

## D. The Judiciary And Law Enforcement

### Introduction

The proper functioning of the judiciary and of law enforcement services is essential not only for an effective criminal justice policy but also for the protection of the fundamental human rights of individuals. The first United Nations instrument in this field was the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979. The development of this instrument was initiated by the General Assembly in its resolution 3218 (XXIX) of 6 November 1974, which requested the Fifth Congress to give urgent attention to the elaboration of an international code of ethics for police and related law enforcement agencies. The Congress, after reviewing a draft international code of police ethics prepared by a working group of police experts, 1/ recommended it for review to the General Assembly, which, by resolution 3453 (XXX) of 9 December 1975, requested the Committee on Crime Prevention and Control to finalize it. The Committee considered this matter in depth and recommended a revised draft code, 2/ which was subsequently adopted by the Assembly, after two years of review by an open-ended working group of the Third Committee.

The resolution adopting the Code states that the nature of the functions of law enforcement in the defence of public order, and the manner in which those functions were exercised, had a direct impact on the quality of life of individuals as well as of society as a whole. While the Assembly stressed the important task that law enforcement officials were performing, it also noted the potential for abuse that the discharge of their duties entailed. The Code's underlying premise is that those who exercise police power are to respect and to protect human dignity and to uphold the human rights of all persons. In particular, the Code prohibits torture or any act of corruption, states that force may be used only when strictly necessary, sets forth the responsibility to keep personal information confidential, and calls for the full protection of the health of persons in custody.

Upon consideration by the Sixth and Seventh Congresses of measures to promote the implementation and dissemination of the Code, the Committee on Crime Prevention and Control elaborated draft Guidelines for the Effective Implementation of the Code, 3/ drawing also on proposals made by the Interregional Preparatory Meeting on topic V for the Seventh Congress. 4/ The Guidelines were adopted by the Economic and

Social Council in its resolution 1989/61 of 24 May 1989.

So far, the Secretariat has prepared two reports on progress made with respect to the implementation of the Code, which have been submitted for consideration to the Seventh Congress and to the Committee on Crime Prevention and Control.5/

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth Congress and welcomed by the General Assembly in its resolution 45/166 of 18 December 1990, were developed at an Interregional Preparatory Meeting for the Eighth Congress6/ and the Committee on Crime Prevention and Control7/ as well as the International Expert Meeting on United Nations and Law Enforcement, held at Baden, Austria. 8/

The Basic Principles were formulated in order to provide more detailed rules on the use of force and firearms by law enforcement officials, in accordance with article 3 of the Code of Conduct for Law Enforcement Officials. They establish special guidelines focused on the use of firearms and then lay out standards for policing unlawful assemblies and persons in custody or detention. Special consideration is further given to the use of force and firearms as a last resort; ethical issues; new technologies for developing non-lethal incapacitating weapons and ammunition for appropriate use; responses by law enforcement officials in proportion to the seriousness of the offence and the legitimate objective to be achieved, qualification and training in the use of force and firearms by law enforcement officials; stressing counselling for law enforcement officials required to use force or firearms in the course of their duties; and effective reporting and review procedures.

The Eighth Congress recommended the Principles for national, regional and international action and implementation and called upon the Committee on Crime Prevention and Control to consider their effective implementation as a matter of priority. The Congress requested the Secretary-General to take appropriate steps to ensure the widest possible dissemination of the Principles and invited Member States to inform the Secretary-General every five years, beginning in 1992, on the progress achieved in the implementation of the Principles.

The Basic Principles on the Independence of the Judiciary were adopted by the Seventh Congress 9/ and welcomed by the General Assembly in its resolution 40/146 of 13 December 1985.

The Sixth Congress, in its resolution 16, had called upon the Committee on Crime Prevention and Control to elaborate guidelines on the independence of judges. Such guidelines were elaborated by the Committee at its eighth session 10/ and reviewed by the Interregional Preparatory Meeting for the Seventh Congress held at Varenna, Italy, 11/ with support of various intergovernmental and non-governmental organizations, especially the International Association of Judges and the International Commission of Jurists. The Seventh Congress, after extensive discussion, decided to adopt the instrument as the Basic Principles on the Independence of the Judiciary.

The Principles emphasize that the independence of the judiciary should be guaranteed by the State and enshrined in the constitution or law of the country. They point out, inter-alia, that justice requires that everyone be entitled to a fair and public hearing by a competent, independent and impartial tribunal, in accordance with the principles proclaimed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other United Nations instruments. In order to secure the independence of the judiciary, the Basic Principles set forth criteria concerning the status of judges, such as their qualifications, selection, training, conditions of service and tenure, and professional secrecy and immunity. The Principles also state that judges shall enjoy freedom of expression and association, and shall be free from any undue disciplinary procedures.

On the recommendation of the Committee on Crime Prevention and Control, the Economic and Social Council adopted the Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary by its resolution 1989/60 of 24 May 1989. In pursuance of Economic and Social Council resolution 1986/10 (V) of 21 May 1986, the Committee, at its tenth session, considered such procedures, which had been formulated by the International Expert Meeting on the United Nations and Law Enforcement, held at Baden, Austria, in 1987, on the basis of previous work accomplished by the United Nations Interregional Crime and Justice Research Institute (UNICRI), in cooperation with various non-governmental organizations. 12/

The procedures call upon States to adopt and implement the Basic Principles in accordance with their constitutional process and domestic practice. They also ask States to widely publicize the Basic Principles, in at least the main or official

language(s) of the country and to make the text available to all members of the judiciary. The Procedures invite Governments to hold national and regional seminars and courses on the judiciary and its independence. Member States are invited to inform the Secretary-General every five years, beginning in 1988, on the progress achieved in the implementation of the Basic Principles.

The Commission on Human Rights, welcoming the close cooperation that had been established between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, 13/ invited Governments to take into account, in implementing the Basic Principles, the principles set forth in the draft Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers, elaborated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 14/ On the basis of information provided by Member States, the Secretariat prepared the first report on the implementation which was submitted to the Eighth Congress. 15/

The Basic Principles on the Role of Lawyers were also adopted by the Eighth Congress and welcomed by the General Assembly in its resolution 45/166 of 18 December 1990. They are based on the preparatory work of the Committee on Crime Prevention and Control, in pursuance of Seventh Congress resolution NO. 18. 16/ In accordance with resolution 1989/32 of 6 March 1989 of the Commission on Human Rights, due account had been taken in the elaboration of the Principles of the draft Declaration on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers and studies undertaken by its Sub-Commission on Prevention of Discrimination and Protection of Minorities. 17/ The International Commission of Jurists and the International Bar Association had also played an important role in the elaboration of the Principles.

The Congress recommended the Principles for national, regional and international action and implementation, and invited Member States to take them into account and to respect them within the framework of their national legislation and practice. Member States were also invited to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Principles, including their dissemination, their incorporation into domestic legislation, practice, procedures and policies, the

problems faced in their implementation at the national level and assistance that might be needed from the international community.

The Basic Principles have a limited but well-focused approach; they contain pragmatic suggestions for the day-to-day operation of the legal profession, with emphasis on criminal justice. Special attention is given to the following issues: effective access to legal assistance for all groups of society; the right of the accused to counsel and to seek legal assistance of their own choice; education of the public on the role of lawyers in protecting fundamental rights and liberties, training and qualifications of lawyers, and the 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 cases without fear of repression or persecution; and the respect by Governments for the confidentiality of communications between lawyers and their clients, including the right to refuse to give testimony on such matters. Further more the Principles provide that lawyers, like other citizens, are entitled to freedom of expression, belief, association and assembly.

It may be recalled in this context that a report was submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities by one of its members, Mr. Louis Joinet, France, which recommended means by which the Sub-Commission could assist in ensuring respect for the independence of the judiciary and the protection of practising lawyers.<sup>18/</sup> The General Assembly, in its resolution 45/166 of 18 December 1990, welcomed the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of a report on strengthening the independence of the judiciary and the protection of practising lawyers as described in Sub-Commission resolution 1990/23 of 30 August 1990.

The Guidelines on the Role of Prosecutors also adopted by the Eighth Congress and welcomed by the General Assembly in its resolution 45/166 of 18 December 1990, were based on the preparatory work of the Committee on Crime Prevention and Control, the regional preparatory meetings for the Eighth Congress, regional and interregional institutes for the prevention of crime and the treatment of offenders as well as various intergovernmental and non-governmental organizations, in pursuance of Seventh Congress resolution 7. <sup>19/</sup>

Recognizing that prosecutors are essential agents of the administration of criminal justice, the Guidelines are designed to secure and promote the effectiveness, impartiality and fairness of prosecutors in criminal proceedings. Prosecutors shall be made aware of the ideals and ethical duties of their office, the constitutional and statutory protection of the rights of the suspect, and the human rights and fundamental freedoms recognized by national and international law.

The Guidelines pay special attention to the requirements of fairness, openness, accountability and efficiency in matters relating to prosecutions; the qualifications, selection and training of prosecutors; their status and conditions of service; their role in criminal proceedings; their relations with other government agencies or institutions; and disciplinary proceedings. Attention is also paid to the discretionary function, which is vested in prosecutors in certain jurisdictions. Member States are invited to take into account and respect the Guidelines within the framework of their national legislation and practice. The Secretary-General is requested to prepare every five years, beginning in 1993, a report on the implementation of the Guidelines.

#### NOTES

- <sup>1/</sup> A/CONF.56/5
- <sup>2/</sup> Committee on Crime Prevention and Control, Report on the fourth session(E/CN.5/536)
- <sup>3/</sup> Committee on Crime Prevention and Control, Report on the tenth session (E/AC.57/1988/17).
- <sup>4/</sup> A/CONF.121/IPM.3.
- <sup>5/</sup> The first report was submitted to the Seventh Congress in 1985 (A/CONF.121/12) and the second to the Committee on Crime Prevention and Control at its tenth session in 1988 (E/AC.57/1988/8 and Add.1/Rev.1.).
- <sup>6/</sup> A/CONF.144/IPM.5.
- <sup>7/</sup> E/AC.57/1988/8 and Corr.1, annex I.
- <sup>8/</sup> Report of the International Expert Meeting

on United Nations and Law Enforcement: the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987.

- 9/ Report of the Seventh Congress (A/CONF.121/22/Rev.1).
- 10/ Committee on Crime Prevention and Control, Report on the eighth session (E/AC.57/1984/18).
- 11/ A/CONF.121/IPM.3.
- 12/ E/AC.57/1988/4, annex. (See also footnotes 3 and 8.)
- 13/ For the coordination of the activities of the Centre for Human Rights and the Centre for Social Development and Humanitarian Affairs, see Brody, "The Independence of Judges and Lawyers: A Compilation of International Standards", 25-26 CIJL Bulletin 7.
- 14/ E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1. This draft declaration was formulated with the assistance of various meetings organized by relevant non-governmental organizations, especially two seminars in 1981 and 1982 hosted by the International Institute of Higher Studies in Criminal Sciences in Siracusa and Noto, Italy, organized by the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists and the International Association of Penal Law.
- 15/ A/CONF.144/19.
- 16/ For the preparation of the draft, see footnotes 6 and 8 and E/AC.57/1988/15.
- 17/ For the report of the Special Rapporteur, see E/CN.4/Sub.2/1.731, E/CN.4/Sub.2/481 and Add.1, E/CN.4/Sub.2/1982/23 and E/CN.4/Sub.2/1985/18 and Add.1-6. (See also footnotes 14, 15 and 16.)
- 18/ E/CN.4/Sub.2/1990/35.

**[18] 34/169 Code of Conduct for Law Enforcement Officials**

The General Assembly,

Considering that the purposes proclaimed in the Charter of the United Nations include the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling, in particular, the Universal Declaration of Human Rights<sup>108</sup> and the International Covenants on Human Rights,<sup>109</sup>

Recalling also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Mindful that the nature of the functions of law enforcement in the defence of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as of society as a whole,

Conscious of the important task which law enforcement officials are performing diligently and with dignity, in compliance with the principles of human rights,

Aware, nevertheless, of the potential for abuse which the exercise of such duties entails,

Recognizing that the establishment of a code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights, and interests,

Aware that there are additional important principles and prerequisites for the humane

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<sup>108</sup> Resolution 217 A (III).

<sup>109</sup> Resolution 2200 A (XXI), annex.

performance of law enforcement functions, namely:

- (a) That, like all agencies of criminal justice

system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole,

(b) That the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws,

(c) That every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system,

(d) That every law enforcement agency, in fulfilment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency,

(e) That standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement official,

Adopts the Code of Conduct for Law Enforcement Officials set forth in the annex to the present resolution and decides to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

**106th plenary meeting  
17 December 1979**

**ANNEX**

**Code of Conduct for Law Enforcement Officials**

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:<sup>110</sup>

(a) 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.

(b) 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.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

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<sup>110</sup> The commentaries provide information to facilitate the use of the Code within the framework of national legislation or practice. In addition, national or regional commentaries could identify specific features of the legal systems and practices of different States or regional intergovernmental organizations which would promote the application of the Code.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination

of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

### Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional while; it implies that law enforcement officials may be authorized to use force as is reasonable necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

### Article 4

Matters of a confidential nature in ;the

possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

### Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

"...torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the

instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."<sup>111</sup>

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take

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<sup>111</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4). annex I.A.

immediate action to secure medical attention whenever required .

Commentary :

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgment of such personnel when they recommended providing the persons in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement

officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connexion with one's duties in response to gifts, promises or incentives demanded or accepted or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code 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.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance

between the need for internal discipline of the agency on which public safety is largely dependent on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority of organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

[19] **1989/61. Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials**

The Economic and Social Council.

Recalling General Assembly resolution 34/169 of 17 December 1979, by which the Assembly adopted the Code of Conduct for Law Enforcement Officials set forth in the annex to the resolution,

Recalling also resolution 14 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>90</sup> in which

the Congress, inter alia, called attention to the guidelines for the more effective implementation of the Code formulated at the Interregional Preparatory Meeting for the Seventh Congress on the topic "Formulation and application of United Nations standards and norms in criminal justice", held at Varenna, Italy, in 1984,

Bearing in mind its resolution 1986/10, section, IX, of 21 May 1986, in which it requested the Committee on Crime Prevention and Control, at its tenth session to consider measures for the more effective implementation of the Code, in the light of the guidance provided by the Seventh Congress,

Having considered the report of the Committee on Crime Prevention and Control on its tenth session,<sup>96</sup>

Guided by the desire to promote the implementation of the Code,

1. Adopts the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution;
2. Invites the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory meetings to explore ways and means of stimulating adherence to the Guidelines.

**15th plenary meeting  
24 May 1989**

**ANNEX**

**Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials**

**I. Application Of The Code**

A. General principles

1. The principles embodied in the Code shall be reflected in national legislation and practice.
2. In order to achieve the aims and objectives set out in article 1 of the Code and its Commentary, the definition of "law enforcement officials" shall be given the widest possible interpretation.

3. The Code shall be made applicable to all law enforcement officials, regardless of their jurisdiction.

4. Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code as well as other basic texts on the issue of human rights.

#### B. Specific issues

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

2. Salary and working conditions: All law enforcement officials shall be adequately remunerated and shall be provided with appropriate working conditions.

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

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

## **II. Implementation Of The Code**

### A. At the national level

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

2. Governments shall disseminate the Code and all domestic laws giving effect to it so as to ensure that the principles and rights contained therein become known to the public in general.

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

rights and the prevention of crime.

### B. At the international level

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

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

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

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

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

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

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

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

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

countries of the region as well as the difficulties encountered.

[20]                   **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,<sup>130/</sup> adopted 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,<sup>131/</sup> 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 resolution 14 of the Seventh Congress,<sup>131/</sup> 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 United Nations norms and guidelines in crime prevention and criminal justice and implementation and priorities for further standard setting,<sup>132/</sup> and by the regional meetings for the Eighth Congress,

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

2.       Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political,

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<sup>130/</sup> 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), chap. I, sect. A.

<sup>131/</sup> Ibid., sect. E.

<sup>132/</sup> A/CONF. 144/IPM.5.

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 branch of government, 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 domestic legislation, practice, procedures and policies, 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 need for restraints on the use of force and firearms by law enforcement officials;

7.       Urges the regional commissions, the regional and interregional institutes on 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 the present 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;

(c) To provide Governments, at their request, with the services of experts and regional and international 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.

## ANNEX

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

Whereas the work of law enforcement officials<sup>133/</sup> 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,

<sup>133/</sup> 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 rights to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights<sup>134/</sup> and reaffirmed in the International Covenant on Civil and Political Rights, <sup>135/</sup>

Whereas the Standard Minimum Rules for the Treatment of Prisoners <sup>136/</sup> 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<sup>136/</sup> provide 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,<sup>137/</sup>

Whereas the Seventh Congress, in its resolution 14,<sup>138/</sup> *inter alia*, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

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<sup>134/</sup> General Assembly resolution 217 A (III).

<sup>135/</sup> General Assembly resolution 2200 A (XXII), annex.

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

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

138/ See Seventh United Nations Congress..., chap. I, sect.E.

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 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 branch 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, Government 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 develop a range of means as broad as possible and equip law enforcement officials with

various type of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, 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 unavoidable, 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 injury, and respect and preserve human life;

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

(d) Ensure that relatives or close friends of the injured or affected person are notified 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, in accordance with principle 22.

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 imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, 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, if 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 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, shall 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. 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. Their continued fitness to perform these functions should be subject to periodic review.

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. These 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 or 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 process, including a judicial process. In the event of the death of such person, this provision shall apply to their dependents accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, 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 also rests on the superiors who gave the unlawful orders.

[21] **Basic Principles on the Independence of the Judiciary**

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

Recalling the Caracas declaration,<sup>37/</sup> unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 35/171 of 15 December 1980,

Recalling also resolution 16 adopted by the Sixth United Nations Congress on the

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<sup>37/</sup> Ibid., sect. A.

Prevention of Crime and the Treatment of Offenders,<sup>38/</sup> in which the Congress called upon the Committee on Crime Prevention and Control to

include among its priorities the elaboration of guidelines relating to the independence of judges,

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

Taking note with appreciation of the work accomplished pursuant of the mandate cited above by the Committee on Crime Prevention and Control and by the Interregional Preparatory Meeting for the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, from 24 to 28 September 1984,

Further taking note with appreciation of the extensive discussions during the seventh United Nations Congress on Prevention of Crime and the Treatment of Offenders with respect to the draft guidelines on the independence of the judiciary,<sup>39/</sup> which led to the formulation of the Basic Principles on the Independence of the Judiciary,

1. Adopts the Basic Principles on the Independence of the Judiciary contained in the annex to the present resolution;

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

3. Invites Governments to take into account within the framework of their national legislation and practice and to respect the basic Principles;

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<sup>38/</sup> Ibid., sect. B.

<sup>39/</sup> A/CONF. 121/9 and Corr.1.

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

5. Urges the regional commissions, the

regional and 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 no-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles;

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

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

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

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

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

## ANNEX

### **Basic Principles on the Independence of the Judiciary**

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

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

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of

those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

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

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

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

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

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

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

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

#### Independence of the judiciary

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

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

#### Freedom of expression and association

8. In accordance with the universal declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

#### Qualifications selection and training

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

#### Conditions of service and tenure

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

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

#### Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

#### Discipline, suspension and removal

17. A change or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the

right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

#### **[22] 1989/60. Procedures for the effective implementation of the Basic Principles on the independence of the judiciary**

The Economic and Social Council,

Recalling the Basic Principles on the Independence of the Judiciary, adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders<sup>95</sup> and endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Recalling also that the Congress, in its resolution on the Basic Principles, recommended them for national, regional and interregional action and called upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the effective implementation of that resolution,

Bearing in mind its resolution 1986/10, section V, of 21 May 1986, by which Member States were invited to inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced in their implementation at the national level and assistance that might be needed from the international community,

Also bearing in mind General Assembly resolution 41/149 of 4 December 1986, in which the recommendations made by the Council were welcomed,

Having considered the report of the Committee on Crime Prevention and Control on its tenth Session,<sup>96</sup>

Guided by the desire to promote the independence and impartiality of the judiciary,

1. Adopts the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, recommended by

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<sup>95</sup> See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No.E.86.IV.1), chap.I. sect. D.2.

<sup>96</sup> Official Records of the Economic and Social Council, 1988, Supplement No.10 (E/1988/20).

the Committee on Crime Prevention and Control and annexed to the present resolution;

2. Invites the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and its preparatory body to accord priority to ways and means of stimulating adherence to the Procedures.

**15th plenary meeting  
24 May 1989**

## **ANNEX**

### **Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary**

#### **Procedure 1**

All States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice

#### **Procedure 2**

No judge shall be appointed or elected for purposes, or be required to perform services, that

are inconsistent with the Basic Principles. No judges shall accept judicial office on the basis of an appointment or election, or perform services, that are inconsistent with the Basic Principles.

#### **Procedure 3**

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

#### **Procedure 4**

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

#### **Procedure 5**

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

#### **Procedure 6**

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

#### **Procedure 7**

In accordance with Economic and Social Council resolution 1986/10, section V, Member States shall inform the Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation

into national legislation, the problems faced and difficulties or obstacles encountered in their implementation at the national level and the assistance that might be needed from the international community.

#### Procedure 8

The Secretary-General shall prepare independent quinquennial reports to the Committee on Crime Prevention and Control on progress made with respect to the implementation of the Basic Principles, on the basis of the information received from Governments under procedure 7, as well as other information available within the United Nations system, including information on the technical co-operation and training provided by institutes, experts and regional and interregional advisers. In the preparation of those reports the Secretary-General shall also enlist the co-operation of specialized agencies and the relevant intergovernmental organizations and non-governmental organizations, in particular professional associations of judges and lawyers, in consultative status with the Economic and Social Council, and take into account the information provided by such agencies and organizations.

#### Procedure 9

The Secretary-General shall disseminate the Basic Principles, the present implementing procedures and the periodic reports on their implementation referred to in procedures 7 and 8, in as many languages as possible, and make them available to all States and intergovernmental and non-governmental organizations concerned, in order to ensure the widest circulation of those documents.

#### Procedure 10

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

#### Procedure 11

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

- (a) Assist Governments, at their request, in setting up and strengthening independent and effective judicial systems;
- (b) Make available to Governments requesting them, the services of experts and regional and interregional advisers on judicial matters to assist in implementing the Basic Principles,
- (c) Enhance research concerning effective measures for implementing the Basic Principles, with emphasis on new developments in that area;
- (d) Promote national and regional seminars, as well as other meetings at the professional and non-professional levels, on the role of the judiciary in society, the necessity for its independence, and the importance of implementing the Basic Principles to further those goals;
- (e) Strengthen substantive support for the United Nations regional and interregional research and training institutes for crime prevention and criminal justice, as well as other entities within the United Nations system concerned with implementing the Basic Principles.

#### Procedure 12

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

Procedure 13

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

Procedure 14

The Committee on Crime Prevention and Control shall assist the General Assembly and the Economic and Social Council in following up the present implementing procedures, including periodic reporting under procedures 7 and 8 above. To this end, the Committee shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for them. The Committee shall make specific recommendations, as appropriate, to the Assembly and the Council and any other relevant United Nations human rights bodies on further action required for the effective implementation of the Basic Principles.

Procedure 15

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

[23] **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,<sup>139/</sup> adopted 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,<sup>140/</sup> 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 United Nations norms and guidelines in crime prevention and criminal justice and implementation and priorities for further standard setting,<sup>141/</sup> and by the regional preparatory meetings for the Eighth Congress,

1. Adopts the Basic Principles on the Role of Lawyers Contained in the annex to the present resolution;
2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political,

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<sup>139/</sup> See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publications, Sales No. E, 86. IV.1), chap.I, sect, A.

<sup>140/</sup> Ibid., sect. E.

<sup>141/</sup> A/CONF. 144/IPM.5.

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 branch of government 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 domestic legislation, practice, procedures and policies, 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 on respect for equality of conditions of access to the legal profession;

7. Urges the regional commissions, the regional and interregional institutes on 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;

(c) To provide Governments, at their request, with the service 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 on Crime Prevention and Control, 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<sup>142/</sup> 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<sup>143/</sup> proclaims, in

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<sup>142/</sup> General Assembly resolution 217 A (III).

<sup>143/</sup> General Assembly resolution 2200 A (XXI), annex,

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 143/ 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<sup>144/</sup> 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<sup>145/</sup> 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 <sup>145/</sup> reaffirms the right of every one suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings in accordance with article 14 of the International covenant on civil and Political rights.

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power <sup>146/</sup> recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of Crime,

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<sup>144/</sup> General Assembly resolution 43/173, annex,

<sup>145/</sup> See Human Rights: A Compilation of International Instruments (United Nations publications, Sales No. E. 88. XIV.1), sect. G.

<sup>146/</sup> General Assembly resolution 40/34, annex.

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, an co-operating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, 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 the framework of their national legislation and practice and should 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,. These principles shall also apply, as appropriate, to person who exercise the functions of lawyers without having the formal status of lawyers.

#### Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them 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 with 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 the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. 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. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interest of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, 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. All 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, 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. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against 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, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

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 as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their 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 clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients 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 seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

#### Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are 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 recognized 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 to counsel is recognized shall refuse to recognize the right of a 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. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their 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 sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

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 recognized standards and ethics of the legal profession.

#### Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to 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

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 recognized professional standards and ethics.

#### Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, 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 the legal profession, 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 recognized standards and ethics of the legal profession and in the light of these principles.

#### **[24] Guidelines on the Role of Prosecutors**

#### **The Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders,**

Recalling the Milan Plan of Action,<sup>218/</sup> adopted 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,<sup>219/</sup> in which the Committee on Crime Prevention and Control was called upon to consider the need for guidelines relating to prosecutors,

Taking note with appreciation of the work accomplished, in pursuance of that resolution, by the Committee and the regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

1. Adopts the Guidelines on the Role of Prosecutors contained 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;

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<sup>218/</sup> Seventh United Nations Congress...f, chap. I, sect. A.

<sup>219/</sup> Ibid., sect. E.

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 as well as others, including judges, lawyers, members of the executive branch of government and the legislature, and the public in general;

5. Urges the regional commissions, the regional and interregional institutes on crime prevention and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in 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 bodies concerned.

## ANNEX

### 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 distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights<sup>220/</sup> 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 combating 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

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220/ General Assembly resolution 217 A (III).

Crime and the Treatment of Offenders, 221/ 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,222/ subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,223/ recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress,224/ 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,

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

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221/ Sixth United Nations Congress..., chap. I, sect. B.

222/ Seventh United Nations Congress..., chap. I, sect.D.

223/ General Assembly resolutuin 40/34, annex,

224/ Seventh United Nations Congress..., sect. E.

prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should 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. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications selection and training

1. Persons selected as prosecutors 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 a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall 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 should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protection for the rights of the suspect and the victim, and of human rights and

fundamental freedoms recognized by national and international law.

#### Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.

4. States shall 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.

5. 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.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. 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

8. Prosecutors 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 disadvantage by reason of their lawful action or their membership in a lawful organization. IN exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. 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

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

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. 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.

13. 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;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. 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.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

#### Discretionary functions

17. 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.

#### Alternatives to prosecution

18. 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 suspect(s) and the victim(s). 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.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

#### Relations with other government agencies or institutions

20. 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 government agencies or institutions.

#### Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. 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 the present Guidelines.

#### Observance of the Guidelines

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

24. 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.