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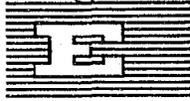
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COMMITTEE ON CRIME PREVENTION AND CONTROL
Tenth session
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Item 4 of the provisional agenda*

IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF
THE SEVENTH UNITED NATIONS CONGRESS ON THE
PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft basic principles on the role of lawyers

Note by the Secretariat

1. The Economic and Social Council, in its resolution 1986/10, section XII, of 21 May 1986, requested the Committee on Crime Prevention and Control to pay particular attention to the role of lawyers. The Council further requested the Secretary-General to study this question with a view to assisting the Committee in its task and to prepare a preliminary report for consideration and further action by the Committee at its tenth session.

2. The request of the Council was based on resolution 18 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,** in which the Congress recognizes that adequate protection of the rights of citizens requires that all persons have effective access to legal services provided by the lawyers who are able to perform effectively their proper role in the defence of those rights, and to counsel and represent their clients in accordance with the law and their established professional standards and judgement without any undue interference from any quarter. The Congress also acknowledges that bar associations and other professional associations of lawyers have a vital role and responsibility to strive to protect and defend their members against improper restrictions or infringements, as well as to uphold their professional ethics. It points out that the legal profession must serve all sections of society and that bar associations have a responsibility to co-operate in making available the services of lawyers to all those in need of them.

*E/AC.57/1988/1.

**See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1).

3. Accordingly the Congress, in the above-mentioned resolution, recommended that Member States should provide for protection of practising lawyers against undue restrictions and pressures in the exercise of their functions. The Secretary-General was requested to provide interested Member States with all the technical assistance needed to attain this objective and to encourage international collaboration in research and in the training of lawyers. The Congress requested the Committee on Crime Prevention and Control to study this question, taking into account the work already done, and to prepare a report on the role of lawyers. Finally, the Seventh Congress requested that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings further consider those issues.

4. In its resolution 41/149 of 4 December 1986 on human rights in the administration of justice, the General Assembly welcomed the recommendations made by the Economic and Social Council in its resolution 1986/10.

5. With a view to assisting the Committee in carrying out its task as requested by the Seventh Congress, the Secretariat has formulated the draft basic principles on the role of lawyers contained in the annex to this note, taking into account work previously accomplished in this area. Thus, the draft basic principles are based to a great extent on the results of the International Expert Meeting on the United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987. Due attention has also been given to the pertinent provisions of the Draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, which is being considered by a working group of the Sixth Committee of the General Assembly, as well as to the findings of the committee of experts at the International Institute of Higher Studies in Criminal Sciences, which dealt with the topic of the independence of the legal profession at a meeting at Noto, Italy, from 10 to 14 May 1982. Of further relevance were the conclusions of the International Seminar on the Rights of the Defence, held by the Council of Europe at Madrid, Spain, from 14 to 16 November 1984, at the invitation of the Ministry of Justice, the General Bar Council of Spain and the Madrid Bar.*

6. The draft basic principles have a limited but well-focused approach: pragmatic suggestions are made in them for the day-to-day operation of the legal profession, with emphasis on criminal justice. In accordance with resolution 18 of the Seventh Congress and Economic and Social Council resolution 1986/10, special attention is given to the following issues: provision for effective access to legal assistance for all groups within society; the right of the accused to counsel and legal assistance of their own choosing; the education of the public on the role of lawyers in protecting fundamental rights and liberties; training and qualifications of lawyers, and the

*The Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights entrusted a Special Rapporteur with the preparation of a study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1985/18), in accordance with Economic and Social Council decision 1980/124 and Sub-Commission decision 1982/1. The study under preparation is a comprehensive analysis comparing the current administration of justice in various countries, particularly from the viewpoint of equality, based on the replies of Governments to a detailed questionnaire. See also Study of Equality in the Administration of Justice (United Nations publication, Sales No. E.71.XIV.3).

prevention of discrimination with respect to entry into the legal profession; the role of Governments, bar associations and other professional associations of lawyers; the right of lawyers to undertake the representation of clients or causes without fear of repression or persecution; and the obligation of lawyers to keep communications with their clients confidential, including the right to refuse to give testimony on such matters.

7. The Committee on Crime Prevention and Control, in pursuing its tasks, may wish to take into account and follow up the draft basic principles on the role of lawyers.

Annex

DRAFT BASIC PRINCIPLES ON THE ROLE OF LAWYERS

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

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

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

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

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

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

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 18, 4/ recommends that Member States should provide for the protection of practising lawyers against undue restrictions and pressures in the exercise of their functions, and the Congress requests the Secretary-General to provide interested Member States with all the technical assistance needed to attain this objective and to encourage international collaboration in research and in the training of lawyers,

Whereas the Economic and Social Council, in its resolution 1986/10 of 21 May 1986, section XII, requests the Committee on Crime Prevention and Control and invites the United Nations regional and interregional institutes for the prevention of crime and the treatment of offenders to pay special attention in their research and training programmes to the role of lawyers, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomes this recommendation made by the Council,

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

Access to lawyers

1. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Governments and professional associations of lawyers shall co-operate in ensuring the provision of funding and other resources for legal services for the poor and, as necessary, other disadvantaged persons.
3. It is the responsibility of Governments and professional associations of lawyers to promote programmes aimed at informing the public of their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.
4. It is the duty of Governments to ensure that all persons charged with criminal offences, or arrested, detained or imprisoned, are promptly informed by the competent authority of their right to be represented and assisted by a lawyer of their own choice.
5. All such persons who do not have a lawyer shall be entitled to have a lawyer assigned to them by a judicial or other authority in all cases where the interests of justice so require, and without payment by them if they lack sufficient means to pay for the lawyer's services.
6. Governments shall further ensure that all persons arrested, detained or imprisoned, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
7. Arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.
8. The guarantees contained in Principle 7 may not be restricted or suspended save temporarily in time of public emergency or other exceptional circumstances, to be specified by law or lawful regulations, when a judicial or other authority considers that such measures are strictly required by the exigencies of the situation and indispensable for the maintenance of security and order. Such restrictions or suspensions shall be limited in extent and duration to those exigencies and shall be subject to an independent judicial review.

Qualifications and training

9. Governments and professional associations of lawyers shall ensure that lawyers have appropriate qualifications and training.
10. It is the duty of Governments and professional associations of lawyers to ensure that there is no discrimination with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, or any other grounds. The requirement that a lawyer must be a citizen of the country concerned shall not be considered discriminatory.

Guarantees for the functions of lawyers

11. Lawyers, in discharging their duties, shall at all times act in accordance with the law and their established professional standards and ethics. They shall promote the cause of justice by protecting the rights of their clients and by co-operating to this end with agencies and institutions of the justice system.

12. Governments shall ensure that lawyers are able to perform all of their lawful functions without improper interference.

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

14. Governments shall ensure that all communications and consultations between lawyers and their clients are confidential and inadmissible as evidence unless they are connected with a continuing or contemplated crime. This protection of the confidentiality of lawyer-client communications shall be extended to lawyers' partners, employees, assistants and agents, as well as files and documents.

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

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

Professional associations of lawyers

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

18. Professional associations shall establish codes of professional conduct for lawyers in accordance with national law and custom and recognized international standards and instruments.

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

Disciplinary proceedings

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

21. Disciplinary proceedings against lawyers shall be brought before a disciplinary body that includes lawyers among its members, or before a court, and should be subject to an independent judicial review.

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

Notes

1/ General Assembly resolution 217 A (III) of 10 December 1948.

2/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

3/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1), sect. 29.

4/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985 (United Nations publication, Sales No. E.86.IV.1), part one, chap. I, sect. E.