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Edward R. Finch Jr.

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Forgotten Prisoners[†]

The recent Tombs prison riots in New York City high-light the population pressure on prisons due to the fast rising world crime incidence. The United States and New York City are no exception to a prison-crowding problem that exists worldwide¹ today, and will be worse tomorrow.²

People look to their local police and government at various levels for the answer.³ But how many people—or even prisoners—realize that it is the United Nations—on an international basis—which is trying to make sure that there are no forgotten prisoners in the crowded jails?

The United Nations, by Resolution 415(v) in 1950, provided for the convening every five years of International Congresses on the Prevention of Crime and Treatment of Offenders. On August 30, 1955, the United Nations adopted, by Resolution for all nations and all civilian prisoners, the "Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations."⁴

These are not yet law, nor official regulation. They are United Nations guidelines and standard minimums, no more and no less, no matter what they be called in any language. They apply to young and old prisoners,

Princeton University 1941 graduate in Political Science, with Atwater prize honors; holder of two Doctor of Law degrees; graduate of the Industrial War College, Air War College, National War College and the Judge Advocate Generals School, the University of Virginia; and formerly Chief, International Statistics Branch in the Pentagon, and also worked for the Combined Chiefs of Staff in World War II. He has lectured and written for professional publications and is President of three foundations. He was advisor and US Delegate to Fourth U.N. Congress in Kyoto, Japan, 1970, on crime by appointment of President Nixon.

[†]This article is presented by the author in his individual capacity and not as representing the U.S. Government or any agency thereof.

¹Report submitted by the International Commission of Jurists—UN 10 June 1970, A/CONF/43/NGO/4, Fourth UN Congress on Prevention of Crime and Treatment of Offenders.

²Law Enforcement Assistance Administration - Fiscal Year 1970 Report, Pages 1-3.

³The National Council on Crime and Delinquency, 44 East 23 Street, New York City, "How NCCD Serves the Nation"—Memorandum to US Delegates and Participants, July 1970—Milton G. Rector, Esq., Executive Director.

⁴UN Dept. of Economic & Social Affairs, "Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations," August 30, 1955, Adopted. *See also* UN Publ. Sales No. 1956, IV 4.

tried or convicted, civil or criminal. They do not conflict with the Geneva Convention, which applies only to military service prisoners.⁵

Should the Standard Minimums be raised to the status of full international law by a new Standard Minimums Convention or Treaty through United Nations procedures? The USSR⁶ indicated its answer at the Fourth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Kyoto, in August 1970, with a limited "yes" via an international declaration.

The United States supported the establishment of an implementing working party. The United States desires first a new United Nations Resolution comprising an international declaration of the rights of persons detained or confined. Thereafter, the United States position was to work in the direction of an international convention. Responses of other nations and non-governmental organizations at the Fourth UN Congress on the Prevention of Crime varied from "yes" to "no." Fortunately, however, the majority response was "yes," with various useful intermediate suggestions. Though the wheels grind slowly on the international level,⁷ there is now clear progress via the United Nations towards a Standard Minimums Convention on Prisoners.⁸

India would require that a copy of the Standard Minimum Rules for Treatment of Prisoners and Related Recommendations, or a similar publication, be given to every prisoner; others would require that they be posted in every prison warden's office. There are many other excellent suggestions⁹ to keep the forgotten prisoner's human rights and dignity at the forefront, even though he be a condemned man.

In 1970, the United Nations Congress focused on crime and delinquency, not merely as a problem of behavior or law enforcement. There were four major topics under consideration by the eighty-four nations represented at the Kyoto International Congress Hall. These were: 1) Social Defense Policies in Relation to Development and Planning; 2) Participation of the Public in the Prevention and Control of Crime and Delinquency; 3) Standard Minimum Rules for the Treatment of Prisoners in Light of Recent Developments in the Correctional Field; 4) Organization of Research for Policy Development in Social Defense. Official reports and documents were simultaneously interpreted in four languages: English, French, Russian and Spanish. The Soviet Delegation was headed

⁵ Geneva Convention of August 12, 1949, covers all military prisoners.

⁶ N.Y. Times—Wed., Sept. 2, 1970, "Soviet Ministry of Justice Restored in Fight on Crime," Special to N.Y. Times by Bernard Guertzman.

⁷ International Review of Criminal Policy 1968, No. 26, United Nations (Devoted to the Implementation of the Standard Minimum Rules for the Treatment of Prisoners).

⁸ International Review of Criminal Policy 1969, No. 27, United Nations.

⁹ Fourth UN Congress on Prevention of Crime and Treatment of Offenders. UN Gen'l. Assembly, 26 June 1970, A/CONF.43/INF.3.

by Deputy Minister B. A. Victorov and the US Delegation by the Hon. Roger J. Traynor, former Chief Justice of California, in the absence of Chief Justice Warren E. Burger.¹⁰

The existing UN Standard Minimum Rules for the Treatment of Prisoners can be summarized on two basic policy grounds. The first is the safeguarding of human rights and dignity in case of imprisonment. The second is the promotion of fair corrective treatment and modern rehabilitation and parole practices, based on progressive principles of correctional practice while still maintaining a fair balance between basic human rights and corrective treatment.

In many countries the effect of a legal conviction and prison sentence is not defined in law¹¹ and there exists a special need for a formal treaty or convention to protect the rights of prisoners. The Standard Minimum Rules have stood the test of time for over fifteen years, and have proved to be workable guidelines. Over twenty international conventions touching upon different areas of human rights to varying degrees presently exist between the various Government members of the United Nations. While these do not speak explicitly to the treatment of criminal offenders, they do need to be clarified on this subject by a Standard Minimum Rules Convention for the Treatment of Prisoners and Related Recommendations.¹² The obligation of a society to guarantee the rights of the imprisoned individual would be reinforced by a Standard Minimum Rules Convention.

Political prisoners, which skyjackers often claim to be, are clearly covered by the UN Standard Minimum Rules now existing. However, they are in a real sense untried prisoners. The United Nations therefore adopted, in 1969, a separate resolution treating the prosecution of skyjackers.¹³ Due to the special nature of that serious international criminal problem, most agree that captured offenders should be returned to their country of origin or nationality for trial.

Majority consensus is in favor of special treatment for young offenders,¹⁴ whether for narcotics violations or other offenses, to prevent recidivism, which would only put further pressures on the now overcrowded jails.

¹⁰Letter of Chief Justice Warren E. Burger to the Author, dated July 22, 1970.

¹¹Origin and History of International Bar Assn.—1970; and Final Report of Fourth UN Congress, U.S. Bureau of Prisons (Provisional).

¹²Letter of Author, dated July 22, 1970, to Hon. H. G. Moeller, Dept. of Justice, Bureau of Prisons, and Technical Secretary of US Delegation to Fourth UN Congress in Kyoto, Japan, August 1970.

¹³UN Resolution "Forceable Diversion of Civil Aircraft in Flight"—24th Session Gen. Assembly, Supplement No. 30, A/7630. *See also* ICAO Legal Subcommittee Report June-July 1970.

¹⁴Report Submitted by the International Union for Child Welfare—UN General Assembly—A/CONF.43/NGO/2 dated 12 May 1970.

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Most agree that the process of treatment and rehabilitation, both inside and outside of prisons, must be continuously modernized, developed, and improved to the fullest extent of the economic and physical resources of each country.

More trained personnel are needed for this work, as well as better public participation in the prevention and control of crime and delinquency.

Most agree also that long delays in prison awaiting trial or administrative disposition, are highly unjust and undesirable. Modern business techniques applied to court congestion where it exists, elimination of antiquated jails, antiquated procedures in prisons, and elimination of delays in prison awaiting trial, are all necessary in an effort to comply with the Standard Minimum Rules.

Majority opinion also strongly favors the implementation of Rule 6(1) of the Standard Minimum Rules, and agrees that it should have very high consideration by all nations for all mankind, in order to eliminate world-wide discrimination in prisons on account of "race, color, sex, language, religion, political or other opinion . . ." (Rule 6(1)).¹⁵

Majority opinion agreed that reasonable, dignified, and useful work, looking towards a prisoners rehabilitation, parole, and reintegration into the society of his nation, to prevent recidivism, is most desirable.

Upon the initial suggestion of Chief Justice Traynor, it was the general consensus of many members of the US Delegation, and of US representatives of non-governmental agencies that the Standard Minimum Rules as now existing should be referred to the Commissioners on Uniform Laws of the American Bar Association, as a possible project in the interests of criminal law and justice for all prisoners in the fifty states of the USA.

The Fourth UN Congress clearly advanced law-and-order policy on the key matters of justice and civil imprisonment, under continuing United Nations leadership. In the year 1970, the United Nations focused its attention and efforts on the forgotten prisoners. Real progress was made. It made a significant contribution to world law and order—on the key issues of justice, imprisonment, treatment and rehabilitation. Perhaps in the 1970 Congress, the groundwork was laid for a new international treaty for all nations for "Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations.

¹⁵ Speech of Federal Judge A. Leon Higginbotham, Jr., US Delegate at Fourth UN Congress, Kyoto, Japan, 19 August 1970. Statement distributed at UN Congress.