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STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS
STAGES IN DEVELOPMENT AND INTERPRETATION

Phase I

- 1925 International Penal and Penitentiary Congress in London.
At the first meeting of the International Prison Commission following this, Mr (later Sir Arthur) Waller, then Chairman of the Prison Commission for England and Wales, suggested "a set of general Rules designed to assure suitable treatment for all those who are deprived of their liberty by a decision of the competent judicial authorities in their different countries".
First draft by three British Prison Commissioners: Mr Waller, Lord Polwarth (Chairman of the Prison Commission for Scotland) and Mr Paterson (a Prison Commissioner for England and Wales).
- 1928 At Prague, a sub-committee of the International Prison Commission was appointed, and prepared a new draft, taking account of discussions and suggestions from members of the Commission.
This sub-committee, in addition to Mr Waller and Mr Paterson, included M. Almquist, formerly Director of the Prisons of Sweden; M. Bumke, Director of the Ministry of Justice of the Reich and subsequently President of the Supreme Court; Dr Simon van der Aa, formerly Director General of the Prison Administration of Holland and Professor of Penal Law at the University of Groningen.
- 1929 Rules submitted to the governments of States represented on the Commission, and subsequently published. Copy sent to the League of Nations.
- 1930 Prague Congress. The President, Dr Bumke, announced that the Rules had been favourably received by governments and that the Council of the League of Nations had requested the Secretary General to get in touch with the Commission.

Phase II

- 1930 Eleventh Assembly of the League of Nations decided to submit the Rules for examination to
- a) Governments of the States Members and Non-Members of the League.
 - b) Institutions attached to the League, International Labour Office, Economic Committee, Health Committee and Commission for the Protection of Children and Young People.

- c) Certain private international organisations (Howard League for Penal Reform, International Association of Criminal Law, International Union of Criminal Law).

Replies were received from 41 governments, from all parts of the world and in different stages of development. It is notable that Russia did not reply, but China did.

On the whole, governments approved of the Rules and claimed to have implemented many of them or to be planning to do so. (This included some governments not represented on the Commission.)

The International Labour Office was prominent in suggesting revisions.

It was the organisations of the League and the voluntary organisations, rather than governments, that made most of the observations and criticisms.

- 1931 Twelfth Assembly of League of Nations sent replies and observations to the IPPC with a request that they be considered.
- 1932-3 IPPC followed a similar procedure to that followed in drawing up the Rules originally, reappointing the Subcommittee which prepared the revised draft on the basis of the comments received.
- 1933 In submitting the draft to the League and recommending its adoption, the IPPC commented that it did not "lose sight of the fact that the economic crisis which is raging everywhere at the present time may make it difficult for all the rules to be carried out in full: but it is the opinion that they may serve as a guide and ventures to express the belief that circumstances will gradually permit of their being more completely applied."
- The IPPC also referred to the suggestion that the Rules might constitute a suitable basis for a general convention between States on the treatment of prisoners.
- 1933-4 The League referred the revised Rules to governments, requesting them to state "whether, in view of their existing or proposed laws and regulations, they are in a position to consider the approval and practical application of these rules, in whole or in part".

Response was generally favourable.

- 1934 Assembly of the League of Nations: - Question of whether the Rules should be
- a) embodied in an international convention, or
 - b) approved in a resolution inviting States to adapt their systems to the rules.

The second course was chosen, as it was thought that it would be easier to achieve a convention when a large number of States had brought their systems into harmony with the rules.

The resolution adopted by the Assembly of the League stated that the Rules constituted "a minimum below which no State's penitentiary system should fall", and recommended governments to adapt their systems accordingly.

It also instructed the Secretary-General

- a) To ask governments to communicate, if possible annually, their experience in applying the Rules or in any other prison reforms;
- b) to report on these questions to the Assembly of the League and to the IFPC.

Phase III

- 1935 Assembly of the League of Nations
- Resolved that "persons deprived of their liberty, and whatever the form of their detention, should not be subject to treatment inconsistent with the Standard Minimum Rules for the Treatment of Prisoners.

Instructed the Secretary-General

- a) to request governments to give the Rules all possible publicity;
- b) to draw their attention to the "alleged existence in various parts of the world of various reprehensible practices which are not only inconsistent with the Standard Minimum Rules, but are also contrary to the principles of rational treatment of prisoners", and to convey the hope that such practices would be abandoned.

The practices referred to included:

- a) Depriving prisoners of the opportunity to practice their religions.
- b) The use of violence or other physical constraints, either in police cells, prisons or other places of detention, with a view to extorting confession or evidence.
- c) The employment of prisoners in something like slave-gangs.
- d) Protracted underfeeding, threatening health or life.
- e) Detention of women in prison without the supervision of women officers.

[The proceedings at this Assembly seem to express the first response to the retrograde movement in the treatment of prisoners, leading up to concentration camps, torture, etc.

It is in sharp contrast to the optimism which, in spite of the depression, accompanied the introduction of the Rules.]

- 1946 IPFC, on the proposal of the Polish delegation, supported by those of Czechoslovakia and Holland, passed a resolution affirming that the Standard Minimum Rules, as drafted before the second world war, were a minimum to be observed by every civilised country, and expressing the conviction that "the failure to observe in substance these rules constitutes an outrage to the rights of humanity".

~~Part IV~~

Phase IV

- 1948 Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations.

- 1949 (August). The first international group of experts in the field of crime and its prevention convened by the United Nations recommended that the Social Commission should undertake revision of the Rules, after consulting:

The Commission on Human Rights,
The governments,
Interested organisations.

This group of experts envisaged the preparation of an international agreement on the Rules which would be submitted for approval to the U.N.

- 1949 (August). International Penal and Penitentiary Commission simultaneously adopted a resolution undertaking the revision of the Rules (because of progress in the penitentiary field over the past 20 years). Resolved also to submit the revised Rules to the United Nations.

- 1949 (December). Social Commission of U.N. approved in principle the revision of the Rules and endorsed the idea of an international agreement.

- 1950 (February) Economic and Social Council of U.N. endorsed this decision.
- 1950 (July) Secretary General of the U.N. circulated ~~x~~ ~~x~~ a questionnaire prepared by the I.P.P.C., as a basis for revision of the Rules, to
- a) Governments,
 - b) The specialised agencies (World Health Organisation, International Labour Office, UNESCO).
- Replies transmitted to the I.P.P.C.
- 1951 Revised draft of the Rules approved by the I.P.P.C. at its last session.
- This draft transmitted to the United Nations. (Revised draft published in I.P.P.C. Bulletin, 'Select Papers on Penal and Penitentiary Affairs', vol. XV, No. 411, Nov. 51.)
- 1951 Draft circulated to
- a) Governments
 - b) Four Regional Consultative Groups in Europe, Latin America, Middle East, Asia and the Far East
 - c) The relevant specialised agencies of the United Nations - World Health Organisation, International Labour Office, UNESCO.
- 1952-54 Each of these groups considered the draft and submitted amendments. Forty countries also replied individually.
- 1953 Ad hoc Advisory Committee of Experts considered a suggestion that the Rules be divided into three:
- a) Generally accepted rules of universal application
 - b) Rules on matters ~~x~~ where differences between countries were purely technical
 - c) Rules which were of purely regional or local application.
- But a Secretariat study of regional replies showed this to be unnecessary, as there were few instances where regional, cultural or administrative differences necessitated special provisions: flexibility was held to be a better solution than groups of rules of varying applicability.

1954-55 Fresh draft of Rules prepared by Secretariat, taking into account amendments suggested whenever it was felt they were acceptable.

Amongst other changes the "General Principles" which had come at the beginning of the 1951 I.P.P.C. draft were moved to the opening of the Section on "Prisoners Under Sentence" in Part II, since they were held to deal with the enforcement of sentences.

1955 The First U.N. Congress on the Prevention of Crime and the Treatment of Offenders (Geneva).

Discussion of the Rules, and further amendments, in Sections and Plenary Sessions.

Subject to these modifications the Rules were adopted unanimously.

(94 Rules, in three Parts: Preliminary observations; Part I: Rules of General Application; Part II: Rules Applicable to Special Categories - A. Prisoners under Sentence; B. Insane and Mentally Abnormal Prisoners; C. Prisoners under Arrest or awaiting Trial; D. Civil Prisoners.)

1957 The Economic and Social Council approved the Rules and invited governments to give favourable consideration to their adoption and application.

It also recommended that the Secretary General of the United Nations should be informed by governments every five years of their progress in applying the Rules.

The Secretariat could then analyse the progress and impediments in implimenting the Rules, and report to the Consultative Group for formulation of recommendations.

1965 The Benelux Penitentiary Commission produced a revision of the Rules "with the purpose of bringing some of the principles contained in the Rules into line with the ideas and methods now prevailing in some developed countries". (For example, they added the alternative of "moral" to references to "religious" instruction or welfare; they explicitly forbade collective punishments; they increased the emphasis on the work of prison staff as "a major social service"; they made explicit reference to pre-release leave as an aid to rehabilitation.)

1965 (December). U.N. Advisory Committee of Experts in the Prevention of Crime and the Treatment of Offenders proposed that the Rules be considered at the session of the United Nations Consultative Group to be held in August 1968.

- 1966 International Covenant on Civil and Political Rights adopted and opened for signature, ratification and accession by the General Assembly. (Note that this does not mean it is yet in force: it does not come into force until thirty-five members of the U.N. have ratified it - Article 49.)
- 1966 (December). U.N. Advisory Committee recommended that the Secretariat should carry out an inquiry on the implementation of the Rules.
- 1967 U.N. Secretary General requested a report from all member States on -
- a) The extent to which the Rules had been incorporated in national legislation
 - b) Progress achieved in implementing the Rules
 - c) Difficulties encountered.
- E
- 1967 (April-May) U.N. Division of Human Rights Seminar in Jamaica on "The effective realisation of Civil and Political Rights at the national level". (ST/TAO/HR/29.)
- ~~1969 (January)~~
- 1968 (March) - Human Rights Year. Paper prepared by the United Nations Institute for Training and Research (A/CONF.32/15) on Acceptance of Human Rights Treaties. (Comments on failures or delays in ratifications, reasons for them, possible ways of reducing them.)
- C
- 1968 (June). U.N. Secretariat produced a Working Paper for the Consultative Group on the Prevention of Crime and the Treatment of Offenders on the implementation of the Rules during the first decade (1957-68).
- They reported general agreement with the spirit and purpose of the rules and the need to implement them, with rehabilitation as a declared objective.
- But the change in penological thought had not always led to a corresponding change in institutional treatment.
- "There is often a lag between governing policy and actual programmes. The scarcity of resources, the weight of correctional tradition, the inheritance of architectural anachronisms and the dearth of qualified personnel combine to frustrate aspirations and to impose inaction."

1968

(August). U.N. Consultative Group on the Prevention of Crime and the Treatment of Offenders recommended that the Secretary-General conduct a study of

a) Measures that could be taken by the U.N. to help ~~xxxx~~ secure fuller implementation of the Rules (including research into implementation so far and help to governments).

b) The need for modify the Rules in the light of recent developments in

- i) protection of human rights
- ii) correctional practice.

There was, however, "no mention for fundamental change of the Rules" - that might jeopardise the authority of the Rules and national legislation to implement them.

c) The need for special rules on certain additional categories of prisoner. [It is not clear whether this refers to additional categories of sentenced prisoners, or to political prisoners, or those detained by courts being involved.

d) The need to extend the Rules to measures other than imprisonment.

e) The possibility of dividing the Rules into two parts

- i) Rules pertaining to fundamental human rights which might be embodied in a convention
- ii) Rules providing guiding principles for treatment.

D

1969

(January) - Report ^{for} of the Commission on Human Rights by Committee appointed "to study the right of everyone to be free from arbitrary arrest, detention and exile". - This is a "study of the right of arrested persons to communicate with those whom it is necessary for them to consult in order to ensure their defence or to protect their essential interests" (E/CN.4/996).

1969

(June). Advisory Committee of Experts met to review arrangements for the Fourth U.N. Congress at Kyoto. It reported -

a) That it was advised that the General Assembly would consider, probably in 1971, the draft principles on freedom from arbitrary arrest and detention, prepared by the Commission on Human Rights. An integral part of this would be a statement that the Standard Minimum Rules should be regarded as the minimum for the treatment of detainees or those arbitrarily arrested.

b) That the time had come to enhance the legal status of the Rules.

- Proposal to divide Rules into two parts and enforce the first by a Convention raises problems:-

- i) The obstacles to enforcement would not be removed by a Convention
- ii) Countries unable to implement unlikely to sign a Convention.

- The U.N. might:

- i) Consider an international covenant, allowing governments to enter reservations
- ii) Develop guidelines for governments
- iii) Improve the machinery for reporting
- iv) Develop some enforcement procedure.

- Difficulties are:

- i) Governments may regard any international supervision as interference in their internal affairs
- ii) Enforcement procedures like those of the European Convention on Human Rights may not be feasible on a broad or international scale.

c) That any machinery designed to secure the implementation of the Rules should consist both of country representatives and of experts.

d) That Congress could not do more than express itself on implementation.

e) That it could be a mistake to invite attention to changes in Rules so soon:

- i) National efforts to implement them might be weakened
- ii) The Rules are already flexible and expressly allow for innovation in the interests of progress.

- On the other hand:

- i) Certain successful innovations reverse certain Rules. Examples: Mixing of juveniles with selected mature offenders;
- ii) Rules on restraint need reviewing in the light of the development of chemical restraints (psychotropic drugs)
- iii) Rules on prison work may also need reviewing, for example to provide for compensation for victims.

f) ~~Rules on~~ Broadening of Rules to include other correctional measures would be justified in view of the blurring of the lives between institutional and other treatment and the new emphasis on a total system of penal services and a treatment continuum.

g) Extension of Rules to other categories of prisoners considered more doubtful, as aim should be rather to exclude some of the categories already included (civil prisoners, debtors).

[Note: this brings up again the uncertain question of what is meant by "categories" in this connection.]

h) In general, it was considered that Congress could initiate, but not conclude, work on the Rules.

1969

Preparatory meetings of experts convened by the U.N. in three of the Regions (Africa, Asia, Latin America).

These discussed the items on the Kyoto agenda, including the Rules.

In all Regions there was agreement that the Rules were relevant.

There were disagreements about whether they should be modified or their scope enlarged.

Failures to implement them more fully were attributed to shortage of resources rather than to cultural differences.

But Latin America emphasised also the legal difficulties arising from an outmoded criminal procedure and penal code.

1970

Professor Jean Dupréel, Secretary-General of the "Fondation Internationale Pénale et Pénitentiaire" suggested that the Rules be revised to distinguish between:

- 1) Those guaranteeing respect for human beings;
- 2) Those giving guidance on effective modern treatment;
- 3) Recommendations as to the application or interpretation of the Rules for those who want to go beyond them.

Such recommendations would be easier to add, and to alter in future, than changes in the Rules themselves.

1967-70

In 1967 the Council of Europe commissioned a sub-committee of the European Committee on Crime Problems to consider a revision of the Rules. The working party consisted of representatives of Austria, Belgium, Britain, Denmark, France and Sweden.

Amongst matters they are likely to put before the Kyoto Congress are:-

1) As regards untried prisoners:

a) The position of those awaiting trial. Too many of them are remanded in custody, and these are often kept under conditions now considered inhumane for sentenced prisoners. They are largely confined to their cells and lack provision for work, education, sport and leisure in association with others.

The sub-committee consider that the principle of separating untried prisoners from those under sentence should be applied in the interests of the untried: whilst they should never be forced to associate with sentenced prisoners, they should be allowed to do so if they wish, subject only to the requirements of security or morality. In particular, they should be able to work under good technical conditions.

b) The sub-committee propose to drop the provision allowing untried prisoners to have their meals brought in at their own expense.

On the other hand they want a clear directive about the quantity, quality, variety and presentation of food for these prisoners, on the basis of modern standards in developed countries.

c) The right to legal advice should be supplemented, where necessary, by the right to an interpreter.

It should be made clear that interviews with a legal adviser should not only be out of hearing of police or prison officials (as already provided) but should not be mechanically recorded.

d) Provision should be made for untried prisoners to receive immediate social help with the family, professional or other problems produced by their arrest.

2) As regards sentences prisoners:

a) Is it desirable to retain the idea (Rule 60) that differences between life in prison and life at liberty should as far as possible be reduced?

The Swedish representative held that this depended on the individual treatment of prisoners. Some need a strongly marked difference between liberty and imprisonment to bring them up against reality.

It is proposed, therefore, that the Rule should read: 'The regime should seek to minimize any differences between prison life and life at liberty which are not justified by the requirements of treatment.'

[Note: This apparently drops the final phrase of Rule 60(1), which indicates that the differences to be minimised are those "which tend to lessen the responsibility of prisoners or the respect due to their dignity as human beings". - I should not have thought that we were so advanced that that phrase was yet expendable. In the anxiety to be exact it is possible to throw out the baby with the bath water. J.K.]

3) As regards prison establishments.

The sub-committee question the preference expressed for small rather than large prisons, especially where open prisons are concerned. Sometimes a large prison is needed to allow sufficient diversity of employment for prisoners.

They propose to alter Rule 63,3, to: "It is desirable that the type, the dimensions, the organisation and the capacity of institutions should be determined essentially in terms of the treatment to be given there."

4) As regards treatment methods.

During their discussions, the sub-committee considered suggestions that the idea of "classification" needs re-thinking, as out of date and in conflict with some modern ideas about treatment, and that prison administrators should be required to use such new techniques as group counselling, psychotherapy and group dynamics.

[Dupré comments that this illustrates the fatal tendency of reformers to put forward suggestions which threaten their character as minimal directive principles. The desire to secure progress and an "equalisation upwards" comes up against the limits originally laid down for the Rules.]

1970

Working Paper prepared by Secretariat for the 1970 Congress under the title "Standard Minimum Rules for the Treatment of Prisoners in the light of recent developments in the correctional field". This discusses:

a) Implementation so far.

b) New developments in treatment which may be relevant to modifications of the Rules:

i) Greater use of alternatives to prison.

The more prison is restricted to the least tractable recidivists, or the most dangerous, the less appropriate becomes the concern of the Rules with open, reformative measures.

With the development of medical and other alternatives, a point may be reached where it is only the politically dangerous who are prisoners.

ii) Blurring of demarcation between prison and outside world.

Prisoners living and working outside prison no longer need some of the provisions and protections included in Part I.

iii) Emphasis on prison as an opportunity for rehabilitation.

Should the Rules contain a specific commitment "to the ideal of reformation, as opposed to deterrence, protection of society, etc." ?

Is it time to seek "an unambiguous statement of policy?"

iv) Emphasis on group, in addition to individual treatment. Do existing Rules hamper this? Should group treatment be explicitly recognised?

v) Extensions of treatment responsibilities to custodial staff. Should this be explicitly encouraged?

vi) Experiments in using ex-offenders in rehabilitation. More experiment needed, but dangers of political exploitation, and guidelines will be required.

vii) New kinds of restraints - chemical, perhaps surgical or electric, perhaps 'depth' psychological. - These may call for new protections of prisoners' rights.

viii) Community involvement. - Need to recognise the possibility of employing prisoners in national development.

ix) Compensation as part of treatment.

x) Application of 'systems analysis' and 'cost benefit' calculations to penal systems. [This, in particular, is relevant to the argument that further attempts should be made to clarify the objectives of penal systems.]

xi) Possible addition of a Rule enjoining research. But this would need to give guidance on trends of research, and be open to review.

c) Possibility of dividing the Rules between:-

i) Fundamental: "the basic unchangeable core"

ii) Non-Fundamental: "the variable or more pliant sections"

iii) possibly a third category of "annotations, commentaries and guidelines on the Rules for those who need to deal with them".

On the general question of division, the point is made that long term studies would be required by working groups authorised to attempt such a division, and that there should be a period during which their results could be criticised by experts.

d) Legal status of the Rules -

- i) At the local, national level (by national legislation or regulation)
- ii) At the international level (by convention, covenant or other means).

Question raised of whether the embodiment of Rules in a convention will encourage or discourage their legal and practical implementation at the national level.

"Municipal court enforcement of international conventions in human rights, whether for prisoners or unconvicted persons, would appear to present no insurmountable problems, but it is a very delicate procedure which has yet to be developed ..."

However, "the weight of opinion so far appears to favour a strengthening of the international status of the Rules."

e) Relevance of the Rules. - Cultural considerations do not appear a serious obstacle. Although the original Rules were drafted largely in a European context the Regional Meetings in Africa, Asia, Latin America in 1969 and 70 confirmed this. (More scientific study might, however, bring the question up again later.)

f) Extension to other categories. [This is still a bit confusing. J.K.]

- i) Should Rules be extended to people in any kind of custody? (i.e. presumably to those detained administratively, or in detention camps, etc. rather than prisons).
- ii) Should there be a special category for 'those detained for political reasons'? - This suggested by the Latin Americans.

But it apparently fails to distinguish between political prisoners sent to prison after trial by courts and those administratively detained outside the prison system.

- iii) Quite another issue seems to be that of the "category" of prisoners in half-way houses, on work-release, or employed in outside agricultural or industrial projects.
- iv) Special consideration may be needed of the category of prisoners on parole.
- v) ~~Th~~ The point is made that the general part of the Rules already applies to all categories of prisoners, including the 'untried'.

To extend them to all in custody would mean including anyone under restraint, including certified mental patients or those isolated for health reasons, including the aged or children.

[This sounds a very good idea - a difficulty is that it goes beyond the scope of 'offenders', or even of political dangerousness. J.K.]

g) Extension to other kinds of treatment.

Difference of opinion:-

- i) Keep the Rules as they stand, but modify to give a general part, covering all persons under restraint and special parts covering special forms of custody and of treatment - Need of care in altering Rules already so carefully worded, or
- ii) Rules should be extended to ~~xx~~ cover all and to take account of special groups. This might include probationers, those subject to suspended sentence, those on bail, juveniles held 'in care' without being technically offenders.

It is argued that this would:-

Recognise and encourage the development of alternatives to imprisonment;

Cater for those denied the protection accorded to the formally convicted.

h) Problems of extension.

- i) Might be over-ambitious, increasing the problems of getting the Rules implemented.
- ii) Existing Rules have not yet been 'digested'.
- iii) Change so soon might convey the impression of impermanence and uncertainty.
- iv) Extension to new categories would make it harder to get basic rules accepted.
 - Conditions needed differ widely with age, so that inclusion of young complicates matters.
 - The question of political prisoners is particularly sensitive.
- v) It would not be possible simply to extend the existing Rules to all under restraint. - Manu clauses would not apply.
- vi) Protection of the civil rights and interests of those under restraint cannot go far beyond that accorded to free people in the particular country. (Health and education standards laid down for prisoners are already higher than those outside in some countries.)

i) Re-arrangement of the Rules - Agreed to be necessary:-

- i) to facilitate reporting on progress
- ii) to facilitate research
- iii) to avoid duplication and overlap by bringing Rules on similar topics together. (Examples - references to medical services, rules 22-26, 52 and 62.)
- iv) Might be grouped to show stages a prisoner goes through, from arrest to release.

Also terminology sometimes old-fashioned [and inexact from the research point of view].

j) Future of the Rules.

- i) In some areas implementation hitherto held back by obsolete legislation and inflexible judicial and administrative systems. But there is already pressure in some countries to reduce the lag.

- ii) In other areas move towards treatment of some kinds of behaviour as medical and social, rather than legal problems. These may call for more advanced standards in Rules.
- iii) Hence a possible clash in future between what is demanded by the most 'progressive' and what is acceptable to those anxious to keep the law in line with established ideas and values.
- iv) In some respects the developing countries may have indigenous institutions (like compensation) which are only just being re-discovered by the developed nations.
 - Yet they are spending large sums on expensive maximum security institutions just when the developed countries are trying to find alternatives.
- v) The development of alternatives holds out hope of less crowded institutions and a better prospect of implementing the Rules.
 - [This seems to ignore the pace of growth of crime. We have taken alternatives to imprisonment a long way - 90% of indictables not imprisoned - yet prison populations still rising and serious overcrowding. J.K.]
 - k) Should work be concentrated on securing the implementation of the Rules rather than their revision?
 - i) By more regular requests for reporting?
 - ii) By making the Rules into a Convention?
 - iii) By seeking endorsement of the U.N. General Assembly?