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COMMITTEE ON CRIME PREVENTION AND CONTROL
Eleventh session
Vienna, 5-16 February 1990
Item 5 of the provisional agenda*

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

Addendum

Recommendations on item 7 (topic 5) of the provisional agenda
of the Eighth Congress: United Nations norms and guidelines
in crime prevention and criminal justice: implementation
and priorities for further standard setting

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*E/AC.57/1990/1.

1. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting" was held at Vienna from 27 June to 1 July 1988. The recommendations adopted by the Meeting (A/CONF.144/IPM.5) were reviewed by the Committee on Crime Prevention and Control at its tenth session, and endorsed by the Economic and Social Council in its resolution 1989/69, paragraphs 5 and 11, of 24 May 1989. With the exception of the draft Guidelines on the Role of Prosecutors, the draft resolutions and annexes thereto set forth below are revised versions of the recommendations and reflect the comments of the Committee (E/1988/20, annex IV) as well as the observations of the five regional preparatory meetings for the Eighth Congress (A/CONF.144/RPM.1-5).

2. In accordance with resolution 1989/32 of the Commission on Human Rights, due account was taken, in drawing up the Draft Basic Principles on the Role of Lawyers, of the study and draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1985/18 and Add.1-6 and E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1). Also, special attention was paid to recommendations made at various meetings organized by concerned non-governmental organizations in consultative status with the Economic and Social Council, such as the Conference of the International Commission of Jurists, held under United Nations auspices at Caracas from 14 to 16 January 1989, the Conference of the International Bar Association, held at Strasbourg from 2 to 6 October 1989, and the XIV International Congress on Penal Law, held at Vienna from 1 to 7 October 1989.

3. The draft Guidelines on the Role of Prosecutors were drawn up in pursuance of resolution 7 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. a/

4. On the basis of that resolution, draft Guidelines on the Role of Prosecution were drawn up by the Secretariat, taking into account work previously done in this field, with special attention being paid to the following: requirements of fairness, openness, accountability and efficiency in matters relating to prosecution; qualifications, selection and training of prosecutors; their status, conditions of service and tenure; discretionary powers of prosecutors; their role in criminal proceedings; relations with the police and other public institutions; and disciplinary proceedings.

5. Particular emphasis was placed on the following issues:

(a) Importance of the prosecutorial decision. The decision whether or not to prosecute is the most significant step in the prosecutorial process. A wrong decision to prosecute or to waive prosecution may undermine public confidence in criminal justice. In addition, the decision-making process should give due consideration to the interests of the victim, the suspect and the community;

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

(b) Special position of the prosecutor. The position of the prosecutor imposes responsibilities not faced by the defence lawyers, because the prosecutor can never work for the wrong result. Defence lawyers can ethically defend a guilty person and still be serving justice; the prosecutor, conversely, must never prosecute a person of whose innocence he or she is convinced;

(c) Exclusion of discriminatory factors in prosecutorial decision-making. A decision whether or not to prosecute should not be influenced by such factors as the following:

- (i) Race, religion, sex, national origin or political association, activities or beliefs of the suspect or any other person involved;
- (ii) Personal feelings concerning the suspect or the victim;
- (iii) Possible political advantage or disadvantage to the Government or any political group or party;
- (iv) Possible effects of the decision on the personal or professional circumstances of those responsible for the prosecution decision;

(d) Exercise of discretionary functions. In countries where prosecutors are vested with discretionary functions, fairness, openness, consistency and accountability in prosecutorial decision-making are of particular importance. However, fairness does not mean weakness, nor does consistency mean rigidity. In view of the multiplicity of factors to be considered, the criteria for the exercise of discretion cannot be reduced to a strict formula. While it would be impossible to avoid certain elements of subjectivity in prosecutorial decisions, the potential for inconsistency can be reduced. In this regard, the law and the prosecuting authority itself should provide prosecutors with objective criteria for decision-making and with mechanisms and safeguards for the internal review of decisions in appropriate cases to prevent or limit abuses of the prosecutor's far-reaching powers, thus ensuring both consistency and accountability.

6. The Guidelines annexed to draft resolution V reflect these and other relevant issues, as well as the comments received from Governments, members of the Committee, the regional preparatory meetings for the Eighth Congress, the United Nations institutes in the field of crime prevention and criminal justice, non-governmental organizations in consultative status with the Economic and Social Council and individual experts.

DRAFT RESOLUTION I

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

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

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 14 of the Seventh Congress, 2/ in which the Committee on Crime Prevention and Control was called upon to consider measures for the more effective implementation of the Code of Conduct for Law Enforcement Officials,

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 14, by the Committee, by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 3/ and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials set forth in the annex to the present resolution;

2. Recommends the Basic Principles for national, regional and inter-regional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;

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

5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of law enforcement and the necessity of restraints on the use of force and firearms by law enforcement officials;

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

2/ Ibid., sect. E.

3/ A/CONF.144/IPM.5.

7. Urges the regional commissions, the regional and interregional institutes in crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;

8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of this resolution;

9. Requests the Secretary-General:

(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all United Nations bodies concerned, and to provide for the widest possible dissemination of the Basic Principles;

(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments; 4/

(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

(d) To report to the Committee, at its twelfth session, on the steps taken to implement the Basic Principles;

10. Requests the Ninth Congress and its preparatory meetings to consider the progress achieved in the implementation of the Basic Principles.

4/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1).

Annex

BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

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

*In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

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

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

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

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

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

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

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

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

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by

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

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

c/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88 XIV.1), sect. G. 30.

d/ Ibid., sect. G. 33.

e/ A/CONF.121/IPM.3, para. 34.

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

Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapon and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, law enforcement officials should also be equipped with self-defensive equipment such as shields, helmets or bullet-proof vests in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is warranted, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and respect and preserve human life;

(c) Ensure that assistance and medical aid is rendered to any injured or affected persons at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

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

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

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

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

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

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

(e) Provide for warnings to be given, as appropriate, when firearms are to be discharged;

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

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only for policing unlawful assemblies, in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. The use of such means shall be strictly regulated in

national legislation and restricted solely to particularly dangerous violent assemblies. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

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

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

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

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

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

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative and prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed

report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent review process, including the judiciary. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

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

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility should also rest on the superiors who gave the unlawful orders.

DRAFT RESOLUTION II

Basic Principles on the Role of Lawyers

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

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 18 of the Seventh Congress, 2/ in which the Congress recommended that Member States provide for the protection of practising lawyers against undue restrictions and pressures in the exercise of their functions,

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 18, by the Committee on Crime Prevention and Control, by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice:

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

2/ Ibid., sect. E.

Implementation and Priorities for Further Standard Setting", 3/ and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Role of Lawyers set forth in the annex to the present resolution;
2. Recommends the Basic Principles for national, regional and inter-regional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;
3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;
4. Also invites Member States to bring the Basic Principles to the attention of lawyers, judges, members of the executive and the legislature and the public in general;
5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;
6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of lawyers and the necessity of unrestricted access to the legal profession;
7. Urges the regional commissions, the regional and interregional institutes in crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;
8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of this resolution;

9. Requests the Secretary-General:

(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all the United Nations bodies concerned, and to provide for the widest possible dissemination of the Basic Principles;

(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments; 4/

3/ A/CONF.144/IPM.5.

4/ United Nations publication, Sales No. E.88.XIV.1.

(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

(d) To report to the Committee, at its twelfth session, on the steps taken to implement the Basic Principles.

Annex

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

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

Whereas the Universal Declaration of Human Rights a/ 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 b/ 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 b/ recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment c/ provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

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

Whereas the Safeguards Guaranteeing Protection of Those Facing the Death Penalty e/ reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at

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

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

c/ General Assembly resolution 43/173 (annex) of 9 December 1988.

d/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

e/ Ibid., sect. G.

all stages of the proceedings, in accordance with Article 14 of the International Covenant on Civil and Political Rights, b/

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

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and 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 and public interest,

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

Access to lawyers and legal services

1. Everyone is entitled to call upon the assistance of a lawyer of his choice to protect and establish his rights and to defend him in all stages of criminal proceedings.

2. 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, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to be provided to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.

4. It is the responsibility of Governments and professional associations of lawyers to promote programmes aimed at informing the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. For this purpose, special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and, where necessary, call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. It is the duty of Governments to ensure that everyone charged with criminal offences, or arrested, detained or imprisoned, is immediately informed by the competent authority of his right to be assisted by a lawyer of his own choice.

6. Any such person who does not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned

to him in order to provide effective legal assistance, without payment by him if he lacks sufficient means to pay for such services.

7. Governments shall further ensure that a person 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.

8. An arrested, detained or imprisoned person shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

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

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

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

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession. They shall, in practice as well as in private life, abstain from any behaviour that may discredit their position as essential agents of the administration of justice.

13. The duties of a lawyer towards his or her client shall include:

(a) Advising the client as to his or her legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the client;

(b) Assisting the client in every appropriate way, and taking legal action to protect him or her and his or her interests;

(c) Assisting the client before courts, tribunals or administrative authorities, where appropriate.

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

15. Lawyers shall not simultaneously represent interests that would conflict with those of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers are (a) able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) able to travel and to consult with their clients freely both within their own country and abroad; and (c) 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.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

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

19. No court or administrative authority before whom the right of counsel is recognized shall refuse to recognize the right of a qualified lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Save in respect of proceedings for failing to show proper respect towards a court and, as provided in these principles, for disciplinary proceedings, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his professional appearances before a court, tribunal or other legal or administrative authority.

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

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the established standards and ethics of the legal profession.

Professional associations of lawyers

24. In addition to being members to official bodies of the legal profession, lawyers shall be entitled to form and join self-governing professional

associations to regulate their profession, represent their interests, promote their continuing education and training and 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.

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

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by professional associations of lawyers or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. 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, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by a professional association of lawyers, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other established standards and ethics of the legal profession and in the light of these principles.

DRAFT RESOLUTION III

Model Treaty on the Transfer of Proceedings in Criminal Matters

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

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should

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

2/ Ibid., sect. B.

prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling further the Seventh Congress resolution 12 3/ on transfer of proceedings in criminal matters, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of the formulation of a model treaty in this area,

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of the Model Treaty on Transfer of Proceedings in Criminal Matters, in particular the International Expert Meeting on United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 4/ and the five regional preparatory meetings for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for the transfer of proceedings in criminal matters will greatly contribute to the development of more effective international co-operation aimed at controlling criminality,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

Recognizing the importance of the Model Treaty as an effective way of dealing with the complex aspects, consequences and modern evolution of transnational crime,

1. Adopts the Model Treaty on Transfer of Proceedings in Criminal Matters, set forth in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;
2. Invites Member States, if they have not yet established treaty relations with other States in regard to transfer of proceedings in criminal matters, or if they wish to revise existing treaty relations, to take the Model Treaty into account whenever doing so;
3. Urges Member States further to strengthen international co-operation in criminal justice;

3/ Ibid., sect. E.

4/ A/CONF.144/IPM.5.

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

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

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements for transfer of proceedings in criminal matters;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on the transfer of proceedings in criminal matters and to report regularly thereon to the Committee.

Annex

MODEL TREATY ON THE TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS

PREAMBLE

The _____ and the _____

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

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

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

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

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

Have agreed as follows:

ARTICLE 1

Scope of application

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

2. For the purposes of applying this Agreement, a request of the requesting State to take proceedings shall provide the requested State with the necessary jurisdiction in respect of the offence if that State has not already jurisdiction under its own law.

ARTICLE 2

Channels of communications

3. A request to take proceedings shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

ARTICLE 3

Required documents

4. The request to take proceedings shall contain or be accompanied by the following information:

- (a) The authority presenting the request;
- (b) A description of the act for which transfer of proceedings is being requested, including the specific time and place of the offence;
- (c) A statement on the results of investigations which substantiate the suspicion of an offence;
- (d) The legal provisions of the requesting State on the basis of which the act is considered to be an offence;
- (e) A reasonably exact statement on the identity, nationality and residence of the suspected person.

5. The documents submitted in support of a request to take proceedings shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

6. Subject to national law and unless the Parties decide otherwise, a request to take proceedings and the supporting documents thereto, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.*

ARTICLE 5

Decision on the request

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

*The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts.

ARTICLE 6

Dual criminality

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

ARTICLE 7

Grounds for refusal*

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

(a) The suspected person is not a national of or ordinary resident in the requested State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

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

ARTICLE 8

The position of the suspected person

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

11. Before a request for transfer of proceedings is made, the requesting State shall, if practicable, allow the suspected person to present his or her views on the alleged offence and the intended transfer, unless that person has absconded or otherwise obstructed the course of justice.

12. If the competence of the requested State is exclusively based on the provision in paragraph 2 of this Treaty, that State shall, before taking a decision on the request to take proceedings, allow the suspected person to present his or her views on the alleged offence and the intended transfer of proceedings.

*When negotiating on the basis of this Model Treaty, States may wish to add other grounds for refusal or conditions to the list in this section, relating, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

ARTICLE 9

The rights of the victim

13. The requesting and requested States shall ensure in the transfer of proceedings that the rights of the victim of the offence, in particular his other right to restitution or compensation, shall not be affected as a result of the transfer. If a settlement of the claim of the victim has not been reached before the transfer, the requested State shall permit the representation of the claim in the transferred proceedings, if its law provides for such a possibility. In the event of the death of the victim, these provisions shall apply to his or her dependants accordingly.

ARTICLE 10

The effects of the transfer of proceedings on the requesting state
(ne bis in idem)

14. Upon acceptance by the requested State of the request to take proceedings against the suspected person, the requesting State shall provisionally discontinue prosecution, except necessary investigation, including judicial assistance to the requested State, until the requested State informs the requesting State that the case has been finally disposed of. From that date on, the requesting State shall definitely refrain from further prosecution of the same offence.

ARTICLE 11

The effects of the transfer of proceedings on the requested state

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

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

17. The requested State shall inform the requesting State of the decision taken as a result of the proceedings. To this end a copy of any final decision shall be transmitted to the requesting State upon request.

ARTICLE 12

Provisional measures

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

ARTICLE 13

The plurality of criminal proceedings

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

ARTICLE 14

Costs

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

ARTICLE 15

Final provisions

21. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

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

23. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

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

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

Done at _____ on _____ in the _____ and _____
languages (both) texts being equally authentic.
(all)

DRAFT RESOLUTION IV

Model Treaty on the Transfer of Supervision of Offenders who
have been Conditionally Sentenced or Conditionally Released

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

Bearing in mind the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also, the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling the Seventh Congress resolution 13, 3/ on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of the formulation of a model treaty in this area,

Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of the Model Treaty on Transfer of Proceedings in Criminal Matters, in particular the International Expert Meeting on United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 4/ and by the five regional preparatory meetings, for the Eighth Congress,

Convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released will greatly contribute to the development of more effective international co-operation in penal matters,

Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

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

2/ Ibid., sect. B.

3/ Ibid., sect. E.

4/ A/CONF.144/IPM.5.

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

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

1. Adopts the Model Treaty on Transfer of Supervision of Foreign Offenders who have been Conditionally Sentenced or Conditionally Released, set forth in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

2. Invites Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account the Model Treaty whenever doing so;

3. Urges all Member States further to strengthen international co-operation in criminal justice;

4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released;

5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, and to report regularly thereon to the Committee.

Annex

MODEL TREATY ON THE TRANSFER OF SUPERVISION OF FOREIGN OFFENDERS WHO HAVE BEEN CONDITIONALLY SENTENCED OR CONDITIONALLY RELEASED

The _____ and the _____

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

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

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

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

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

Have agreed as follows:

ARTICLE 1

Scope of application

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

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

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

ARTICLE 2

Channels of communications

3. A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

ARTICLE 3

Required documents

4. A request for the transfer of supervision shall contain information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in the preceding provision and a certificate that this decision is legally binding (res iudicata).

5. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

ARTICLE 4

Certification and authentication

6. Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the supporting documents thereto, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.*

*The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts.

ARTICLE 5

Decision on the request

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

ARTICLE 6

Dual criminality

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

ARTICLE 7

Grounds for refusal*

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

(a) The sentenced person is not an ordinary resident in the administering State;

(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

(c) The offence is in connection with taxes, duties, customs or exchange;

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

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

ARTICLE 8

The position of the sentenced person

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

*When negotiating on the basis of this Model Treaty, States may wish to add other grounds for refusal or conditions to the list, relating in this section, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

ARTICLE 9

The rights of the victim

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

ARTICLE 10

The effects of the transfer of supervision on the sentencing state

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

ARTICLE 11

The effects of the transfer of supervision on the administering state

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

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

ARTICLE 12

Review, pardon and amnesty

15. The sentencing State alone shall have the right to decide on any application to reopen the case.

16. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

ARTICLE 13

Information

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

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

ARTICLE 14

Costs

19. Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

ARTICLE 15

Final provisions

20. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

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

22. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

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

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

Done at _____ on _____ in the _____
and _____ languages (both) texts being equally authentic.
(all)

DRAFT RESOLUTION V

Guidelines on the Role of Prosecutors

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

Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

Recalling also resolution 7 of the Seventh Congress in which the Committee on Crime Prevention and Control was called upon to consider the need for guidelines relating to prosecutors,

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

Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 7, by the Committee and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Guidelines on the Role of Prosecutors set forth in the annex to the present resolution;

2. Recommends the Guidelines for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

3. Invites Member States to take into account and to respect the Guidelines within the framework of their national legislation and practice;

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

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

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

7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the Guidelines, including their transmission to Governments, intergovernmental and non-governmental organizations and other parties concerned;

8. Also requests the Secretary-General to prepare every five years, beginning in 1993, a report on the implementation of the Guidelines;

9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the Guidelines and to report regularly thereon to the Committee;

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

Annex

UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

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

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

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

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

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combatting criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

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

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, c/ subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas, in resolution 7 of the Seventh Congress, the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their co-operation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

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

b/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August to 5 September 1980: Report prepared by the Secretariat, (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

c/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, No. E.86.IV.I), chap. I, sect. D.

The guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general.

Qualifications, selection and training

1. Persons selected as prosecutors, irrespective of their position as members of the judiciary, the executive or the legal profession, shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:

(a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against or in favour of a person on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, except that it would not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;

(b) Prosecutors have appropriate education and training and be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. States shall further ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

4. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

5. The conditions of service of prosecutors, their security, adequate remuneration, and, where applicable, tenure, pension and age of retirement, shall be secured by law.

6. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

7. Prosecutors are, like other citizens, entitled to freedom of expression, belief, association and assembly, provided that in exercising such rights they shall always conduct themselves in such a manner as to preserve the dignity of their office.

8. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

9. The office of prosecutors shall be strictly separated from judicial functions.

10. Prosecutors shall perform an active role in the investigation of crime and in criminal proceedings, including institution of prosecution, and, where authorized by law, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

11. Consistent with their crucial and far-reaching role in society and the high degree of responsibility required by their profession, prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

12. In the performance of their duties, prosecutors shall:

(a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.

(c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise.

13. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings when an impartial investigation shows the charge to be unfounded.

14. Prosecutors shall give special attention to the investigation and prosecution of serious crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law.

15. When prosecutors come into possession of evidence against suspects which they know to have been obtained directly or indirectly through recourse to unlawful methods, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other grave violations of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

16. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution, as well as adequate judicial monitoring of the exercise of prosecutorial discretion, as required. Criteria to be followed by prosecutors in exercising discretion shall be made available to persons concerned on request.

Alternatives to prosecution

17. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of the alleged offender(s) and the victim(s), provided that such measures do not affect essential public interests. For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

18. Prosecutory action against juveniles shall be used sparingly. In taking a decision whether or not to prosecute a juvenile, special consideration shall be given to available alternatives to prosecution under the relevant juvenile justice laws and procedures.

Relations with other public agencies or institutions

19. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to co-operate with the police, the courts, the legal profession, public defenders and other public agencies or institutions within or outside the justice system.

Disciplinary proceedings

20. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing.

21. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of these Guidelines.

Observance of the Guidelines

22. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and rigorously oppose any violations thereof.

23. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.