

XIIIth INTERNATIONAL CONGRESS OF PENAL LAW (Cairo, 1 – 7 October 1984)¹³

Topics:

1. Crimes of omission.
2. Concept and principles of economic and business criminal law, including consumer protection.
3. Diversion and mediation.
4. Structures and methods of international and regional cooperation in penal matters.

Section I: Crimes of omission^(*)

Certain tendencies of contemporary penal law

1. The present-day situation emphasizes an ever-increasingly close reciprocal interdependence among individuals as well as between the individual and society. There ensues from this a complex series of "expectations" of determined lines of conduct and an equally greater increase of the phenomenon of omission (in a prejuridical sense).

2. Doctrine has been well-aware of this situation as evidenced by the scientific development of these topics in recent years.

3. The extent of the phenomenon differs from society to society, and its juridical regulation, particularly in the penal field, is equally influenced by the different ideologies, socio-economic systems and cultural traditions. However, one notes a growing tendency to extend the scope of penal action, either by legislators who -in the field of the special penal law- provide for a growing number of crimes of omission, or through judicial interpretation which applies -without clear-cut criteria- some provisions of penal laws to omissive behaviors and sanction a steadily increasing number of omissions as participation by omission in active conduct of another subject.

One should therefore highlight the general principles which could provide an adequate framework within which the legislator could act, taking into account the various interests to protect, and the judge could find precise criteria in conformity with the general rules on penal liability.

¹³ RIDP, vol. 56 3-4, 1985, pp.485-488; 501-504; 513-520; 539-543 (French); p. 489-492 ; 505-508 ; 521-527 ; 545-549 (English).

(*) First section. Original: French.

Terminology

Given the fact that the criterion for distinguishing between genuine and non-genuine crimes of omission is not uniform in the doctrine, and in order to avoid an unnecessary partiality, taking into account the fact that in the view-point of criminal policy, it is more important to distinguish between cases of legal typification and cases where typification depends on judicial interpretation of a type of offence by action, we adopt the terminology , “legally typified omissive offences” (known as genuine crimes of omission) and “non-legally typified omissive offences” (known as crimes of commission by omission or non-genuine of omission).

Legally described crimes of omission (also called genuine crimes of omission)

In several countries one notes an increase in the number of crimes of omission described by the legislator (genuine crimes of omission) for reasons which do not always meet the requirements of modern criminal policy.

The rule that should govern the recourse to a penal sanction as a means of defending the interests of the individual and the society, which can only be the *ultima ratio*, should also apply to the obligations to act ascribed to the citizen.

On this basis, we believe that we can recommend the following to legislators:

- a) to always consider the real importance of the interest to be protected, as well as the fundamental duties of the individual towards society, when a decision is made to incriminate the violation of an obligation to act;
- b) to resort mainly to purely civil or administrative sanctions, in accordance with the general tendencies to decriminalize the less important offences; and particularly to limit the unintentional penal offences of omission, the prosecution of which could fall within the scope of administrative contraventions;
- c) to avoid abusing "blank penal provisions" which apply penal sanctions to certain offences against administrative regulations and standards.

Non-legally described omissive offences (also called crimes of commission by omission)

The regulation of the crimes of commission by omission, where behavior liable to prosecution is not precisely described by law, raises serious problems as far as the principle of legality is concerned. It is to be feared, particularly in certain countries and at certain political moments, that the limits of given penal norms would be uncontrollably and arbitrarily extended. The provisions of the general part of some Penal Codes dealing with crimes of commission by omission have not always met the requirements of certainty and legality, neither do they satisfy the role of proportion between the omission committed and the sanction.

One hopes however, that by their interventions, national legislators would try to define the

conditions of incrimination of this type of offence in a more precise way.

The normative techniques appropriate to achieve this aim can, generally spoken, be of the following types:

1. the improvement of the regulations as already provided for by the general part of some Codes;

2. a detailed description of the incriminated offences in the special part of the Penal Code.

Should this second solution prove to be impractical, one should nevertheless improve the general rules existing in the Codes or elaborated by interpreters, ensuring the following minimal conditions:

a) the obligation to act, the violation of which contributes to cause a result that involves the penal responsibility of the perpetrator of the violation, should not only be moral or social, but strictly juridical, founded on a law, a role, a contract or any other juridically recognized source;

b) a person in order to be considered responsible, should be in the position of a so-called guarantor of the legally protected interest, having the power to dominate some essential conditions of the materialization of the typical event;

c) the legal duties which establish the function of a guarantor should be addressed to a specifically determined category of subjects, having a personal position described by law;

d) the omission should correspond to the achievement of the result contrary to the law through action;

e) one should limit the type of offences of commission by omission to attacks against legally protected interests that are essential to the individual or to society.

Consideration should be given to whether crimes of commission by omission could be subject to sanctions less serious than those provided for the corresponding offence committed by action.

Culpability and dolus

In all crimes of omission intent includes, at least, the knowledge of the factual situation for which the law stipulates the obligation to act.

In crimes of commission by omission intent covers the will not to prevent the result which is the legal constituting element of the offence.

In crimes of commission by unintentional omission, the fault also implies the possibility and the duty to foresee the result.

Participation

Participation by omission in an offence committed by a third party should be governed by the same principles mentioned above with regard to crimes of commission by omission:

- a) existence of a juridical obligation;
- b) position of guarantor of the interest protected by penal law;
- c) an omission corresponding to the occurrence of the typical event by action;
- d) restriction of criminal liability to more serious offences.

Responsibility for omission within groups

Given the great importance of the phenomenon of criminality in the field of enterprises and companies, it is necessary that legislators state precisely the conditions of responsibility for omissions within groups, and this in the respect for the general principles of personal responsibility.

Section II. Concept and principles of economic and business criminal law, including consumer protection

Preamble

1. Economic and business criminality often adversely affects the entire economy or important parts of the economy and is of special interest today in many countries independent of their economic systems.
2. Generally, penal law is only one means of regulating economic and business life and sanctioning the violation of economic and business rules. Normally, penal law plays a subsidiary role. However, in some instances, penal law is of primary importance and provides a more appropriate means of regulating economic and business activity. In such cases it may interfere less with economic and business activity than administrative and civil regulations.
3. Proper justice and assistance to individual victims or groups of victims of economic and business offenses are necessary.

Terminology

4. The term "economic penal law" is here understood to encompass offenses against the economic order. The term "business penal law" refers to offenses involving private or public enterprises. Both are closely interrelated in the sense that the offenses violate legal regulations which organize and protect economic and business life.

Protected interests

5. In most cases, the use of penal law in this field is concerned with the protection of collective, not only individual, interest. Most of these collective interests, being particularly complex and

diffuse, are more difficult to identify and defend than individual interests. Therefore, there is a special need to protect these collective interests. Their protection by penal law should be assumed by the Penal Code.

Technique of penal law

6. Despite the peculiarities of economic and business penal law, the general principles of penal law, especially those protecting human rights should be applied. The burden of proof should not be shifted to the defendant.

7. General clauses in economic and business penal law should be avoided. Where it is necessary to use general clauses, such clauses should be interpreted narrowly. The prohibited conduct should be precisely described.

8. In connection with the description of offenses the use of the reference technique, that is, the technique pursuant to which activities regulated outside of the penal law are criminalized by reference, can have the danger of imprecision and lack of clarity and of delegating too much of the legislative power to the administration. The prohibited action or effect should be specified by the penal law in so far as possible.

9. Per se bans (*abstrakte Gefährungsdelikte, delits-obstacle*) are a valid means of combating economic and business offenses so long as the prohibited conduct is clearly defined by the legislation and so long as the prohibition relates directly to clearly identified protected interests. The use of per se bans is not justified merely for facilitating proof.

10. Ways to prevent circumvention of the law should be studied.

Culpability and criminal liability

11. As a general rule of penal law, the principle of culpability should be applied in the field of economic and business offenses. Where strict liability offenses exist, they should at least be subject to the defense of impossibility. Reform efforts should be directed to abolish strict liability offenses as quickly as possible.

12. Criminal liability of directors and supervisors for offenses committed by employees should be recognized when there is both a breach of the specific duty of supervision by, and personal culpability (at least negligence) of, the director or supervisor. The general principles of participation are not affected by this recommendation.

13. Criminal liability of corporations and other legal entities is recognized in an increasing number of countries as an appropriate way of controlling economic and business offenses. Countries which do not recognize such criminal liability may wish to consider the possibility of imposing other appropriate measures on such entities.

Administrative and civil remedies

14. Normally, the introduction of administrative and civil remedies should be considered before

criminalizing certain acts of omissions harmful to economic and business life.

15. Administrative proceedings should provide guarantees of due process including the right of judicial review. Administrative bodies should not be permitted to impose prison sentences in the field of economic and business offenses.

Protection of victims

16. The access of individual victims or groups of victims of economic and business offenses to judicial and administrative remedies should be facilitated. Associations of victims of such offenses, including consumer associations, should be permitted to participate in penal or administrative or civil proceedings. The system of sanctions for economic and business offenses should include the possibility of restitution.

International law and procedure

17. In view of the transnational character of many economic and business offenses, the harmonizing of national laws in this field should be encouraged. This harmonization could be initiated by the development of a set of modern penal regulations proposed by appropriate international bodies or groups composed of criminal law specialists.

18. The protection of foreign interests by national penal law should be encouraged, particularly in connection with regional economic interests and organizations. Bilateral and multilateral agreements and treaties should be used to harmonize the effects of, and make more effective, local economic penal provisions, to reduce conflicts between national laws, and combat abuse of economic power in international relations.

19. The traditional exclusion of fiscal and similar offenses from extradition and mutual assistance treaties should be re-examined in the light of harmonious international relations and with due respect for human rights.

Section III. Diversion and mediation

Preamble

1. The phenomenon of informal diversion of those occurrences which would be crimes if they were evaluated according to criminal law, but which are either not perceived as such by those directly involved or are simply not reported to criminal justice agencies, play an important role in the prevention and control of crime. Realistic analysis shows that such occurrences often are resolved by their participants through or in cooperation with public or private institutions, for example, groups to which they belong, the socio-medical system, entities administering civil disciplinary and administrative measures, and the police. This is true whether an offence is serious or minor. Attempts at formal diversion should not interfere with such informal controls

and, where possible, should be harmonized with them.

2. Diversion may be applied in different jurisdictions in different ways consonant with social, political, cultural, economic and legal concepts and traditions. If for whatever appropriate reasons (e. g. distance or travel difficulties) law enforcement authorities cannot resolve a criminal matter swiftly, diversion might be placed in the hands of a community or other local or tribal leader, particularly in cases not evidently productive of community harm.

3. As used in these resolutions:

a) Diversion refers to any deviation from the ordinary sequence of events in the criminal justice process before adjudication.

b) Simple diversion means a unilateral official determination to discontinue criminal investigation or criminal proceedings before conviction. It includes (a) activities of public agencies exercising social control outside the criminal justice system; (b) exercise of police or prosecutorial discretion to forego criminal prosecution; and (c) alternative procedures in lieu of criminal prosecution; and (d) alternative procedures in lieu of criminal prosecution approved by a judicial authority.

c) Diversion with intervention means discontinuance of criminal investigation of proceedings before conviction combined with conditions which refer to non-penal ways of dealing with social conflicts, e.g., of a rehabilitative, therapeutic or educational nature, or compensation or restitution.

d) Mediation is a process directed to a reconciliation of conflicting concerns on the part of offenders, victims, family members of either, the community, and governmental entities. It envisions the active involvement of offenders in the settlement process.

e) Offender as used in these resolutions includes suspects, accused persons and defendants.

4. Diversion procedures do not run counter to the principle of compulsory prosecution and its invocation in penal law systems governed by that principle, if conditions embodied in a national legal system are met. Such conditions might recognize that diversion may not be implemented solely on the consent of the accused, but requires in addition the approval of proceeding authorities, followed by judicial approval of an interruption in an investigative inquiry or proceedings before adjudication.

Purposes of diversion

1. Modern criminal justice systems have experienced, and continue to experience, two divergent developments:

a) Criminal law is used as an expedient means of social control. It has been extended far beyond its classical scope, producing a serious danger of over-criminalization.

b) The effectiveness of using traditional criminal justice, especially punishment, as a functional means of social control has been viewed with growing skepticism. The concepts of rehabilitation, deterrence and retribution are seriously criticised. This has reopened the discussion about other measures to achieve the aims of criminal law.

2. Furthermore, criminal justice itself has come under criticism. The criminal justice process tends to reduce the interaction between those involved in a transaction to a consideration of the responsibility of only one of them. Those directly involved, particularly if they feel themselves victimized, are not able to resolve the conflict underlying the criminal transaction as they view it. Under such circumstances, the criminal justice process may well impair rather than promote peace among the participants.

3. From these perspectives, diversion should be considered a new desirable approach to contemporary problems of the criminal justice system, for at least two reasons:

a) Diversion may well counter the danger of over criminalization. It does not contract the scope of criminal law itself, but may mitigate its adverse effects;

b) Diversion may also help to overcome what has been called the punishment crisis, by facilitating appropriate responses to crimes whenever penal sanctions are thought inappropriate.

4. Diversion should not work further extension of the scope of coverage of criminal law, nor should it institutionalize or restrict what hitherto has been resolved through informal or covert dispute resolution. Replacing penal measures with measures stemming from diversion with intervention should not of itself warrant an increased severity in offender treatment.

Justification of diversion

1. Diversion may be a preferred response whenever criminal trial processes are not required in the public interest. Diversion may appropriately be invoked whenever it may be expected to achieve a greater rehabilitative or preventive effect than criminal adjudication and punishment. However, the extent to which it actually does so depends on the nature of a specific diversion program. The success of any given rehabilitative program is notoriously difficult to assess. Therefore, care should be exercised not to confuse rehabilitative program motivation with actual success rates.

2. Diversion may help to avoid unnecessary stigmatization of offenders. Although the stigma associated with diversion may be less severe than that flowing from imposition of criminal sanctions, it is nevertheless fallacious to assume that diversion entails no stigmatization whatsoever. However, diversion with intervention may well support increased efforts to reduce stigmatization stemming from imposition of criminal punishment.

3. Diversion may be appropriate when a criminal trial might harm an offender, the victim or the family of either to an extent outweighing the benefits to be expected from public adjudication.

4. Diversion may serve to enable those directly involved to cope better with an underlying crime. Care must be exercised to involve them in the process of diversion.
5. Diversion may benefit crime victims if it accomplishes restitution or an apology and allows them to express their personal feelings and desires. The importance of this aspect of diversion should not be underestimated, because, in general, penal sanctions do not accomplish restitution or compensation for crime victims. Diversion, therefore, may well be viewed as desirable by the latter.
6. It has often been asserted that diversion serves to reduce prosecutorial and judicial caseloads. This assertion is of dubious merit. In all criminal justice systems, the problem of judicial overload is met through widespread use of so-called simplified procedures. If necessary, greater use might be made of such procedures consistent with basic standards of fair procedure. Decisions to divert or to invoke penal measures should not turn on technical aspects of caseload reduction. That may prove an incidental effect of diversion, but should not become a principal purpose.
7. Diversion may be advocated as a means to reduce the costs of administering a criminal justice system. That goal, however, may be ephemeral from the stand-point of national economy, because in fact diversion with intervention usually shifts costs from criminal justice agencies to other governmental or private entities.

Cases appropriate for diversion

1. Cases involving youthful offenders are particularly appropriate for diversion. For purposes of social adjustment, every effort should be made to aid youthful offenders in advancing their social training.
2. Diversion also may be indicated in cases involving adult offenders. Decisions to select diversion with intervention must turn on the facts of individual cases and personal attributes of offenders.
3. Diversion is particularly appropriate if there is a permanent relationship of some kind between offender and victim, e.g., family, business, neighborhood, educational, or landlord-tenant.
4. In special cases diversion may be coupled if appropriate with a treatment program, for example, when offenders are alcohol-or drug-abusers.
5. Diversion need not necessarily be excluded in cases of recidivism. Rather, the circumstances of individual cases should control simple diversion or diversion with intervention for multiple offenders.
6. Diversion may be withheld if public confidence in administration of criminal justice will be impaired unless an offender is required to undergo criminal trial and adjudication.

Procedures for diversion

1. Two conflicting considerations may underlie diversion decisions. One is the principle of equality which requires that similar cases be treated similarly. A second is the principle of individualized treatment which mandates that each case be resolved on the basis of its peculiar facts. Neither principle should be accorded controlling authority. Instead, in cases involving petty offences, in which a thorough investigation into the circumstances of criminal activity and an offender's personal characteristics seldom is feasible, the principle of equality may control. In more serious cases and in cases involving youthful offenders, greater efforts are needed to achieve an individualized approach.
2. Responsibility for implementation of diversion measures with intervention may, and perhaps should, be allocated to institutions and persons outside the criminal justice system. Care should be exercised, however, not to subject diverted offenders to unduly coercive influences. In particular, only governmental bodies should be empowered to take compulsory measures. Measures infringing upon individual freedom (e.g. medical treatment) should require judicial authorization.
3. Public and official control should extend to both authorization and implementation of diversion with intervention.
4. Diversion determinations should rest on an evaluation of all available data, free from limitations affecting receipt and consideration of evidence at trial.
5. Diversion with intervention usually should require the free and voluntary consent of offenders, because they cannot be forced against their will into therapeutic or educational programs. Nevertheless, there should be a scope to recognize a de facto consent manifested through participation in, e.g. therapeutic or educational programs. The right of an offender to insist on trial should be respected.
6. Diversion with intervention should not be accomplished unless there is adequate evidence of an offender's guilt. However, simple diversion need not rest on a preliminary ascertainment of guilt if it is not noted in an offender's criminal record.
7. Diversion should not undermine an offender's constitutional or civil rights. If a private entity is entrusted with the development and supervision of a diversion program, it must also be responsible for protecting those rights. In particular, the right of an offender to consult with counsel prior to diversion with or without intervention, and to be represented by counsel in any proceeding to authorize with intervention, should be carefully protected.
8. Confidentiality of records concerning diverted offenders should be safeguarded, and neither the fact nor the content of criminal accusations against diverted offenders should be used adversely against them in such matters as employment and eligibility for public and private benefits.
9. Informal diversion procedures ordinarily may and should be conducted privately. However, judicial proceedings to authorize diversion with intervention may be open to the public.

10. Lay participation, including that of victims, in diversion determinations should not be required, but may be appropriate in light of a jurisdiction's social or cultural traditions.

11. Successful diversion should bar subsequent institution of prosecution related to the same occurrence. However, a victim should maintain a right to civil action unless he or she consented to diversion. Police investigation files should be closed.

12. The sanction of revived or renewed prosecution should be available if offenders subjected to diversion with intervention fail to comply with intervention conditions. However, care should be exercised that passage of time does not unduly prejudice the procedural rights of a formerly diverted offender and that a renewed prosecution does not become the standard criminal justice response to non-compliance. As a general rule, renewed prosecution should not be instituted against diverted offenders solely because they have failed to achieve treatment program goals.

Mediation and related forms of dispute resolution

1. Mediation and referral to community for informal action, e.g. conversations among those involved in or affected by a crime, have been insufficiently used in most jurisdictions; their use should be expanded.

2. Mediation appropriately may be entrusted to lay persons. Mediators should be respected in the community, experienced and specially trained, knowledgeable about community, and social traditions, and sensitive to human personality factors.

3. Mediation should require the free and voluntary consent of offenders and victims and should be shared by those affected by a crime. Care should be exercised, however, not to limit their right to access to the courts by making mediation the sole method of conflict resolution.

4. Mediation proceedings usually should be conducted privately.

5. If arbitration follows unsuccessful mediation efforts, a former mediator should be disqualified to serve as arbitrator in the same matter.

6. Admissions and statements made during mediation negotiations should not be useable as prosecution evidence during criminal prosecutions following unsuccessful mediation efforts.

Implementation

More emphasis should be placed in the future on diversion and mediation, including the conduct of experimental diversion and mediation programs and research into the causes of conflicts and methods of conflict resolution. The International Penal Association requests national governments to consider and, if appropriate to national circumstances and traditions, to institute diversion and mediation if they are not now recognized, or to strengthen their acceptance and implementation by government officials and citizens.

Section IV. Structures and methods of international and regional cooperation in penal matters

Preamble

The Congress emphasizes the necessity of closer cooperation between States in the fight against the principal forms of criminality, independent of whether they are punishable directly under international law or under national law. This necessity has become more acute in recent years due to the growing phenomenon of criminal organizations on the international level, improved travel facilities, the extension of commercial relations and the development of world tourism.

To prevent offences committed in these circumstances from going unpunished, States are invited to harmonize and coordinate their legal rules.

Such cooperation must be organized in such a way as to ensure a fair trial which safeguards the rights and freedoms of the defendant and provides an improved social resettlement of the sentenced person. It must extend to the different phases of the proceedings: investigation, prosecution, judgment and enforcement of sanctions. Moreover, the legitimate interests of the victim should be taken into consideration.

It manifests itself already through the elaboration of conventions relating to certain criminal acts which cause damage to the community as a whole and sometimes providing universal jurisdiction for their repression.

It manifests itself also in different forms of international cooperation such as extradition (the subject of the 1969 Congress in Rome) and other measures provided by the inter-American Conventions, the Conventions concluded within the Council of Europe, various agreements among the Socialist countries and within the Benelux and the Scandinavian countries and the Organization of the Arab League.

The Congress therefore:

Considers it desirable to further develop these forms of cooperation with regard to substantive law and regulations of jurisdiction, as well as in the field of procedural law.

Substantive Law

1. *Encourages* the conclusion of international Conventions against acts which are unanimously recognized as reprehensible. It is, however, absolutely necessary that these Conventions contain penal law provisions whose scope is clearly defined, and they must recall the necessity for States to prepare national legislation for their application. States must create a penal system which makes violations of the provisions of these Conventions punishable.

2. *Calls* for international cooperation in the field of substantive criminal law to extend to the new forms of crime, particularly in the following areas:

- protection of data affecting privacy;
- protection of the environment and the cultural property;
- computer crimes;
- bribery and corruption of business managers;
- fraudulent international commercial transactions.

3. *Calls* on States to extend, as far as possible, the application of their domestic criminal law to the protection of foreign, communitarian or supra-national legal interests beyond individual legal interests, which are protected without respect to the nationality of the victim, in order to avoid situations where lacunae in the law make prosecutions impossible.

4. *Considers it necessary* that international Conventions relating to substantive criminal law contain the principle «*ne bis in idem*» in favor of any person prosecuted in a State party to the Convention so far as the facts are the same. In the event of a conviction or acquittal on the merits the decision should preclude any further prosecution on the same facts as long as this decision and the procedure upon which it is based are compatible with the public order. The principle «*ne bis in idem*» does not apply, if the sentence imposed has not been fully executed in the foreign country; in such a case, however, the period already served should be deducted from the sentence to be imposed.

Jurisdiction

5. *Considers it desirable*, without regulating the various forms of jurisdiction exercised by States in criminal matters, that the establishment of several jurisdictions which may create positive conflicts does not result in simultaneous or consecutive prosecutions in different States; therefore, the States concerned should initiate consultations to determine in which of these States the prosecution would be appropriate.

6. *Invites* States to adopt the principle of universality in their national law for the most serious offences in order to ensure that such offences do not go unpunished; recalls, however, that the creation of an International Criminal Court even on a regional level remains a priority.

Procedural Law

7. *Calls* for the establishment and extension of international instruments in the field of judicial assistance and calls on States, not only when they negotiate new Conventions but also when they apply already existing Conventions on judicial mutual assistance, to safeguard, in all stages of the criminal proceedings, the guarantees -in particular «*ne bis in idem*»- as contained in other international instruments such as the International Covenant on Civil and

Political Rights of 19 December 1966 and the European Convention on Human Rights of 4 November 1950 and its Protocols.

8. *Proposes* that, while the principle «*locus regit actum*» remains a basic principle of mutual assistance, the law of the requesting State should, if necessary, be taken into consideration. The presence and active participation of foreign judicial authorities as well as of representatives of the prosecution and defense should be authorized;

9. *Proposes* that, if a request for mutual assistance does not imply any coercive measures, the requirement of double criminality can be abandoned in order to grant the assistance requested.

10. *Encourages* the conclusion of international agreements on specific aspects of the recognition and enforcement of foreign judgments, and considers it desirable that States afford each other, in a general way, the widest possible measure of mutual assistance by providing for full recognition of the validity of judicial decisions enforced abroad.

11. *Invites* States to conclude agreements on the transfer of criminal proceedings to the country of nationality or residence of the offender. If the offender is detained in the country where the proceedings were initiated, the transfer should be effected only with his consent.

12. *Emphasizes* the importance of the instrument of transfer of the execution of sentences for the successful reintegration of offenders into society. If the offender is imprisoned in the sentencing State, such transfer should, however, be effected only with the offender's consent.

13. *Considers it necessary* that in cases of enforcement of foreign sentences the administering State be given some freedom to adapt the sanction to that provided in its own penal system without, however, aggravating the prisoner's penal situation. The administering State must inform the sentencing State of its decision and it must enforce the sentence in accordance with the principle of good faith. The modalities of enforcement should be governed by the law of the administering State, but the prisoner should nevertheless benefit from measures such as pardon taken in either of the two States.

14. *Invites* States also to conclude agreements on the supervision of conditionally sentenced or conditionally released offenders.

15. *Expresses* the wish that the application of new forms of cooperation (transfer of prosecution, transfer of prisoners for the enforcement of their sentence, supervision of conditionally sentenced or released persons) not be confined to the nationals of a State but should be extended to persons having their permanent or habitual residence in that State, with a view to facilitating their social resettlement.

16. *Calls* on States not to use these international instruments of transfer of proceedings and of prisoners in cases where the offender might face capital punishment or be confronted with any

other form of cruel, inhuman or degrading treatment. States should, moreover, abstain from using these instruments as a means of disguised extradition.

Conclusions

17. *Considers* it desirable to facilitate mutual assistance, in particular in the new forms, such as transfer of proceedings, enforcement of sentences or supervision of sentenced persons. However, in taking such measures, States must ensure that the interests of the person prosecuted, the rights of defense and the legitimate interests of the victim are not violated.

18. *Proposes* that close cooperation be pursued through the conclusion of agreements at worldwide, regional or bilateral level or by adopting provisions in domestic law offering to other States, where necessary on the condition of reciprocity, special facilities to implement their criminal justice.

19. *Calls* on States to open such regional agreements to countries outside the geographic region and possibly also to groups of States in other regions.

20. *Invites* all States, international organizations, in particular the United Nations, as well as non-governmental organizations to take into consideration these recommendations and to implement their principles.