations, and to develop criteria for proof based on individual criminal responsibility or conspiracy.

60. Not only have the existing restrictions on and manipulations of corporate responsibility ("responsabilité des personnes morales") ^{41/} reduced the likelihood of convictions but, when such convictions have been obtained, they have often been of lower-level operatives rather than upper-level executives, who usually claim ignorance of the prosecuted act(s). It has been proposed that the principle of "command responsibility" should obtain to avert such denials; in some countries, there does seem to be provision in legislations on vicarious liability for a plea by the accused that he or she has taken all reasonable precautions to prevent the commission of the offence. ^{42/} In others, where there are certain problems in the prosecution of "special offences" (Sonderdelikte) that can be committed by one category of persons only (for example, businessmen) - which is not generally the case in acts committed by companies where division of labour prevails - a specific provision usually allows for prosecution in cases of a joint offence. Nevertheless, the issue of criminal responsibility for the abuse of economic power and, particularly, that of corporate responsibility continues to present serious problems in regard to criminal prosecution. Remedial measures are called for.

61. To investigate and prove organizational offences and to resolve the problem of who is responsible, doctrines of collective responsibility have to be promoted. The establishment of the principle of corporate criminal liability was recommended by the preparatory meetings, namely, that any corporation or collectivity, be it privately owned or State-owned, should be liable for criminal or harmful acts, without precluding the individual liability of its officials. This principle should be used to emphasize that there is a special burden of responsibility for corporate actors on behalf of corporate units, as well as a burden of individual responsibility for crimes committed behind the corporate veil. Countries facing the problem must determine the forms of corporate liability in the context of their socio-economic development and objectives.

^{41/} For example, the use of expedients to avoid admissions of guilt, such as nolo contendere pleas or consent decrees (agreeing not to offend in the future), as a form of plea bargaining.

^{42/} The problem has recently been attracting increased attention. See, for example, the proceedings of the colloquium "La responsabilité pénale des personnes morales en droit communautaire", held at Messina from 29 April to 5 May 1979.

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62. With regard to personal responsibility - and the principle might also be applicable to institutions or groups - it has been contended not only that powerful offenders should be held responsible for their acts but that positions of economic and social power and advantage carry with them heavier demands for social responsibility, which may warrant increased criminal responsibility. ^{43/} This is largely a reaction to the fact that such offenders are generally treated more leniently than the perpetrators of street crimes, who usually operate from a position of disadvantage.

63. While equity may justify such an approach, it poses the difficult problem of how and by whom such increased social capacity and responsibility are to be judged. Those invoking it have pointed out that expert testimony is utilized in the difficult task of determining diminished responsibility on the grounds of impaired mental capacity, and that with regard to social capacity the criteria might at least be more factual. This problem raises other important issues of equity and justice: perhaps, indeed, "one must be unjust in order to be just", ^{44/} seeking to equalize - as far as is humanly possible - the balance-sheet of advantage and disadvantage through the mechanism of criminal justice as a complement to social justice. On the other hand, the very principle of discretion in sentencing is currently under fire because of its subjectiveness and the seemingly arbitrary variations it has produced. The movement towards flat sentences has grown as a reaction to what is perceived as the "criminal justice lottery", which defeats the deterrent purpose of the law and the principle of equal treatment for all who come before it. While the possibility of increased responsibility for powerful offenders is an issue for discussion, the converse is not the case: they should not escape justice nor be treated more leniently, as has all too often been the case in the past.

(d) Sanctions

64. The question of the societal response to offences involving abuses of economic power raises the wider problem of choice of the most appropriate sanctions. Empirical evidence of the relative effects of different kinds of sanctions is lacking because of the infrequent use of imprisonment in such cases and the consequent lack of a scientific basis for comparison. Some analysts hold that prosecution and conviction are an ample punishment for high-status offenders, and that suspended sentences, nominal fines, brief periods of probation or community service are thus sufficient. Judges who end to identify with these offenders frequently advance this rationale for leniency in such cases. ^{45/} The possibility of professional disqualification is also invoked as a sufficient punishment in itself. ^{46/}

^{43/} See Juan Manuel Mayorca, et al., in Venezuelan working paper on topic V of the Congress.

^{44/} S. C. Versele, "Equité et justice", 1978 (unpublished).

^{45/} See also Kenneth Mann, Stanton Wheeler and Austin Sarat, "Sentencing the white-collar offender: choosing among alternative sanctions", American Criminal Law Review, vol. 17, No. 4, spring 1980, pp. 479-500; and study by Clinard et al., op. cit., which found that 85 per cent of all sanctions against corporate offenders were administrative, and that they were not subjected to the full force of legally possible sanctions.

^{46/} Severe punishments for offenders through abuse of power were recommended by the Ninth Arab Conference for Social Defence (convened in preparation for the Congress at Cairo, from 3 to 6 July 1978), besides prohibiting them from occupying any posts in which they could exploit their power and confiscating what they had amassed illicitly.

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65. The penalties adopted to date have for the most part not been adequate to the problem. Professional interdictions imposed by self-protective professional associations may not be commensurate with the possible severity of the offence. Fines imposed by regulatory agencies or even criminal justice organs have been modest. Where more substantial ones have been exacted, for example, from corporations, their payment has hardly presented a problem and the cost has usually been passed on to consumers. Criminal sanctions are still rarely imposed. The occasional "show cases" of imprisonment have been used mainly for their symbolic value of reaffirming that the criminal justice system operates impartially - which, for the most part, it does not appear to do. Even if imprisoned, the affluent tend to be subjected to less rigorous regimens in less oppressive institutions, and have often been able to purchase more favoured treatment.

66. If they are to dispense impartial justice, the criminal and civil justice systems must find a more equitable basis of operations. To ensure that the powerful will not be treated differently from the powerless, conventional penalties such as imprisonment for the former might be more widely applied, showing those who believe themselves to be above the law that they are not. It has been suggested that the "short sharp shock" of confinement would be an effective deterrent in the case of non-conventional offenders. ^{47/} It might be argued that this approach runs counter to the increased curtailment of short-term imprisonment and that it, too, is discriminatory in being too lenient - that, as in the case of conventional offenders, the greater the harm inflicted, the longer the prison term should be. ^{48/} Similarly, the level of the fines imposed should be increased so as to be proportionate to the damage inflicted - but even the largest fine can easily be offset by corporate profits. These issues can obviously not be easily resolved; they require careful consideration and judicious implementation.

67. Different types of response have been used, geared to the nature of the offence and the values that are being protected. Some countries - such as the East European ones - impose heavy penalties for economic crimes, especially those construed as offences against socialist property. Others are coming to use imprisonment more often.

68. Some countries have special provisions for the compensation of victims of economic and other offences in accordance with the offender's means, for example, in the case of special offences such as fraudulent bankruptcy (United Kingdom). There are also various provisions for injunctions, mediation and arbitration. However, special provisions in this field frequently have a restrictive character which limits their applicability, both in terms of scope and of the instances in which they may be used.

^{47/} See also Klaus Tiedemann, "Crime and the abuse of power: offences and offenders beyond the reach of law?" (general report of the International Penal and Penitentiary Foundation, submitted to the interassociation colloquium held at Bellagio from 21 to 24 April 1980.

^{48/} In Japan, a substantial term of imprisonment is sometimes imposed on those responsible for industrial calamities on a large scale and tax evasion involving large amounts may also be punished by a prison term. See Yoshio Suzuki, "The role of criminal law in the control of social and economic offences", UNAFEI Resource Materials, No. 15, 1978.

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69. The preparatory meetings of experts called for a sustained effort to develop more appropriate and effective ways of curbing economic offences, particularly corporate criminality. It was also felt that the gap between the penalties available and the penalties actually imposed and applied should be dealt with. As the objective of any approach to criminalization was the protection of identified community interests and values, which differed from country to country, it was recommended that an appropriate mix of material sanctions be employed, such as punitive fines (including multiple fines), the recapture of illegal gains, cease-and-desist orders (with effective sanctions in cases of contempt of those orders), and imprisonment of corporate officers in cases of persistent or intentional or reckless conduct, or that which caused serious harm. Sanctions might be levied both against damaging acts and attempts to commit acts involving potential harm. Professional interdictions and disbarment of corporations, which would prohibit them from operating in those sectors of industry where they had been flagrant violators and other measures, preferably at the expense of the firm, could serve as a powerful sanction, provided due regard was given to the rights of the accused who had not been proved guilty.

70. It was recommended that the United Nations should formulate suggested legislative guide-lines on corporate crimes. Individual countries could then fashion their own domestic legislation according to their individual systems and circumstances, without neglecting the guarantees of legal procedure and rules of evidence as essential instruments of criminal justice.

71. The development of more just and appropriate sanctions is one of the challenges facing researchers and policy-makers in the future. Some progress toward those aims has been made in countries where social responsibility is particularly stressed, and where some standards for dealing with the privileged have been developed. Others are seeking to develop wider and more effective sentencing options. ^{49/} Various modalities must be explored and further inroads made if the recalcitrant problems of economic abuse are to be effectively faced in the context of national priorities and development needs.

(e) Preventive strategies

72. It has been recognized that social and material costs of crime prevention are less than those of crime control and that the effects more long-ranging. The issue, however, is how to prevent abuses of economic power; it is a complicated one, with no easy answers, particularly in view of the many aspects involved.

73. Since economic power is usually closely linked to political and social power - whether directly or more subtly so - it can be argued that structural reforms are

^{49/} See, for example, Suzuki, op. cit., and Y. Fujinaga (paper prepared for interregional meeting of experts on this topic). In the United States of America, the Criminal Code Reform Act of 1977, now before Congress, would widen such options and sharply increase fine limits, as well as permitting alternative fines of double the monetary gain to the defendant or double the loss caused to the victim, whichever is greater.

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the only way of preventing its abuse. Indeed, a redistribution of power in the direction of greater equity may well be the ultimate solution for the abuse of power. 50/

74. At the same time, there must be greater accountability in the exercise of power, which would serve as a built-in mechanism for abuse control. The more open a system is to scrutiny, the less the chances of abuses being perpetuated, and the greater the likelihood of some kind of redress. An educated and vigilant public is the necessary partner in such a system if this goal is to be fulfilled. 50/

75. In addition to these broad approaches, aimed at preventing different kinds of abuses of power, specific strategies can be instituted to prevent abuses of economic power. Some of the most effective ones might be those based on the premise that it is most appropriate to fight economic crime by economic means, as it might be to fight organized crime with organizational means. In addition to various economic and institutional measures, it is also a matter of employing a cost/benefit approach in making policy decisions about industrial and business forms and operations, with a view to minimizing the potential for criminal abuse. The suggestion has, for example, been made that preventive efforts should be focused on the critical (most vulnerable) points in the economic system and operations so structured as to increase accountability at all stages, thus reducing the potential for abuse. 51/ Other approaches have also been suggested, such as the chartering or licensing of domestic corporations and foreign trading partners, management participation by workers, the appointment of public interest directors, and the establishment of shareholders' tribunals to increase accountability. Improvements in the systems of regulatory justice have also been called for to increase their effectiveness and minimize the influence of special interest groups. 52/

76. In some market economies, measures have been proposed for the deconcentration and divestiture of conglomerates and holding companies acting in restraint of trade. National securities commissions can also be established to encourage fair trade and investigate violations of laws. Regulation of intra-corporate pricing can be promoted through investigative and information systems and legal standards on "arm's length" pricing. International exchanges of information on the regulatory stringency brought to bear against transnational corporations can help countries to adopt appropriate measures. Developing countries have a special opportunity in shaping their policies and practices so as to avoid opportunities for abuse which impairs economic development.

77. The role of law-making and the criminal justice system has been considered in some detail, as has their preventive potential. The crucial question here, perhaps,

50/ See, for example, John Braithwaite, Inequality, Crime and Public Policy (London, Routledge and Kegan Paul, 1979).

51/ Leszek Lernell, Przestępczość Gospodarcza: Zagadnienia społeczno-ekonomiczne /Economic criminality: socio-economic questions/ (Warsaw, Wydawnictwo Prawnicze, 1965); see also Braithwaite, op. cit.

52/ See also Robert A. Kagan, Regulatory Justice (New York, Russell Sage Foundation, 1978).

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is under what conditions do laws and their application deter? 53/ A sure and even-handed application of equitable laws would evidently have greater preventive force than the present haphazard and profoundly inequitable situation and would help to foster respect for the stipulations of a system that dispensed justice fairly to all, limiting the abuse of economic and other privilege.

78. Self-regulation by those holding economic power has also been suggested as a means of preventing and controlling abuse. For example, trade associations and business enterprises might be encouraged to develop codes of ethical conduct, and ethical behaviour inculcated in business schools (though many businessmen receive no formal business education). Some movement in this direction can be observed in a number of countries, particularly in response to calls for greater social responsibility of business voiced in the aftermath of the questionable payments scandals of the mid-1970s. 54/ However, scientific evaluations of some corporation codes of ethical conduct reveal that they tend to give most attention to illegal and unethical conduct likely to decrease a firm's profits (for example, conflict of interest, embezzlement, drunkenness), and least attention to illegal or unethical conduct that might increase the profits (for example, pollution, unsafe working conditions, the manufacturing and selling of unsafe products), although corporate codes usually state or clearly imply that profits should be acquired only through ethical means. 55/ While there has been progress in achieving safer working conditions and products and in environmental protection, it is probably being made largely in response to governmental and public pressures. Appropriate enforcement procedures are often lacking, but there is some evidence that, if the threat of government action is great enough, corporations and other institutions may develop internal policing mechanisms through "compliance officials" or other means; their effectiveness is, however, open to question. Measures can be devised to protect employees who denounce abuses of power by their organizations, but such complaints must be subject to proper legal procedures so that those holding power are not accused falsely of violations.

53/ See, for example, Robert F. Meier and Gilbert Geis, "The abuse of power as criminal activity: toward an understanding of the behavior and methods for its control" (paper prepared for interregional meeting of experts on this topic), and N. K. Block, F. C. Nold and J. G. Sidak, "The deterrent effect of anti-trust enforcement: a theoretical and empirical analysis" (Stanford, California, Stanford University, Center for Econometric Studies of the Justice System, December 1978).

54/ See, for example, Donald R. Cressey and Charles P. Moore, Corporation Codes of Ethical Conduct (Santa Barbara, California, 1980). It could also be argued that such codes might fulfil a symbolic function of standard-setting, whose adoption and communication to the staff can be used to absolve the officers at the top from possible criminal responsibility for corporate wrongdoing.

55/ Ethics courses have been introduced in some business colleges and universities in some countries. See, for example, "Codes of Ethics in Corporations and Trade Associations and the Teaching of Ethics in Graduate Schools: a Survey Conducted for the Ethics Research Center" (Princeton, N.J., Opinion Research Corporation, 1979).

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79. Consumer pressures and class actions have been instrumental in promoting governmental standards designed to prevent consumer fraud: they should be supported through subsidies and tax deductible status. Any successful enforcement of consumer protection standards requires a symbiosis between effective governmental regulatory mechanisms and formal and informal means of fostering consumer pressure against the powerful. The setting up of co-operatives offers the possibility of active control by consumers over management decisions and the development of quality standards. Trade union pressure to counteract abuses of power can also be effective, provided that unions are not manipulated for special advantage.

80. The principle of disclosure can have a salutary effect in exposing possible abuses to public scrutiny and in deterring potential violators. This may involve the publication of annual government reports of all complaints, investigations and enforcement actions against those abusing economic power, or other means of fostering accountability, including the appointment of ombudsmen to act on consumer and other complaints, standing commissions of inquiry, compulsory audits and other independent mechanisms to control abuses of power. It can also mean the use of publicity as a sanction in itself, corrective advertising, etc.

81. It has also been suggested that, in addition to punishing the abuse of economic power, good corporate behaviour should be rewarded, for example, by positive publicity for corporations which comply fully with the law. The press and other mass media have a crucial role to fulfil in exposing abuses and in pressing for remedial or preventive action. Above all, an informed and vigilant public, sensitized to the possibilities of abuse, and able to join together to prevent and withstand it, is the sine qua non of effective preventive action.

2. International action

82. The growing economic interdependence of States - developing and developed - and the increased internationalization of business have been fostered by technological progress and the perceived mutual advantages of partnerships in trade and development. There have been admitted benefits for all sides in this process. The contributions of industrialized countries and their transnational corporations to development in different regions of the world is undeniable; but so are the imbalances and depredations deriving from the inequality of power and the abuses to which the less advantaged countries have often been exposed in their dealings with powerful trading partners.

83. This does not mean, of course, that all transnational economic crimes involve abuses of power: in so far as they represent haphazard occurrences, they may have limited effects and may be more easily contained through appropriate national or bilateral policies. But where there are institutionalized and well-planned operations, the impact on developing countries may be staggering, and efforts aimed at control extremely difficult, requiring concerted international as well as national action.

84. The Programme of Action on the Establishment of a New International Economic Order (General Assembly resolution 3202 (S-VI)) seeks to establish structures and promote arrangements for a more equitable and efficient functioning of the

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international economic system and to enhance the capacity of developing countries for self-sustained development. The growing recognition of the importance of transnational corporations in the world economy, as well as their perceived role in certain deleterious business practices and instances of alleged political interference, have led to a movement to strengthen the legal mechanisms applicable to transnational corporations at the national and international levels and to redefine their role in the development process. 56/

85. That such controlling measures are urgently needed is clear from the evidence of economic abuses by powerful trading partners in many developing countries. The range and repercussions of such abuses have been noted before, as has the tendency to profit from loop-holes and differences in national legislation. Collaborative strategies are needed to supplement national legislation and procedures designed to control such malpractices. Bilateral, regional and international action of various kinds, joint strategies and exchanges of information can help to prevent and contain many of these abuses.

86. The preparatory meetings recommended, for example, international co-operation in the investigation and prosecution of individual cases, through the exchange of or access to information and evidence available only outside the prosecuting jurisdiction, in respect of all types of corporate crimes. International co-operation can take place during the investigation phase as well as during the judicial proceedings. Computerized systems for sharing relevant data and closer co-operation between the respective organs and services dealing with the problem in different countries (police, prosecutors, tax, and customs officials etc.) are a prerequisite for more effective action.

87. In order to avoid the exploitation of differences in national legislation and of legal and procedural intricacies favouring "gilded" crime, jurists would need to have a better knowledge of the laws in force in different countries to deal more adequately with cases on an international as well as a national level. Given the transnational nature of many of the illegal abuses of economic power, and the individual and collective ability of violators to circumvent, or avoid compliance with, the law of any one jurisdiction by transferring operations as convenient, the harmonization of laws and law enforcement on a regional or international basis, to the extent possible, has been strongly recommended.

(a) Norms and guidelines

88. One of the more pressing tasks suggested by the preparatory meetings is the development of guidelines and norms aimed at the prevention and control of transnational abuses of economic power, to provide criteria against which countries can assess their efforts. Some kind of "minimum rules" in this area have been urged. Where conventions and other binding agreements are not yet feasible, the adoption of international codes of conduct can formalize and systematize

56/ "Progress made towards the establishment of the new international order: the role of transnational corporations: report of the Secretariat" (E/C.10/74).

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international consensus regarding acceptable practice, and give adherence moral weight. A Code of Conduct on Transnational Corporations is being formulated under the aegis of the Commission on Transnational Corporations; measures are foreseen for its implementation and appropriate institutional machinery is being considered. ^{57/} The International Labour Organisation has also produced principles and guidelines on multinational enterprises and social policy. ^{58/}

89. Codes of conduct have also been formulated or are being developed in a number of special areas of transnational business operations, such as restrictive business practices and the transfer of technology, with special reference to developing countries. ^{59/} There has also been an effort to develop international standards of accounting and reporting, in order to provide certain guidelines and standards for Governments and national accounting bodies in the formulation or review of reporting procedures and disclosure requirements. ^{60/}

90. The problem of transfer-pricing and tax evasion has also been dealt with by a group of experts, with a view, particularly, to helping developing countries in their efforts to combat tax evasion and avoidance. ^{61/} Studies are envisaged of devices used to evade or avoid taxes with regard to transactions occurring in an

^{57/} "Work related to the formulation of a code of conduct: report of the Intergovernmental Working Group on a Code of Conduct on its eighth, ninth and tenth sessions" (E/C.10/62); Transnational Corporations: Issues Involved in the Formulation of a Code of Conduct (United Nations publication, Sales No. 77.II.A.5); and "Transnational corporations: a code of conduct: formulations by the Chairman on the implementation of the code of conduct" (E/C.10/AC.2/14).

^{58/} Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (Geneva, International Labour Office, 1977).

^{59/} United Nations Conference on Trade and Development, Draft Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (TD/RBP/CONF.10), approved by the Conference on 22 April 1980 for transmittal to the General Assembly, and Draft International Code of Conduct on the Transfer of Technology (TD/Code TOT/20 of 16 November 1979).

^{60/} See "International standards of accounting and reporting: work of the United Nations" (E/C.10/AC.3/1); "International standards of accounting and reporting: a comparative study" (E/C.10/AC.3/2); "International standards of accounting and reporting: comparison of various reporting standards with the minimum items proposed by the Group of Experts" (E/C.10/AC.3/3); and International Standards of Accounting and Reporting for Transnational Corporations (United Nations publication, Sales No. II.77.11.A.17).

^{61/} "International taxation issues: report of the Secretary-General (E/1980/11). The Economic and Social Council, on 28 April 1980, adopted resolution 1980/13, requesting the Group of Experts to expedite its work on international tax evasion and avoidance, with a view to working out, as soon as possible, proposals for international co-operation in combating them.

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international context (also in relation to transfer-pricing and tax havens), of possible solutions to problems of tax avoidance and evasion, and of bilateral and multilateral arrangements for mutual assistance in the collection of taxes and the eventual harmonization of tax policies. Work is also under way on the harmonization and unification of international trade law, with input from the various bodies and organizations concerned with this matter. ^{62/}

91. The initiatives undertaken underline national and international concern with the potential negative (as well as positive) aspects of international activities and transactions in business and trade, especially from the standpoint of ensuring more equitable arrangements between the developed and developing world. Their co-ordination and integration is required, wherever possible, if their usefulness is to be enhanced. Such initiatives, though usually lacking in effective provisions for enforcement, are crucial in providing a common framework for action against problems facing many nations and a basis for mutual co-operation. The preparatory meetings felt that their effectiveness would be enhanced with the provision of appropriate investigative and enforcement machinery.

(b) Other initiatives

92. A number of other initiatives with a bearing on the problems under discussion have also been taken at the international level. The increased emphasis on environmental protection in view of the dangers to the biosphere has led to the establishment of the United Nations Environment Programme, which is engaged in a range of activities. While other preventive strategies are needed in this respect, the penal law might have a significant deterrent effect if appropriately used. The recently established Group of Experts on Environmental Law could usefully take this aspect into account and draw on the increasing number of criminological contributions in this field (see A/CONF.87/9). ^{63/}

93. The growing international concern with consumer protection is reflected in a recent resolution of the United Nations Economic and Social Council, calling for a comprehensive report on this subject, to include, inter alia, proposals for adequate standards and other measures which States could consider adopting, with special attention to the needs and problems of developing countries and the contributions in this area of various United Nations bodies (see Economic and Social

^{62/} See "Current activities of international organizations related to the harmonization and unification of international trade law" (A/CN.9/192) and the report of the United Nations Commission on International Trade Law on the work of its twelfth session (Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17)).

^{63/} See also G. O. W. Mueller, "Offences against the environment and their prevention: an international appraisal", Annals of the American Academy of Political and Social Science (1979); and Riuichi Hirano, "The criminal law protection of the environment". Report to the Twelfth International Congress of Penal Law, Hamburg, September 1979.

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Council resolution 1979/74). Measures against consumer fraud should form an important part of any guidelines that might be drawn up in this connexion.

94. In accordance with the recommendations of the Committee on Crime Prevention and Control, a policy-oriented study and analysis will be undertaken in order to help develop strategies and measures aimed at the prevention and control of economic criminality which particularly victimizes the least affluent among nations. The study, to be conducted in co-operation with the United Nations Centre on Transnational Corporations, is also to take into account such issues as corruption from a criminological perspective. The guidelines to be developed as part of this project will be based, inter alia, on the conclusions and recommendations of the Sixth Congress.

(c) Regional and subregional collaboration

95. Practical co-operation among countries can sometimes be more easily ensured at the regional or subregional level, among countries with similar circumstances and approaches. The Organisation for Economic Co-operation and Development has helped to create a model bilateral tax treaty and has formulated consulting mechanisms to head off international disputes over the application of national security controls and antitrust laws; it has also developed a set of guidelines for multinational enterprises (as has the European Economic Community), as well as specific guidelines on transfer pricing, 64/ to be taken into account by Member States. The Council of Europe has sought to develop joint criminal policy principles and standards with regard to economic crime, and to improve mutual assistance in this area. 65/ The Scandinavian countries, with a tradition of close collaboration, have adopted a convention on mutual assistance in tax matters. The Andean Pact countries have sought to pool their economic power in a joint policy towards multinational enterprises, which places a number of restrictions to prevent the draining off of profits and includes other provisions breaking new ground.

96. A comprehensive scheme for strengthened co-operation in the prevention and control of crime against socialist property has been proposed in the framework of the Council for Mutual Economic Assistance, which provides for an analysis of the national and international issues involved in closer co-operation in this area among the socialist States members of the Council, aimed at using their collective experience to combat economic crimes, and at a range of measures to promote and integrate efforts in this respect among the authorities and services concerned

64/ Organisation for Economic Co-operation and Development, Transfer Pricing and Multinational Enterprises (Paris, 1979).

65/ Council of Europe, Preliminary draft recommendations of the Select Committee on Economic Crime, Strasbourg, 13 February 1980 and "Report of the Colloquium on International Tax Avoidance and Evasion, 3-7 March 1980".

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(including legal systems and law enforcement agencies, public control bodies and national and international production collectives). 66/

(d) Non-governmental action

97. International non-governmental and popular initiatives can stem abuses linked to economic power, particularly by strengthened international consumer movements (for example, through the International Organization of Consumers' Unions) and global environmental protection initiatives (Earthwatch, Planetary Citizens etc.). International trade union movements (such as the World Federation of Trade Unions and the International Confederation of Free Trade Unions) also have much to contribute. Non-governmental organizations active in crime-prevention and criminal justice have a special role to play, and some have already demonstrated their concern about the abuse of power. The four major organizations active in the crime field (International Society for Criminology, International Society of Social Defence, International Association of Penal Law and International Penal and Penitentiary Foundation) have tackled some of the major aspects of this problem area in their congresses and publications and have convened a special preparatory colloquium on this topic for the Congress, at which a joint resolution was adopted urging intensified international action in this sphere (E/1980/NGO.3). These organizations can provide valuable scientific input and a broad base of professional support to increase the cumulative impact of international initiatives in this entire field.

66/ International Authors' Collective, "Problems of co-operation between the members of CMEA in the prevention of crimes against socialist property", Prestuplenya sovershennyye v ukhode khozyastvennoi deyatel'nosti /Economic crime/: International Round-Table Conference, Szeged, 2-6 October 1978 (Budapest, 1979), pp. 398-408.

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B. Abuse of public power

98. In any political system operating within the framework of the rule of law, an important aim of public policy is to control abuses of power and ensure that elected representatives and responsible officials (public servants) are held accountable for the proper exercise of power. The problem of the abuse of power in government is an important subject for examination, owing to the high cost this malaise exacts in political, ethical, and socio-economic terms. The abuse of power in the public sector can undermine public confidence and trust in government, reduce the capacity of the government to fulfil its functions effectively, subvert its obligations to the citizenry, and impose unnecessary financial burdens on taxpayers. The capacity of a political system to prevent, detect, punish, and control such abuses will have a direct bearing on its legitimacy and long-term stability.

99. Abuses of public power can be categorized in various ways, including international and national abuses: the former involves the violation of norms of international law, for example, the United Nations Charter, which call for peaceful coexistence among States; the abuse of national public power undermines the legal basis of peaceful coexistence among citizens. Such acts cause serious harm, whether by infringing individual rights, or countering widespread legitimate interests. It is evident that the borderline between abuses of economic and public power is not easy to trace because the same conditions and factors may facilitate their commission. Accordingly, most of the remarks made earlier are also relevant to the abuse of public power. In the following paragraphs those aspects which are specific to the abuse of public power are highlighted.

1. National policies for the prevention and control of abuses of public power

100. The preparatory meetings emphasized that the democratic process precluded much criminal abuse of public power, or at least made its exposure more likely; its absence and the lack of legitimate channels for the redress of grievances stemming from persistent inequities and abuses tended to generate feelings of anger and resentment and might lead to violent conflict. To determine whether an abuse of power should be criminalized or not, due account has to be taken not only of national law but also of international instruments setting standards for the observance of basic human rights, and promoting the progressive development of international law. Among these are the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, articles 6, 7, 8, 11, 15, 16 and 18 of which admit no derogation, even in declared cases of a state of emergency or "necessity", in accordance with article 4. The prohibition of Nuremberg-type crimes of the kind referred to in the draft Code of Offences against the Peace and Security of Mankind is a matter further pursued in the discussion of international action against abuses of public power. The observance of United Nations standards in the field of criminal justice is also necessary, with special reference to the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Principles against Arbitrary Arrest and Detention and the Code of Medical Ethics.

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(a) Legislation

101. The law, which articulates a society's values, has often not been an effective instrument for the social control of those who abuse public power because they can shape the law to their own or other special advantage. The complexity, contradictions, and obscurity of certain legal provisions can limit their usefulness, as can restrictive clauses or, on the contrary, overinclusive interpretations (for example, of exigency or obedience to a higher authority). ^{67/} As in the case of economic abuses, the law affecting the conduct of those exercising public power can also be violated because enforcement efforts are not always adequate.

102. The ease and impunity with which abuses of public power might be committed where there are insufficient controls tends to make them self-perpetuating: their discovery, prosecution and punishment can then be effectively blocked, since the organs entrusted with these functions may have become subverted. Elimination of documentary evidence, subterfuge, secret negotiations and agreements and cover-ups are characteristic of abuses of public power. Reforms of laws of evidence, proof and responsibility - as in the case of economic crimes - are required in many countries to facilitate the detection, investigation and prosecution of offences involving the abuse of public power.

103. Moreover, the normative sphere comprises not only the criminal law but also every type of lawful system (administrative, civil, disciplinary, ethical, deontological, social usage etc.). A legislative formula has been suggested, covering the main characteristics of abuses of public power - more as a general guideline and basis for study than a specific provision: "Whoever, being in possession of great public powers, abuses them, whether for himself or others, by the use of fraudulent or violent means, and brings great harm to individual rights or to individual or widespread interests or offends human rights, is liable to criminal sanctions." ^{68/} Actual legislative provisions, however, may have to define specific instances of abuse with more precision, otherwise arbitrary judgements and disparities in sentencing or treatment may result. Furthermore, as in the case of economic offences, there is need for a new doctrinal body of penal law which was traditionally created to deal with conventional criminality, in such a way that it be brought up to date so as to deal more appropriately with non-conventional crime involving abuse of public power, particularly in respect of culpability, responsibility and the weight of proof. Some doctrines of responsibility in this area already embodied in national legislations are interesting

^{67/} See also Jacques Verhaegen. La protection pénale contre l'excès du pouvoir et la résistance légitime à l'autorité (Bruxelles, Emile Bruylant, 1969).

^{68/} Alessandro Malinverni, "The abuse of public power" (general report of the international Society of Social Defence to the Bellagio Interassociation Colloquium, April 1980).

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in that they use as a cost/benefit basis of assessment the balance of social harm and good involved in the contested act(s) a socially relevant criterion. 69/

(b) Institutional organization

104. The judiciary may foster (or fail to prevent) abuses of public power through "the alternative use of the law", interpreting existing provisions with a particular bias, rather than objectively, as it should. Preferential treatment is a variant of such distortion, as is selective leakage of information, which may in extreme cases involve actual complicity. Special administrative courts or tribunals can be established to hear cases of alleged abuse on the part of public servants: these bodies could be organized so as to be more informed and less expensive than regular courts, establishing their own rules of procedure, including the admission of evidence.

105. The separation of powers allows for a system of checks and balances. The preparatory meetings emphasized that the independence of the judiciary should be guaranteed as a normative constitutional provision, and that appropriate financial and administrative dispositions should be made so that its impartiality might, in fact, be assured. A necessary concomitant is an independent prosecuting authority or other kinds of prosecution free from political interference; there can also be the instrumentality of the private or special prosecutor to pursue instances of alleged abuse of public power. In some countries such prosecutors have been appointed in the wake of, or on suspicion of, abuses of public power and special legislation for their prevention and control has been promulgated.

106. The preparatory meetings also stressed that a responsible and responsive Government had to demonstrate its respect for fundamental human rights, including, inter alia, access to the judicial system with full enjoyment of due process and observance of rights of arrested or detained persons before and during judicial proceedings and after sentencing, as well as maintenance of the jurisdiction of civilian courts.

107. In rural areas, there is significant scope for the operation of village councils (for example, panchayats in India and barangay in the Philippines), which preserve elements of the operation of customary justice and serve as mechanisms to promote the accountability of the local village leaders. The main principle in the effectiveness of such institutions is that they permit change "from a bureaucratic administration to democratic administration or rather an amalgam of the two". 70/ The personal links and accessibility and flexibility of such

69/ Thus, for instance, article 217 of the Polish Penal Code provides for penalties in cases of mismanagement through failure to perform one's duties or exceeding one's authority, in accordance with the seriousness of the harm caused; criminal responsibility is however, precluded if the official has acted within the limit of admissible risk, "especially when the possibility of an advantage considerably exceeds the probability that damage will result". Krzysztof Poklewski-Koziell. (Paper prepared for the interregional meeting of experts on this topic.)

70/ F. R. Dubhashi, Rural Development Administration in India (Bombay, Popular Prakashan, 1970); see also University of London, Institute of Commonwealth Studies, "A revival of local government and administration: collected Seminar papers, 1978", and Local Government Reform: Analysis of Experience in Selected Countries (United Nations publication, Sales No. E.75.II.H.1).

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representatives permit them to be responsive to the people whom they serve and thus give vitality to local government, which tends to be lost in the bureaucratic process. Lessons are to be learned from this experience - not only for the replication of such institutions elsewhere but also for improvement in the quality of any local (or other) administration which risks becoming rigidified and thus unresponsive to public needs.

(c) Other arrangements

108. Furthermore, special measures applicable to particular situations or institutions, for example, prisons, should be taken. These should include the periodical inspection, by an independent authority, of the institutions or facilities used for the commitment or detention of offenders for any length of time; their access to benevolent-voluntary associations or welfare organizations; special publications such as newspaper articles on prison conditions; comparative studies on the situation of those under preventive detention and other initiatives aimed at furthering the observance of human rights. In that connexion, it was recommended that Member States should accept periodic visits of both regional and international organizations, dedicated to the protection of human rights, and facilitate the dissemination of information produced by these organizations.

109. Among the rights to be assured, is the right to medical examination by a physician selected by the prisoner, and a psychiatrist, if the physician or other professional so recommends. There is also a need for an ombudsman, as well as for mechanisms of judicial review or other means of hearing and redressing grievances, including those of prisoners. 71/ In that connexion educational and training programmes relating to human rights, with special emphasis on the United Nations instruments and guide-lines referred to above, were deemed by the preparatory meetings to be highly desirable.

110. As a strategy for overall control, it was emphasized that the abuse of public power was more susceptible to control within national machinery when openness to systems of inspection existed. A necessary means of ensuring such control and openness is the principle of legality and accountability in the use of public power, with constant scrutiny of the exercise of such power through publicity and efficient systems of complaints, investigations, legal sanctions and disciplinary action in cases of abuse.

(d) Preventive strategies

111. Increased accountability of the system would of itself serve as the most effective preventive strategy for preventing abuses of public power. To be fully effective, it requires informed and vigilant public opinion, linked by a common concern for integrity in government and the preservation of basic citizen rights. In this connexion, freedom of expression and association are of great importance. In addition, public servants have a particular role to play in safeguarding values

71/ See, for example, Stanley Anderson, "Ombudsmen and prisons in Scandinavia", Nordisk Tidsskrift for Kriminalvidenskab, vol. 66, No. 3-4, 1978, pp. 211-246. See also A/CONF.87/7.

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which would foster integrity in the public service. The promotion of ethical standards for public servants is thus a crucial task. A code of ethics in the public service, such as that developed under the auspices of the International Institute for Public Administration, can serve as an important instrument in this regard. ^{72/} This code might be widely disseminated and submitted for comments by public authorities in the various Member States, with a view to refining it and obtaining consensus. Such a code, prescribing expected standards of professional conduct and proscribing certain unethical and criminal practices, would serve to inhibit the use of public office for self-interest and private gain, enhance the professional image of the public servant, and further public confidence in government.

112. Training programmes for public officials have to specify their rights, obligations and responsibilities. Such programmes, which need to be provided on a pre-service and in-service basis, should seek to inculcate standards of impartiality, effectiveness, responsiveness and accountability in public affairs. Increased remuneration, status and job stability for political officials and bureaucrats may undercut the motivation to engage in abuses of power.

113. Admittedly, however, the measures indicated above may be inadequate for coping with really flagrant, massive abuses of public power by the most powerful offenders, including States. The principle of State responsibility for wrongful acts, including those against its own citizens, must be judged by reference to some international standards, and will therefore be considered in that perspective.

2. International action

114. Certain abuses of public power have only national or local dimensions; others may be transnational in character or may contravene certain international instruments, agreements or norms. In the latter case, an international jurisdiction and/or practical bilateral or multilateral co-operation among States may be required.

(a) Norms and guide-lines

115. Some of the rights established in the United Nations human rights covenants are protected within national systems, while others at times are not. Violations of those rights might be considered within international bodies in accordance with the procedures established in those instruments. There is no doubt that the ratification or the international covenants, and their application and incorporation,

^{72/} O. P. Dwivedi for the International Institute of Public Administration, "Ethics in the Public Service". The Code was approved at the thirteenth International Congress on Public Administration, held at Abidjan in September 1977. See also O. P. Dwivedi, "The State as the offender: reflections on ethics and public policy" (paper prepared for the interregional meeting of experts on this topic).

together with other relevant international standards and norms, ^{73/} into the domestic legislation and practice of Member States would contribute greatly to the monitoring of abuses of public power related to infringements of human rights, including torture, summary executions and disappearances of persons. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the Fifth Congress, was approved by the General Assembly (resolution 3452 (XXX)). The Assembly subsequently requested the Commission on Human Rights to draw up a draft convention on the subject, to be finalized next year (see A/CONF.87/8, paras. 14 and 15). The question of missing and disappeared persons was dealt with by the Commission on Human Rights for the first time at its 1980 session, in pursuance of General Assembly resolution 33/173 when it decided to establish a working group to study the matter. ^{74/}

116. The draft Code of Offences against the Peace and Security of Mankind, as elaborated by the International Law Commission, deals with the most powerful offenders and the most serious forms of crime. This question will be taken up at the forthcoming session of the General Assembly which will decide on the future work in this area (see General Assembly resolution 33/97 and A/35/210). The preparatory meetings urged that the matters envisaged by the Draft Code should be considered and deemed its adoption crucial for the control of offenders currently beyond the reach of the law. An international criminal code, with appropriate implementation mechanisms, ^{75/} operating under the jurisdiction of an international criminal court, would, in the experts' view, significantly further efforts aimed at the prevention, regulation and control of abuses of public power. The court would operate not in conflict with, but as an alternative or supplement to, national judicial systems, particularly where the prosecution of powerful offenders might be beyond the capacity and resources of developing countries.

117. International norms, codes of conduct, an international jurisdiction, regional as well as national remedies for violations of human rights equivalent to criminal conduct, are co-ordinates of a concerted strategy against abuses of public power, to be implemented with the co-operation of Member States. United Nations guide-lines, minimum standards and codes, and other internationally accepted instruments, such as the Code of Ethics for the Public Service, could serve as a

^{73/} See also, in this regard, "United Nations norms and guidelines in criminal justice: from standard-setting to implementation" (A/CONF.87/8) and General Assembly resolution 34/178 on the right to amparo, habeas corpus or other legal remedies to the same effect.

^{74/} Official Records of the Economic and Social Council, 1980, Supplement No. 3 (E/1980/13), chap. I, decision 6; chap. VIII, paras. 194-221; and chap. XXVI, resolution 20 (XXXVI).

^{75/} For a consideration of some of these issues, see also Otto Triffterer, "Jurisdiction over States for crimes of State", in M. Cherif Bassiouni and Ved P. Nanda, eds., Treatise on International Criminal Law, vol. II, Jurisdiction and Co-operation (Springfield, Illinois, Thomas, 1973), pp. 86-96.

frame of reference not only for national policies but also for the development of a global consensus aimed at promoting integrity and minimizing abuses in the exercise of public power. The mobilization of international opinion and pressure from international bodies is essential for progress in this direction.

(b) Regional co-operation

118. Regional arrangements for the promotion and protection of human rights have proved extremely useful and effective and, as such, deserve particular attention and further expansion. In this connexion, the preparatory meetings suggested that studies should be made of the relevant work of such entities as the European Commission on Human Rights and the Inter-American Court of Human Rights. Emphasis was placed on the work done by the United Nations and its regional crime prevention training and research institutes on human rights in the administration of justice, with the recommendation that initiatives in this respect, especially training courses, should be continued and also undertaken interregionally.

119. Co-operation between States or groups of States is also needed in the investigation, pursuit and extradition of those who have committed abuses. Mutual assistance in judicial matters, extradition etc., as envisaged, for example, under the conventions adopted by the Council of Europe, can help to expedite prosecutions and bring offenders to justice.

(c) State responsibility

120. The responsibility of States for abuses of power is a pivotal issue and one of great complexity. The International Law Commission has elaborated draft articles on State Responsibility for Internationally Wrongful Acts, which have been submitted for comments to Governments and are now being finalized. ^{76/} The general rules concerning State responsibility ^{77/} (termed "primary rules" by the Commission) may be regarded as a further development of a system of international law "the rules of which should ensure that responsibility is established and regulated for every breach, in whatever area, of international law. The formulation of such rules will undoubtedly be conducive to that certainty of law which is so necessary in international and national relations (see E/CN.4/328/Add.1). The reference to an "internationally wrongful act" presupposes that the international order takes precedence over the domestic order of States. The Commission is currently also continuing its work on international liability for injurious consequences arising out of acts not prohibited by international law.

^{76/} See General Assembly resolution 33/139 and the report of the International Law Commission on the work of its thirtieth session (Official Records of the General Assembly, Thirty-third Session, Supplement No. 10 (A/33/10), vol. II).

^{77/} The definition of "State responsibility" also attributes to the State the conduct of entities, for example, territorial ones) or persons acting in fact on behalf of the State, in addition to State organs.

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121. The idea that there are extremely serious breaches of international law, to be characterized as international crimes, is now generally accepted. It has been suggested that paragraph 2 of the draft Articles, specifying which are to be considered "international crimes", should stipulate explicitly "that such a breach of an international law obligation entails not only condemnation but also a concrete reaction by the entire international community, since ... an international crime is not only a violation of the interests of the State directly affected by the crime, but ... affects the overall social interest of all States without exception ... The aspirations of most of the international community are undeniably directed towards the establishment of an international public order which should ensure, first and foremost, peace, security and justice for all States" (A/CN.4/328/Add.1) and all people. The International Law Commission has based the legal grounds for State responsibility on "the binding nature of international law; any breach of it thus suffices to render the offending entity responsible under international law for acts of commission or omission, so that it may be required to fulfil the obligation to make reparations" (see A/CN.4/328). ^{78/}

(d) Restitution to victims

122. A corollary of State responsibility for internationally wrongful acts would thus be the principle of obligatory restitution to the victims of such acts. While considerable work has been done in the area of individual victimology, and many countries have provisions for compensation to individual victims of crimes, there are as yet no institutionalized, internationally agreed principles for restitution for the wrong done to groups of victims of abuses of public power in contravention of international agreements (for example, the conventions on genocide, torture, racial discrimination, apartheid etc.); these need to be elaborated. A precedent already exists in the Wiedergutmachung policy adopted by the Government of the Federal Republic of Germany for restitution to victims of Nazi persecution. This policy could be extended and adapted, with appropriate international criteria and guide-lines, for implementation by willing States. ^{79/} It might serve not only to redress past wrongs - to the extent to which this can be done - but also to discourage future abuse.

123. In criminology the focus has often been on relatively circumscribed areas of specialized concern. It is necessary that the issues of the day be analysed in a wider perspective and further contributions made on such major questions as those mentioned above. At the same time, statesmen and policy-makers in different parts of the world, as well as international law experts, could profit considerably from the inclusion of criminological expertise in tackling some of the most problematic yet most important issues facing individual countries and their peoples, as well as the international community as a whole.

^{78/} With reference to non-retributive penal sanctions, see also Triffterer, *op. cit.*

^{79/} See Walter Schwarz, "On undoing national wrong" (paper prepared for the interregional meeting of experts on this topic) and Walter Schwarz, Rückerstattung nach den Gesetzen der Alliierten Mächte, vol. I in Series edited by Walter Schwarz and the Minister of Finance of the Federal Republic of Germany, entitled Die Wiedergutmachung Nazionalsozialistischen Unrechtes durch die Bundesrepublik Deutschland (Munich, Beck, 1974).

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C. Collusion between the abuse of public and economic power

124. Collusion between economic and public power can promote the abuses of both and make them particularly difficult to control. Indeed, the pervasive and often nefarious interfaces between them can generate complex and harmful configurations whose web extends far into the various facets of national and international life. The strategies of prevention and containment should be equally multi-faceted and wide-ranging, cutting the lifeline of such collusion at vital points, and creating a context where it cannot thrive.

125. In many instances, the holders of economic power also exercise public power. Abuse by the one may therefore be inseparable from abuse by the other. This aspect has been taken into account in both sections of the report on the abuse of public and economic power.

126. While collusive abuses of public and economic power have long existed, recent startling instances in both developed and developing countries, reported in the mass media, have attracted increased attention and generated calls for remedial measures. This has sometimes led to legal action, and even legislation intended to end the more flagrant types of such abuses. 80/

1. Bribery and corruption

127. Among the most noxious and pervasive forms of linkage between abuses of economic and political power is the twin problem of bribery and corruption. Both activities negatively affect the moral climate and endanger the development process, particularly in developing countries. The experience of some countries points to the prevalence of this form of abuse in its various manifestations at all levels of the socio-political structure. Where extra-territorial agencies such as transnational corporations have been involved, this has generally been with the more or less extensive collaboration of local officials. Bribery has even been regarded as an established cost of doing business. Measures have recently been adopted in various countries in the wake of major domestic or foreign payment scandals, which have aroused widespread public reprobation, to prevent repetitions

80/ See, for example, J. Braithwaite, "Transnational corporations and corruption: towards some international solutions", International Journal of the Sociology of Law, vol. 7, No. 2, pp. 125-142 (May 1979). The United States Ethics in Government Act of 1978 was enacted as a result of the Senate Watergate Committee recommendations. A Public Integrity Section was established in the Department of Justice and prosecution of corruption cases has been intensified with reports issued on enforcement actions.

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of such abuse. 81/ Extreme penalties (for example, executions) have been applied in some jurisdictions, due mainly to an escalation of frustration and public outrage in the face of prolonged abuses of power and the non-enforcement or ineffectiveness of existing laws. Although corruption is illegal in almost all countries and although sincere efforts have been made to deal with the situation in many countries by stepping up enforcement efforts, 82/ setting up investigative commissions and initiating anti-corruption campaigns, these have often been ineffective and insufficient to counter "the general belief that corruption is rampant and that it is growing among higher officials, legislators and ministers". 83/ Experience has shown that discrete measures taken in isolation against an endemic problem are not likely to succeed and that they must be applied in a comprehensive form. Yet even efforts to treat corruption in its wider, systemic matrix, have tended towards a rather mechanistic econometric perspective, for example, in terms of the scarcity caused by an imbalance between supply and demand, 84/ which does not take account of the complex nature of human motivations. Perhaps a deeper appreciation is offered by those who see the basic problem as the perceived unfairness of society and uncertainty about developmental goals being pursued by the leaders. 85/

128. At the microlevel, there is a need for honest, energetic leadership in government agencies, fewer bureaucratic procedures in the management of various government activities, less discretion, disclosures of assets, and efforts to inform the public. 86/ There is also a need for proper procedures for reporting cases, incentives for the production of evidence, and the protection of persons producing it, as well as those accused whose guilt has not been proved. However,

81/ See also Neil H. Jacoby, Peter Nehemkis and Richard Wells, Bribery and Extortion in World Business (New York and London, MacMillan, 1977); Yerachmiel Kugel and Gladys W. Gruenberg, International Payoffs (Lexington, Massachusetts, Lexington Books, 1977); and W. Michael Riesman, Folded Lies: bribery, crusades and reforms (New York and London, Free Press, 1979). The United States Foreign Corrupt Practices Act of 1977, which makes illicit payments a federal offence, circumvents the problem of territoriality by providing for the prosecution and punishment of acts committed outside United States territory. Similar Swedish legislation came into force on 1 January 1978. However, it has been acknowledged that the solution of the problem of bribery and corruption requires multilateral as well as national action. See Samuel Dash, "Crime and the abuse of power: offences and offenders beyond the reach of the law?" (paper prepared for the interregional meeting on this topic).

82/ The Commissioner of the Independent Commission against Corruption in Hong Kong in his annual report for 1979 notes that more people were charged in the courts in 1979 than in any of the six years since the Commission was established and that delay in trials has been reduced. Commission against Corruption (Hong Kong, 1980).

83/ V. N. Pillai, op. cit.

84/ See, for example, Susan Rose-Ackerman, Corruption: A Study in Political Economy. (New York, Academic Press, 1978).

85/ See also A. T. Rafique Rahman, op. cit.

86/ T. R. Lyman, et al., Prevention, Detection and Correction of Corruption in Local Government (Washington, DC), United States Government Printing Office, November 1978.

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a decrease in lower or middle-level abuse is not sufficient if those who wield power are still often immune. While this may be changing, accountability is not yet properly institutionalized in most cases: built-in controls, an overseeing watchdog agency, and citizen vigilance committees can be useful in this regard. The integrity of those at the top can provide an example that will help to upgrade the public service as a whole. 87/

129. At the transnational level, an International Agreement on Illicit Payments has been developed by a working group of the Commission on Transnational Corporations (see E/1979/104) but not yet adopted; further action is expected to be taken towards this end.

130. Other parameters of action can be useful as supplementary initiatives at both the international and national levels. Thus, the preparatory meetings recommended the wide dissemination of the Code of Ethics in the Public Service, referred to above, and of standards prohibiting the use of public office for self-interest or private gain or for giving improper preferential treatment to any person or group, as well as to ensure that public resources are expended in an effective and efficient manner. Bilateral or multilateral agreements were also suggested for judicial co-operation, as was further international study of corruption with a view to making inroads into it.

131. The collusive nature of corruption, particularly at high levels, is also reflected in its reliance on both legitimate and illegitimate institutions such as banks and organized crime. The "laundering" of illicit political campaign funds through foreign banks is but one instance of such usage. The abuse of bank secrecy laws to hide improperly acquired assets is another, but here the basic problem seems to be that banks cannot be expected to investigate the manner in which monies deposited with them were acquired. However, it may be useful to establish international standards for the disclosure of assets secreted away in foreign banks for the purpose of providing the affected countries some means by which they may trace and recover such funds.

2. Organized crime

132. The tools of abuse implicit in economic criminal activity, such as the misuse of the power inherent in the operation of banks and other financial institutions, which can be used to cloak the origin and ownership of funds, make new interactions possible between such activity and other criminal practices. Such linkages pose special problems in the control of organized criminal activity within and between States. These criminal activities involve the use of legitimate enterprises, either directly or indirectly, in the furtherance of illegal practices. Many well-intended legal prohibitions, for example, the prescription of prostitution, drugs, gambling, alcohol etc., as well as other types of regulatory activities, have been seen to become sources of enormous profit for those willing to violate these prohibitions, for example, those involved in organized crime. Such persons often manage to escape prosecution by developing and using connexions with politicians and law enforcement officers.

87/ This point has been made by the President of Venezuela, in his proposed programme, Luis Herrera, Mi Compromiso con Venezuela: Programa de Gobierno para el Periodo 1979-1984, p. 43.

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133. Though "organized crime" is a phenomenon more endemic to certain developed States, it is becoming more prevalent in some developing countries, interfering with the regular distribution of goods (for example, by hijacking and piracy), and causing increased concern. In some cases, special units have been established to deal with the problem. 88/

134. As the dimensions of organized criminal activity expand, its participation increases in traditional economic criminal practices, such as tax fraud, the use of fictitious invoices and other false documents, the corruption of public servants, the acquisition and control of financial institutions, and transnational operations. The combinations and configurations of power abuse in organized crime activities are thus among the most damaging and recalcitrant forms of criminality. They can permeate virtually every sector of society, involving networks of operatives including underworld figures (sometimes serving as "dummies", middlemen or fronts in fictitious companies) and manufacturers, businessmen, bankers, politicians, etc. with organized crime connexions. The devious and wide-ranging activities of these perpetrators and methods for escaping and shifting liability all too often enable them to elude the traditional mechanisms of detection and control. 89/

135. Besides the organized crime problem in its narrower sense, the organizational aspect of the abuse of economic/public power merits special attention. The distinction between activity, criminal from its very origin, and that which becomes deviant in the course of its normal operations, is important for legislation and law enforcement. While one is a predominantly illegitimate organization, which penetrates into legitimate activities, the other is a predominantly legitimate organization, which engages in illegitimate activities. 90/

136. More information is needed on the interfaces between legitimate and illegitimate organizations and activities. The preparatory meetings suggested that empirical work be done to reveal, for example, how organized crime functions, including its monetary and societal effects, and the patterns of illegality, including the roles of "neutral facilitators" such as financial institutions and the extensive links to corporate and government power. Money movements - both domestic and transnational need to be exposed which further the objectives of

88/ See also James S. E. Opolot, "Organized crime in Africa" (paper prepared for the Interregional meeting on this topic).

89/ See also Jean Cosson, "Abuse of economic and financial power", Richard Rosenthal, "Organized, economic and political crime: overlapping perspectives" (papers prepared for the interregional meeting on this topic), and Peter P. Lejins, "Gang and organized criminality". Quaderni Rassegna di Studi, Higher International Institute of Criminal Science, 1979.

90/ In some countries, the term "organized crime" is used to denote organizational economic crime or so-called "criminal affairs". See, for example, A. Marek, "Organized criminality in Poland", Quaderni Rassegna Penitenziari, vol. II, 1979, pp. 322-328.

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organized crime and furnish a critical link between legal and "shadow" economies. The nature of illegal infiltration and manipulation must also be understood and the implications analysed with respect to such diverse facets as the role of professionals (lawyers, accountants, etc.), the means of corporate ownership and control, the recruitment of law enforcement personnel and the content of treaty obligations. An assessment of law enforcement agencies and current sanction structures, along with analysis of policy-making processes, would illuminate the shortcomings of current approaches and point the way to the necessary remedies.

3. Migrant workers

137. In some cases there might not be outright collusion between those wielding, respectively, economic and public power; yet in their interfaces, the abuses perpetrated have contributed to the exploitation of particularly vulnerable population groups, such as migrant workers. Unscrupulous entrepreneurs have profited from the cheap labour of migrants, often illegal migrants, who lack a permit to work. At the same time, the latter are penalized by the authorities for their dubious status, in a spiral of exploitation and marginalization. Their plight has been considered by the Commission on Human Rights and other United Nations bodies in an effort to provide some remedies to their particularly disadvantaged situation. A study of national legislation and administrative regulations and other measures are envisaged, in pursuance of a General Assembly initiative, which are expected to lead, ultimately, to the elaboration of a comprehensive international convention for the protection of migrant workers and their families. 91/

4. Preventive strategies

138. A number of specific recommendations were made by the preparatory meetings for policy formulation and action to minimize the pernicious interfaces between abuses of economic and of public power including:

(a) The formulation of standards and enactment of laws for the disclosure of information on interlocking directorships and conflicts of interest in the public service to aid in the detection and investigation of illegal practices involving private and public organizations, as well as mechanisms to detect and prevent the improper influence of those who have economic power over those who exercise a public function;

(b) Laws to prevent such abuses by providing access to information on banking and other financial operations of large corporations and other powerful trading partners, to reveal the secret accumulation and use of funds for bribery, extortion and corruption;

91/ See E/CN.4/Sub.2/L.640, on the exploitation of migrant labour, and General Assembly resolution 34/172. An ILO convention on migrant workers was adopted in 1975.

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(c) Development of standards, regulations and laws to permit greater control over national and international banking transactions through required documentation of holdings and transfers;

(d) Establishment and operation of information systems, documenting all money flows and transactions by banking institutions;

(e) Formulation of rules and laws for the retention of banking records relevant to the commission and investigation of economic crimes, and penalties for the destruction of records comparable to penalties for offences which can be concealed through the destruction of records;

(f) Training programmes to inculcate ethical standards and values of social responsibility.

139. Special measures are needed to prevent potential victimization of segments of the population most apt to suffer from certain interfaces of abuses of economic and of public power, such as migrant workers.

140. The preparatory meetings also stressed that active support should be given for the development and maintenance of an independent press to uncover collusion between public and private power, and that freedom of information acts should be enacted to help reveal collusion between public and private officials. 92/

92/ The Bellagio colloquium suggested the promotion of laws to institutionalize access to relevant information, such as, for example, the United States Freedom of Information Act, and for the establishment of data banks on different kinds of abuse. See also Aldo Loiodice, Information, banche di date e diritto all' informazione (Milan, Giuffrè, 1977), and Informazione e partecipazione nella società tecnologica (Reggio Calabria, Editori Meridionali Riuniti, 1978). This issue poses the problem of privacy versus information needs.

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V. INFORMATION AND RESEARCH PROSPECTS

A. Availability of data

141. The development of more effective policies and measures to prevent and control offences involving the abuse of power requires a knowledge of their extent, forms, trend and impact, as well as information on their perpetrators, victims and dynamics. Yet efforts to develop a more scientific, empirical base for action in this area are fraught with difficulties, some of which have been touched upon before. The limitations of traditional crime statistics, concerned primarily with conventional crime, have been emphasized elsewhere, as has the large "dark number" of undetected or unrecorded crimes (see also A/CONF.87/3). Since many of the acts considered here are dealt with under civil or administrative rather than criminal law, or are beyond the reach of law (de jure or de facto), their identification is all the more difficult. The fundamental methodological problem may, thus, lie in the actual detection and prosecution of these offences, rather than the estimation of their "dark" or "gilded" figure as such. At the same time, the sophistication and elusivity of many such acts (especially in the economic sphere) and their power base (in the public sphere) lessens the chance of discovery and/or pursuit by an official apparatus which may be no match for them, or not prepared to follow them up.

142. The main problem, however, is in the nature of the power itself, which implies the capacity to act in secrecy and thrives on ignorance. In areas such as corruption or the violation of human rights, and at such levels as the transnational one, to obtain valid, meaningful and comprehensive data is particularly complicated. Where public abuses prevail, the resistance of those in power usually presents an insurmountable block to relevant data collection. It is to the credit of some non-governmental organizations that pertinent and objectively treated information has been assembled and released. United Nations initiatives have sometimes suffered from constraints imposed by political decisions, and from limitations of the questionnaire method, which does not necessarily ensure compliance with the request for information, or veracity. Still, such efforts represent important beginnings: their existence may serve to discourage abuse. The determination of "consistent patterns of gross violations of human rights", for attention by the Commission on Human Rights, is another step in subjecting abuses of public power to closer scrutiny and thus increasing accountability.

143. The problem of the availability of data has various aspects. Even where some kinds of information are available (for example, in the economic sphere), they may be dispersed among different agencies and not generally accessible. In several countries, special efforts have been made or are under way to improve and systematize the information-gathering capability concerning white-collar crimes in general, and corporate crime and corruption in particular. A government-funded project has been concerned with the development of criteria for the selection of

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federal data sources on white-collar crime in the United States ^{93/} where a National Center on White-Collar Crime has also been established to serve as a clearinghouse of information in this field. ^{94/} In Australia (New-South Wales) a model for corporate crime statistics has been developed, with specifically designed reporting forms, and computer analysis capabilities. ^{95/} In some countries special commissions of inquiry, established, for example, on outbreaks of violence or on corruption, have collected relevant information and made various proposals. With regard to the latter, particularly, indirect indicators may be required to measure the extent of the problem, an exercise often complicated by the fluid line between corruption and accepted practice stemming from local custom and tradition. Contingent monitoring measures can include expenditure patterns, organizational forms, such as the use of proxies, and estimates of acceleration of the bureaucratic process in certain cases. The degree to which such indices can be used to reveal the true nature, extent and seriousness of a problem is a critical test in meeting this methodological challenge.

144. It must be pointed out that the development of a more adequate information base would not of itself ensure adequate action: all too often has knowledge not served as a prelude for reform. Yet, if "knowledge is power" - as the saying goes - then more informed decision-making should permit a more effective control of the abuse of power.

145. The preparatory meeting on this topic made specific recommendations aimed at the development of more adequate and comprehensive information systems on offences, offenders and victims of acts involving abuses of power, urging particularly that:

(a) Substantial priority be given to assembling statistics on the incidence and prevalence of such crimes and on the nature and extent of their impact;

(b) Member States develop systems of social reporting to assess the nature and level of offences related to abuse of power;

^{93/} Albert D. Biderman and Albert J. Reiss, "Definitions and criteria for a selection of prospective federal sources on white-collar crime data". Report No. 1, White-Collar Crime Project, prepared under a grant from the National Institute of Law Enforcement and Criminal Justice (Washington, D.C., 1979). See also Clinard, "Illegal corporate behaviour", loc. cit., pp. 225-229 for suggestions for improving corporate crime information.

^{94/} Established and operated under a Law Enforcement Assistance Administration grant by the Batelle Memorial Institute, in Seattle, Washington, which is linked to the National District Attorneys Association's economic crime project and its reporting system. These have also conducted research training programmes and policy planning in this field.

^{95/} Developed jointly by the New South Wales Bureau of Crime Statistics and Research and the New South Wales Corporate Affairs Commission. See, for example, Department of the Attorney General and of Justice, New South Wales Bureau of Crime Statistics and Research, Research Report No. 4.

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- (c) The information derived from these systems be shared among Member States and conform to a common system of social reporting;
- (d) The system of social reporting of offences involving the abuse of power give due attention to:
- (i) The standardization of offence categories so that some intercountry comparison is possible;
 - (ii) The reporting of information on the methods used to commit such offences, their victims, and the nature and degree of harm caused;
 - (iii) Reporting on methods of prevention and problem-solving regarded as especially effective in reducing the incidence of offences related to abuses of power and in minimizing the resulting economic and social consequences;
- (e) More especially, attention be given to the development of measures of harm caused to people, organizations, social institutions, national economies etc. by offences involving abuses of power, namely, measures of victimization and the development of economic models and methodologies capable of gauging the costs of crime necessary to make cross-cultural comparisons; ^{96/}
- (f) Special attention be given to developing new methods, on the national and international levels, for measuring the incidence and prevalence of such offences, which would be sensitive to changes over time;
- (g) Independent audit procedures be developed to assess systems of information on economic offences. These should be exempt from ordinary rules of defamation and libel, and should use common standards for auditing and criteria for determining what should be audited and what may be excluded from the audit;
- (h) Steps be taken to develop systems of reporting (to the public or some independent agency) and systems of accountability, with sanctions for failure to comply with required reporting, e.g. in the case of economic offences, by disclosure of the fact that the corporation or other enterprise concerned refused to co-operate;
- (i) International reporting standards should be established and international statistics published in regard to the illegal abuse of power.

^{96/} The development of measures of harm was also deemed to be a priority need by the Bellagio colloquium. See also "Economic and social consequences of crime: new challenges for research and planning" (A/CONF.56/7).

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146. The meetings stressed the need for comparative data on legal prohibitions affecting the powerful. For example, what mechanisms have been employed by different countries at the central and local levels to monitor possible abuses of public power and increase accountability in its exercise? What nations have rules concerning the extra-territorial application of prohibitions against bribing public officials? What countries prosecute anti-trust (cartel) violations as criminal offences? What is the nature and stringency of controls on pollution, consumer protection, industrial safety and the like in different countries? The importance of the aggregation of these data was stressed since, for example in economic offences, powerful trading partners can play off differences in the regulatory stringency in various countries. International information-gathering would permit the establishment of a meaningful data base to aid in the formulation of appropriate measures of prevention and control. ^{97/}

147. It was thus recommended that an appropriate mechanism should be established at the international level for the collection, tabulation and interpretation of information on illegal abuses of power, for example, on the cases treated by the courts of each country, and the resulting court dispositions, which might constitute a possible source of information about such illegal activities. Consequently, it was felt that the national supreme courts could be invited to report on the cases being heard, dividing data into cases dismissed or otherwise disposed of prior to trial, and the disposition of those actually tried.

B. Research priorities

148. The problems inherent in the collection and analysis of data regarding offences through the abuse of power make research in this sphere particularly difficult. ^{98/} Indeed, even in the more limited area of "white-collar crime", few research studies have been done since that conducted by Sutherland in the 1940s. Those carried out have usually focused on a particular industry or relatively narrow problem. Government and other funding has generally supported studies on various aspects of traditional crimes, including the role of poverty in their generation. With the rising public concern about business-related crime and its linkages to the public sector, some studies with a broader perspective have recently been undertaken.

^{97/} The Latin American preparatory meeting, at the initiative of Cuba, called for reports from countries of the region regarding the manifestations, gravity, cost, trends and repercussions of the illicit activities of transnational corporations during the preceding five-year period, in order to warn other countries of such activities and to devise effective means of eradicating them (A/CONF.87/BP/3).

^{98/} See also Klaus Tiedemann, "The international situation of research and legal reform work in the field of economic and business crime", International Annals of Criminology, vol.17, Nos. 1-2 (1978), and Marshall B. Clinard and Peter C. Yeager, "Corporate crime: issues in research", Criminology, vol.16, No. 2 (August 1978).

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149. That some important advances have been made in providing an empirical basis for future action in this sphere is testimony to the resourcefulness and persistence of the researchers engaged in this work. Most of the work done has been in the economic area, though some pioneering efforts relating to the public sector have also been made, with implications for policy-making.

150. Studies of tax fraud in France, and of economic criminality in the European Economic Community have made painstaking use of dossiers of initiated but often uncompleted criminal actions, of civil cases, and of questionnaires. A recent study has focused on the treatment of economic crime by the criminal justice system. 99/

151. In the Federal Republic of Germany, research attention to the problems of business crimes led to a thorough analysis of the economic criminal law system, improved recording methods, and the reorganization of law enforcement in this field. The Commission for Combating Business Crimes, established by the Ministry of Justice, has initiated research into many aspects of these crimes and has been instrumental in the adoption of new legislation, including additional civil and criminal provisions on usury, bankruptcy, credit fraud, fraudulent procurement of subsidies to business and industry, anti-trust offences, etc. 100/

152. In the United States of America, some major empirical investigations on economic crime have been undertaken, including a comprehensive study of corporate behaviour. 101/ The meticulous investigative work done by the Sub-Committee on Crime of the Judiciary Committee of the House of Representatives of the United States Congress has revealed a variety of abuses of economic power leading to draft legislation aimed at providing more effective mechanisms for their prevention, detection and control. 102/

153. One of the most fruitful approaches to this entire problem area is the case study method. A number of longitudinal studies, dealing with broader or more specific aspects of the abuse of economic and public power, have shed light on the processes and problems involved. Case studies of abuses in the economic sphere have recently been conducted in several countries, including Norway and

99/ Jean Cosson, Les industriels de la fraude fiscale (1971) and Les grands escrocs en affaires (Paris, 1979); Mireille Dèlmas-Marty, "La délinquance d'affaires dans le cadre des règles communautaires: recherche exploratoire" (Université de Lille, 1976); P. Lascoumes, op. cit.

100/ See foot-note 22.

101/ See Marshall B. Clinard et al. Illegal Corporate Behaviour, op. cit., and Stanton Wheeler, "Overview of Yale white-collar crime research programme" (10 July 1979. Mimeo).

102/ See Hearings before the Subcommittee on Crime of the Committee on the Judiciary, House of Representatives, Ninety-Fifth Congress, Second Session on White-Collar Crime, Serial No. 69 (Washington DC, United States Government Printing Office, 1979), and White-Collar Crime: the problem and the Federal response, prepared for the Subcommittee by M. Saxon (Washington, United States Governing Printing Office, 1978).

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the United Kingdom. 103/ Such studies can help to reveal the dynamics and trends, the degree of recidivism of the offenders, and the effectiveness of the measures employed as a means of prevention and control. In Italy, an investigation of abuses of public power, using case studies, has recently been conducted as part of the preparations for the Congress discussions on this agenda item. 104/ At the same time, there is significant scope for quantitative, comparative studies of abuses of both public and economic power.

154. The resistance of those abusing power to research, especially by outsiders, has been a major problem also in producing meaningful research on abuses in the criminal justice sector and its subsectors. The police, particularly, has in many countries been relatively closed to research which could yield information on the excessive use of force and thus help to "control the controllers". 105/ The gradual opening up of the agencies of control, such as the judiciary, to investigations can be seen as an encouraging sign. 106/ Subtle and ingenious ways of overcoming resistance and gaining the necessary co-operation can help to make further inroads in this respect. Where direct research is still not possible, other methods, including retroactive research, personal memoirs (critically assessed), investigative reporting and public opinion polls can be used. Progress in this field is likely to be accelerated by a multidisciplinary approach (including political science, economics, administrative and civil law, sociology etc) and by the training of criminologists in researching abuses of power.

155. The transnational ramifications and interfaces of illegal abuses of power have led to an increasingly international focus in research studies and to

103/ See, for example, W. C. Carson, "The other price of Britain's oil: regulating safety on offshore oil installations in the British sector or the North Sea" (paper presented to the Conference on White-Collar and Economic Crime, State University College at Potsdam, New York, in February 1980); Per Stangeland, "Controlling the oil industry" (Oslo, Institut for Kriminologi og Strafferett, 1979) and Peter C. Yeager and Marshall B. Clinard, "Regulating corporate behaviour: a case study", in Paul Bretingham and Jack Kress, eds., Structure, Law and Power: Essays in the Sociology of Law (Sage Research Progress Series in Criminology, 1980).

104/ Alessandro Malinverni, op. cit.

105/ A number of reasons have been suggested for the paucity of research on police crime and some fruitful approaches proposed by analysts deploring the failure to conceptualize and research police crime as a serious problem, which affects far more people, in more fundamental ways, than conventional criminal activities, and urging research on police operations as a prerequisite for their control (Richard L. Henshel, "Police crime as a neglected topic: analogies with white-collar crime" (paper presented to the Conference on White-collar crime and Economic Crime, State University College at Potsdam, New York, in February 1980)).

106/ Since the pioneering study of S. C. Versele on the motivation of judges, at the start of the decade, the taboo seems to have been broken in the francophone European countries, some 10 studies on the judiciary having appeared in France alone.

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cross-national efforts. A Latin American collaborative investigation on crimes committed through the abuse of power and white-collar crime, originating in Venezuela, has been carried out by researchers from a number of countries in the region, who have met annually to co-ordinate research designs and compare the results of their studies. ^{107/} An international consortium for research on economic crime, established in 1976, has met periodically to review progress in the research being carried out in participating countries. The Council of Europe, since its 1976 conference on and establishment of a sub-committee on the criminological aspects of economic crime, has started a long-term programme to stimulate research in this area with the aim of harmonizing the pertinent legislations of Member States. The scheme for collaboration among countries members of the Council for Mutual Economic Assistance against economic crimes also includes a strong research component. ^{108/}

156. An Italian-sponsored European colloquium on economic crime, held under United Nations auspices in late 1977, brought together researchers and policy-makers and elicited scientific contributions on various aspects of the problem. The quinquennial Colloquium, organized at Bellagio in April 1980 by the four main non-governmental organizations active in the crime prevention and criminal justice field in preparation for the Sixth United Nations Congress, urged the promotion and improvement of research efforts in the entire area of "Crime and the abuse of power". ^{109/}

157. The following priorities have been suggested for future comparative research in this area:

- (a) Studies of the forms, manifestations, modalities and trends of abuses of public and economic power, developing empirically-based typologies and sifting out common elements;
- (b) Comparative criminal law studies relating to legal prohibitions;
- (c) Action-research designed to help control abuses of power;

^{107/} See Lolita Aniyar de Castro, "Crimes committed by abuse of power and white-collar crime: A Latin American Investigation" (paper presented to the interregional meeting of experts on this topic). A study of economic criminality in Latin American countries is also being conducted by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders.

^{108/} For example, a study of the causes of crimes against socialist property and the positive effect of socialist economic integration in reducing them, monitoring and auditing mechanisms to identify and help prevent such crimes etc. ("Problems of co-operation between the Members of the CMEA in the prevention of crimes against socialist property").

^{109/} "Criminalité et abus du pouvoir: délits et délinquants au-dessus de la loi?" (general summary report by Ezzat A. Fattah, presented to the Bellagio Colloquium on 24 April 1980).

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- (d) In-depth studies of areas conducive to abuses of power, such as prisons or police discretion;
- (e) Studies of the psychology of power and its effects;
- (f) Research on the perpetrators and victims of abuses of power and on community attitudes to abuses of different kinds;
- (g) Feasibility studies in areas of special concern;
- (h) Efforts to determine the efficacy of the policies and programmes adopted, using built-in evaluation schemes and cost-benefit analysis.

158. Additional areas for study have recently been proposed by criminologists concerned with some of these issues ^{110/} and will crystallize as relevant knowledge develops and policy requirements are further defined. Empirical, cross-cultural research will be essential in monitoring progress and providing a scientific basis for future planning in this complex and wide-ranging problem area.

VI. SUMMARY OF RECOMMENDATIONS

159. The overview of problem areas deriving from abuses of power of different kinds has revealed pervasive needs at all levels and in most countries. The scope of such abuses is so vast because of prevailing realities and because efforts to study and contain such abuses have hardly begun, both nationally and internationally.

160. Incisive and urgent action is required if these abuses are not to be perpetuated further and if they are not to continue to take their inexorable toll on the development of countries and on the quality of life.

161. Some suggestions for action and research to be carried out with regard to "gilded criminality" have been made in the various chapters of this paper, in accordance with the recommendations of the preparatory meetings and related initiatives. These might serve as a basis for new national and international strategies against abuses of economic and public power. New national and international strategies are needed designed to foster progress in this field: they should benefit greatly from the deliberations of the Congress.

162. The last preparatory meeting on this agenda item adopted a resolution proposing some major elements of prospective action, which is appended hereto. It might provide the departure point for the recommendations on this topic.

^{110/} See, for example, Herbert Edelhertz, "Development of a comprehensive research program to contain white-collar crime" (Washington, D.C., United States Department of Justice, National Institute of Justice, 1979-80) regarding the creation of models for the control of economic crime arising out of transactions between developed and developing countries, and of a systemic approach to white-collar crime law enforcement.

however, taking into account the fact that this is only a beginning and that only the broad lines of an envisaged strategy have been traced. The concrete elements will have to be filled in in the light of the Congress discussions.

163. This paper started out with the question whether, indeed, power corrupts and absolute power corrupts absolutely. No clear-cut answer can as yet be given to this standing question; but this does not mean that some inferences cannot be drawn. The main lesson of this initial examination of the issues under this topic may well be that if, in fact, power corrupts, then the opportunities for its exercise must be properly structured and the chances of abuse significantly reduced.

164. The situation both nationally and internationally reveals that all too frequently adequate controls are not built into the exercise of power, permitting it to be abused. If the just cannot be strong, then at least the strong should be just. ^{111/} The only alternative to the redistribution of power is greater accountability of power to ensure greater equity. It is the responsibility of a society which considers itself "civilized" that the law of the jungle should not prevail nor that it should lend itself to subterfuge.

165. The consequence of the abuse of power - which may involve either the circumvention or violation of law - is to accentuate the injustices and inequalities which are the affliction of many of societies and the relations between States. Their spectre, like those of hunger, poverty and disease, must be vanquished, or at least subdued, if life is to have a meaning, and if the benefits of development are to be enjoyed by all rather than by the few.

166. To facilitate this task, the Congress may find the following options for future action promising, on which a substantial measure of consensus has already been achieved. They have been grouped by major problem areas and levels of intervention, but need to be refined, supplemented, and integrated in a comprehensive and coherent strategy.

A. National level

1. Comprehensive reviews of current legislation relating to abuses of power, in accordance with criteria of social harm and prevailing conditions with a view to decriminalizing "formalistic" crime and criminalizing highly damaging or reproachable acts not yet proscribed, as well as simplifying,

^{111/} "La justice sans la force est impuissante; la force sans la justice est tyrannique. Il faut donc ... faire que ce qui est juste soit fort ou que ce qui est fort soit juste." (Blaise Pascal, Pensées, v. 298 (1670)).

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clarifying and integrating legal provisions and, where appropriate, developing effective and flexible legal systems responsive to changing needs.

2. Organization of specialized, multi-disciplinary teams to aid in detecting, investigating and prosecuting offences related to abuses of power, so as to ensure swifter and fairer justice;

3. Establishment of the principle of corporate criminal responsibility to help determine criminal intent and responsibility, without precluding individual liability for the acts committed.

4. A flexible and wide-ranging mix of sanctions for offenders of this kind, using both innovative and conventional sanctions, which may be warranted by the severity of the offence and their possible deterrent value.

5. Prevention, involving, in some cases, structural reforms aimed at the redistribution of power, but mainly seeking to increase the system's legality, fairness and accountability to an informed and involved public.

6. Observance of human rights, with special attention to United Nations principles and instruments, defended by an independent judiciary and democratic process, with access by victims to channels of redress.

7. Efforts to make the public service more responsible, including the use of codes of conduct, training initiatives, and ways of assuring sufficient independence.

8. Special measures, including restitution to, and for the right to initiate criminal proceedings on behalf of, victims of crimes related to abuses of power.

9. More adequate and comprehensive information systems to correct the present inadequacies in the information available in most countries on offences related to abuses of power and their impact, and/or the lack of co-ordination between the facilities capable of generating relevant data, in particular:

(a) Statistics on the incidence and prevalence of such offences and on the nature and extent of their impact;

(b) Systems of social reporting to assess the nature and level of crimes related to abuses of power, with standardization of offence types to permit inter-country comparisons;

(c) Information on the methods used to commit such crimes, the degree of harm caused, and the preventive measures regarded as particularly effective;

(d) New or special (including indirect) methods of information-gathering as a basis for policy-making and planning in this field;

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(e) Independent audit procedures to assess such information systems, which should provide for reporting to the public and other means of ensuring accountability.

10. Action-oriented research on the forms, manifestations, modalities, interfaces and trends of abuses of public and private power, with empirically-based typologies of such acts and focus on strategies for their prevention and control, geared to areas conducive to abuses of power, as well as community responses to abuses of different kinds.

B. Regional level

1. Comprehensive regional strategies for controlling illegal abuses of power, involving also the regional Commissions and crime prevention institutes in this effort, with special emphasis on the promotion of common standards and approaches which would prevent powerful offenders from profiting from legislative and other differences among various countries.
2. Practical collaboration between countries of the region in the detection and pursuit of alleged perpetrators of crimes involving abuses of power, and appropriate provisions for mutual judicial and administrative assistance in such matters.
3. Regional training courses and workshops to develop specialized multidisciplinary cadres to deal with various kinds of illegal abuses of power and aid in preventing them, and to raise the quality of the public service in the region, with appropriate training materials being developed for this purpose.
4. Policy-oriented studies on the forms, trends and impact of such offences, as well as measures (including model legislation) for their prevention and control in the developmental context, with built-in evaluation schemes.
5. Data-sharing and exchange arrangements with regard to offences related to abuses of power, with the regional crime prevention institutes serving as focal points.

C. International level

1. Technical assistance to requesting Governments to help formulate and implement effective policies for preventing and controlling illegal abuses of power, and promotion of technical co-operation among developing countries in this area, with feasibility studies to determine areas of greatest potential impact.
2. Interregional seminars, workshops and training courses in this sphere, with the co-operation of interested Governments.

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3. Formulation of standards and guidelines, particularly legislative ones, as well as more effective and consistent policies for dealing with illegal abuses of economic and public power and for preventing the exploitation of differences in national regulations in this respect.

4. Development of policy options and strategies to stem transnational abuses of power.

5. Action-research on the salient features of illegal abuses of power and strategies to contain and prevent them, with special reference to studies of the impact of such practices on developing countries and inter-country relations; of changing public attitudes to such abuses; comparative criminal law studies; assessment of the differential success obtained with different measures, using a cost-benefit approach, and case studies of particularly successful experience.

6. New action proposals for consideration by national Governments and United Nations policy-making bodies, such as for instance, the principle of group restitution for victims of massive illegal abuses of economic or public power.

7. Collaborative projects in areas such as illicit practices of powerful trading partners, bribery and corruption, tax avoidance and evasion, restrictive business practices, consumer fraud, environmental pollution; human rights in the administration of justice, ethics in the public service, international criminal jurisdiction as well as the statistical initiatives referred to above.

8. International mechanisms for the collection, tabulation and interpretation of information on crimes related to abuse of power, developing appropriate reporting standards and forms, publishing international statistics on the illegal abuse of power. In particular:

(a) Comparative data on legal prohibitions affecting the powerful;

(b) Arrangements for information-sharing, in conformity with a common system of social reporting, on the conditions and practices in various countries and the overall situation as a data base (including cost data) and frame of reference to aid Member States in formulating appropriate measures of prevention and control.

9. Provision of appropriate support to non-governmental initiatives in this field in order to maximize their contribution, broaden the scientific base and integrate international efforts directed at studying and stemming illegal abuses of power.

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Annex

RESOLUTION OF THE WORKING GROUP OF EXPERTS ON CRIME AND THE
ABUSE OF POWER

The Working Group of Experts on Crime and the Abuse of Power,

Considering that abuses of economic and public power cause great material and social harm, undermine economic and social development, and impair the quality of life of peoples throughout the world,

Recognizing that criminal justice systems in most countries are designed primarily for the prevention and control of conventional forms of crime,

Emphasizing the need for urgent and incisive action to prevent, deter and control illegal abuses of economic and public power, wherever they may occur, and to make criminal justice more responsive to contemporary needs and able to cope more effectively with such abuses,

Resolves:

- (a) That more effective strategies of prevention and control, nationally, regionally and internationally, be developed to combat these abuses;
- (b) That public awareness of the harmful consequences of these abuses be increased;
- (c) That individual countries consider revising and implementing more fully legal safeguards against such abuses;
- (d) That research efforts and training programmes for criminal justice officials be organized and co-ordinated at the regional level;
- (e) That steps be taken to proscribe in the penal laws of countries the more serious abuses where not already prohibited;
- (f) That co-operative efforts be intensified among Member States to prevent and control abuses involving action that may extend beyond national boundaries and territorial jurisdictions;
- (g) That the United Nations should assume a leadership role in gathering and co-ordinating information and making available to all countries expert advice pertaining to the nature and consequences of abuses of power.

Adopted at San José on 9 May 1980

END