TWELFTH

INTERNATIONAL PENAL AND PENITENTIARY CONGRESS

THE HAGUE, AUGUST 14-19, 1950

PROCEEDINGS

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SECRETARY-GENERAL OF THE INTERNATIONAL PENAL AND PENITENTIARY COMMISSION

VOLUME II

THE RECORD OF THE MEETINGS

BERN

INTERNATIONAL PENAL AND PENITENTIARY COMMISSION

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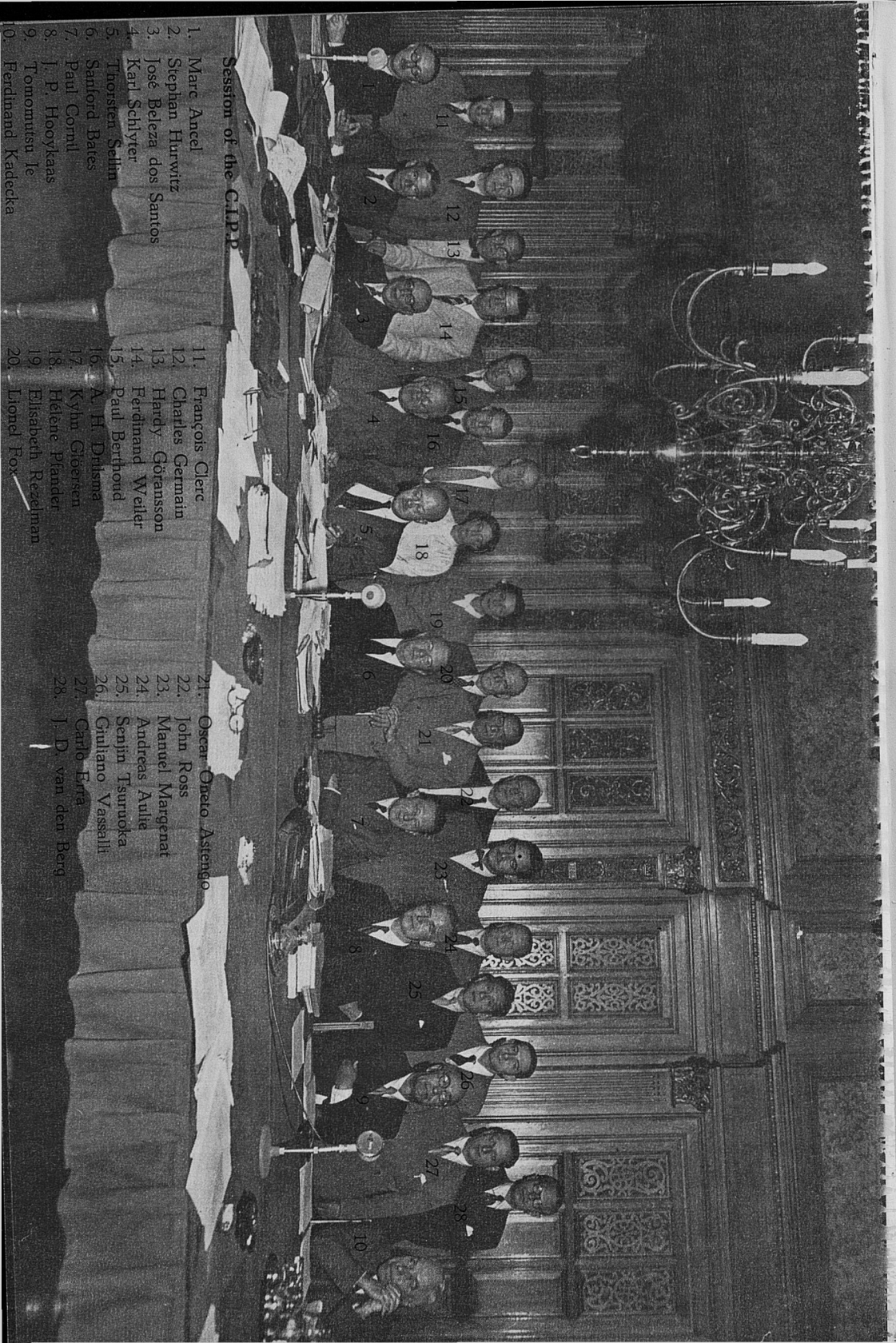

Session of the C.I.P.P.

1. Marc Ancel
2. Stephan Hurwitz
3. José Beleza dos Santos
4. Karl Schlyter
5. Thorsten Sellin
6. Sanford Bates
7. Paul Cornil
8. J. P. Hooykaas
9. Tomomutsu Ie
10. Ferdinand Kadecka
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21. Oscar Oneto Astengo
22. John Ross
23. Manuel Margenat
24. Andreas Aulie
25. Senjin Tsuruoka
26. Giuliano Vassalli
27. Carlo Erra
28. J. D. van der Berg

Administration des Prisons - La Haye
Administration of Prisons - The Hague

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PREFACE

This book records the work of the Twelfth International Penal and Penitentiary Congress, held at The Hague, August 14–19, 1950, by the International Penal and Penitentiary Commission.

The historical significance of the convention was not lost on its participants, for they knew that it was the last of a distinguished series, the final great international congress convoked by the Commission, which as a result of an agreement reached with the United Nations will terminate its existence in 1951.

We need not give any details about the Hague Congress here, for they are contained in subsequent pages, but it may be of interest to hark back to the first congress held in London in 1872 and briefly examine its organization and the problems discussed so that the reader of the present proceedings may note the differences as well as the similarities of these meetings held nearly eighty years apart.

The London Congress was due to American initiative. Its prime mover was Dr. Enoch C. Wines, secretary of the Prison Association of New York, and it was proposed by the American government. It was held July 3–14, 1872, under the chairmanship of Lord Carnarvon and was attended by 339 persons, 193 of them from Great Britain, 81 from the United States and 65 from other countries. Twenty-two states were represented by official delegates, including every European nation but Portugal, the United States, Mexico, Brazil and Chili.

During the first six days the London Congress was divided into three sections, which respectively considered questions relating to the prisoner before conviction, the convicted and imprisoned offender, and the discharged prisoner. The last two days, however, two sections, one French-speaking and the other English-speaking,

met to examine the penitentiary systems of the different countries, having previously been provided with extensive reports, from twenty countries or states. Twenty-eight papers were presented, but only a few of them were actually read to the assemblies.

During the first six days twenty-six questions were discussed, sometimes at considerable length. Among them, we notice several which in substance were also on the programme of the Hague Congress; I have indicated the section and question numbers of the Hague programme. In 1872, they had the following wording: Ought classification of prisoners according to character to be considered as the principal basis of any penitentiary system? (I, 3) Is it possible to replace short imprisonment and the non-payment of fines by forced labour, without privation of liberty? (III, 1) Should prison labour be merely penal or should it be industrial? (II, 3) What is the treatment likely to be most effective for the reformation of juvenile offenders? (IV, 1) Ought the punishment of privation of liberty (imprisonment *in genere*) to be uniform in nature and differing only in length, or ought several kinds, differing in denomination and discipline, to be admitted? (II, 2) What is the best mode of giving remission of sentences and regulating conditional discharges? (III, 2) Is the supervision of discharged prisoners desirable? If so what are the most efficient means of accomplishing it? (III, 2)

In addition, the London Congress discussed the problem of how large prisons should be; the kind and limit of teaching in the reformatory treatment of prisoners; training schools for prison officers; custodia honesta; international prison statistics; how to deal with receivers of stolen goods, referred to as "criminal capitalists"; whether life imprisonment should be retained as a form of punishment and what should be the maximum length of imprisonment; the treatment of prisoners before conviction; aid to discharged prisoners; the centralization of prison administrations; corporal punishment in prisons; and a few other topics.

In their desire to improve the treatment of offenders the congressists of 1872 were not inferior to those who met at The Hague. Many of them held views that would not have been out of place in that assembly. Nevertheless, the comparative study of these

proceedings eighty years apart shows the strides in thinking which we have made in penology. They reflect the same spirit and sometimes differ only in the choice of terminology, but penologists of to-day have profited by the advances made in the behaviour sciences in recent decades.

The London Congress passed no detailed resolutions, but a committee drafted a general resolution which was adopted. The essential part of this resolution is reproduced here.

"The Committee did not think it advisable that votes should be taken on the matters of opinion which were discussed in the Sections. Such votes could have represented nothing but the personal views of those who happened to be present at any given moment in a fluctuating assembly, largely composed of irresponsible persons, who might or might not have had any real knowledge of the question under discussion. But it had from the first resolved that it would endeavour to formulate in this report the prevalent views enunciated in the Congress, to express the spirit of the meeting, not on matters of detail, but as to some of those leading principles which lie at the root of a sound prison discipline, and which must animate any system, whatever its nature, which is effective for the reformation of the prisoner and the consequent repression of crime.

Recognizing as the fundamental fact that the protection of society is the object for which penal codes exist and the treatment of criminals is devised, the Committee believes that this protection is not only consistent with, but absolutely demands, the enunciation of the principle that the moral regeneration of the prisoner should be a primary aim of prison discipline. To attain this aim, hope must always be a more powerful agent than fear and hope should therefore be constantly sustained in the minds of prisoners by a system of rewards for good conduct and industry, whether in the shape of a diminution of sentence, a participation in earnings, a gradual withdrawal of restraint, or an enlargement of privilege. A progressive classification of prisoners should, in the opinion of the Committee, be adopted in all prisons.

In the treatment of criminals, all disciplinary punishments that inflict unnecessary pain or humiliation should be abolished; and the penalties for prison offences should, so far as possible, be the diminution of ordinary comforts, the forfeiture of some privilege, or of a part of the progress made towards liberation. Moral forces and motives should, in fact, be relied on, so far as is consistent with the due maintenance of discipline; and physical force should be employed only in the last extremity. But in saying this, the Committee is not advocating unsuitable indulgence, which it believes to be as pernicious as undue severity. The true principle is to place the prisoner — who must be taught that he has sinned against society, and owes reparation — in a position of stern adversity, from which he must work his own way out by his own exertions. To impel a prisoner to this self-exertion should be the aim of a system of prison discipline, which can never be truly reformatory, unless it succeeds in gaining the will of

the convict. Prisoners do not cease to be men when they enter the prison walls, and they are still swayed by human motives and interests. They must, therefore, be dealt with as men – that is, as beings who possess moral and spiritual impulses as well as bodily wants.

Of all reformatory agencies religion is first in importance, because it is the most powerful in its action upon the human heart and life. Education has also a vital effect on moral improvement, and should constitute an integral part of any prison system. Steady, active and useful labour is the basis of a sound discipline, and at once the means and test of reformation. Work, education, and religion are consequently the three great forces on which prison administrators should rely. But to carry out these principles individualization becomes essential; prisoners, like other men, must be treated personally, and with a view to the peculiar circumstances and mental organization of each. The Committee need not say that to carry out such views prison officers are required who believe in the capacity of prisoners for reformation, and enter heartily into that work. They should, as far as possible, receive a special training for their duties, and should be organized in such a gradation of rank, responsibility, and emolument as may retain experience and efficiency in the service and lead to the promotion of the most deserving.

But if a sound system of prison discipline be desirable, it is no less expedient that the prisoner on his discharge should be systematically aided to obtain employment, and to return permanently to the ranks of honest and productive industry. For this purpose a more comprehensive system than has yet been brought to bear seems to be desirable.

Nor can the Committee omit to say that it is in the field of preventive agencies, such as general education, the establishment of industrial and ragged schools, and of other institutions designed to save children not yet criminal, but in danger of becoming so, that the battle against crime is in a great degree to be won. In this, as in the general question of the reclamation of the guilty and erring, the influence of women devoted to such work is of the highest importance; and the Committee rejoices that this Congress has had the advantage of the presence and counsel of many ladies whose practical acquaintance with prisons and reformatories has given weight to their words, and whose example furnishes hope for the future.

Lastly, the Committee is convinced that the systems of criminal statistics now in force stand in urgent need of revision. Greater uniformity should be secured, and means taken to ensure a higher standard of accuracy and trustworthiness in this branch of the statistics of different countries.

For this purpose, the Committee has taken upon itself to appoint a permanent international Committee to communicate with the various Governments, and to draw up a uniform scheme of action."

The Hague Congress was the first held after the second world war. After the Congress of 1935 in Berlin, the International Penal and Penitentiary Commission accepted the invitation of the Government

of Italy to hold its twelfth Congress in Rome in 1940. At that time the Government of the Netherlands had indicated its desire to be the host of the thirteenth Congress planned for 1945. The war interrupted these plans, but in 1948 the Commission accepted an official invitation to meet at The Hague.

At the same time it accepted an invitation from the Belgian Government to bring official delegates to the Congress on a two-day tour of Belgian institutions immediately after the Hague sessions.

The work programme of the Congress was set up by the Commission, which selected the questions to be discussed, the subjects of the special lectures, and the persons to be invited to prepare reports. The Secretariat of the Commission secured a total of 134 reports from experts in 16 countries. These reports as well as the 12 general reports on the discussion topics were printed and distributed before the Congress opened. The national reports were submitted in either French or English and furnished with summaries in the other language; the general reports were printed in both languages. All these reports will be found in volumes III–VI of these proceedings.

The printing of the reports as well as of these proceedings has been done in the prisons of Leeuwarden and Groningen (except for a few of the general reports, which were printed by the Government Printers) and under the direction of Mr. H. F. Grondijs, chief of prison industries in the Prison Administration of the Netherlands.

The proceedings of the sections and the general assemblies were recorded with the aid of wire-recorders. Every effort has been made to give an accurate summarization or reproduction of this record in these proceedings, with only such editorial changes as are ordinarily required to improve a translation or to render extemporaneous remarks more fluent. In order to speed publication it has been impossible to submit the edited text to the approval of the speakers; if as a result some minor error has occurred we ask for their tolerant indulgence.

We owe special thanks to Mr. J. P. Hooykaas, member of the Commission, honorary president of the Congress and chairman of the local committee on arrangements, and to Dr. J. D. van den Berg, assistant general secretary of the Congress, for their supervision of the printing of the proceedings. Thanks to their willingness we have been able to include, for the first time, a large number of photographs,

which will be welcomed by all those who participated in the Congress, including a photograph of the International Penal and Penitentiary Commission taken on the occasion of its session immediately preceding the Congress. These visual aids complement those included in the excellent little guide of the Twelfth International Penal and Penitentiary Congress (151 pp. The Hague, 1950) which was distributed to all participants.

THORSTEN SELLIN.

Opening Session
Dr. A.A.M. Struycken
Minister of Justice
delivering the opening address

Opening Session

Monday morning, August 14th, 1950

The opening session of the Congress began at 10 A.M. in the Hall of Knights in the Binnenhof, magnificently decorated and bedecked with flowers for the occasion, where all the plenary sessions of the Congress will be held, the sectional meetings being assigned to other rooms in the Binnenhof. The following persons took their seats on the speakers' platform: His Excellency, Mr. A. A. M. Struycken, Minister of Justice of the Netherlands, Mr. J. P. Hooykaas, Chairman of the local committee of organization of the Congress and Honorary Vice-President of the International Penal and Penitentiary Commission, Mr. Sanford Bates, President, Mr. Karl Schlyter, Vice-President, and Mr. Thorsten Sellin, Secretary-General of the International Penal and Penitentiary Commission.

The brilliance of the assembly of some 450 persons was enhanced by the presence of many members of the diplomatic corps at The Hague, leading judges and high officials of the Courts and the Government of the Netherlands.

Mr. *Bates*, President of the International Penal and Penitentiary Commission, delivered the following address:

Dames en Heren, Mesdames et Messieurs, Ladies and Gentlemen:

It is a high privilege for me, as the president of the International Penal and Penitentiary Commission, to call this 12th International Congress to order. These meetings have been held over a period of 75 years, under the sponsorship of one of the oldest of our international intergovernmental associations: the IPPC. The Congress itself is a separate organization and will be organized in a few moments. The Commission is a permanent association of governmental representatives who meet annually and carry on the work of prison reform throughout the world.

First I desire to acknowledge the great feeling of appreciation that we all have at being invited to meet in this beautiful, peace-loving and historic city of The Hague, in the country of Holland, famous throughout the world for the industry and the patriotism and the courage of its people. We, in America, derive many of our finest virtues from the people of Holland and I think that is true throughout the world.

We are particularly cognizant of the tremendous amount of work that has been done in anticipation of this meeting by the local committee under the leadership of our colleague, Mr. Hooykaas, and his able assistants. Some of us who have been to similar meetings of this sort must agree that never before have we seen such care and thoroughness exhibited in preparation of a meeting.

We, naturally, in these days look to the future with some trepidation; we do not know from one year to the next what there is in store for this world of ours. As changes take place in international relationships it is quite natural and appropriate that changes should take place in our own field and it may be, before the next congress meets, there will be a change in the sponsorship of these meetings. We are coming to understand, although with some difficulty, that we are one world and that while we have different heritages and languages our aims and objects and desires are much the same. And when the UN undertook to bring a greater harmony and a greater understanding throughout the nations of the world, they properly and justifiably became interested in the great social questions of the day. Just as this interest manifested itself in civil rights, and world health, and education, so it became concerned with crime, delinquency and penal reform.

Because questions have been asked by some of you, I might announce that after four years of earnest and protracted discussion the IPPC has decided to integrate its activities with those of UN. We confidently believe that such action will bring about no lessening of interest on the part of the various nations of the world and the professional representatives within those nations. Indeed, we may look forward to an era of greater usefulness in the sphere of international penal science. If we can bring to bear upon the solution of the problem and the implementation of the decisions that we make here, the power and influence of the UN throughout the world, may we not look forward to greater practical accomplishments than we have ever

known? Surely such an influence was never more needed than in this day and generation.

I am not here to make a speech. I am here to perform the opening function of this assembly but I was very kindly allotted a few minutes to make some introductory remarks. You will recall that when the melancholy Dane of Shakespeare was recounting the many things that made calamity of so long life, he included among them "the law's delay, the oppressor's wrong, the proud man's contumely" and the other ills that flesh is heir to. He likewise listed the "spurns which patient merit of the unworthy takes". Those who have clung to the ideals of prison reform throughout the generations know what that means. We know what it is to sacrifice popularity and influence because we choose to espouse the cause of the helpless and the hopeless.

The great Winston Churchill has been quoted throughout the world when he said: "The unfailing test of the civilization of a nation is the attitude that it expresses towards the imprisoned and the convicted". You remember the incident when the old soldier came to Napoleon and tried to convince him that he had done a great service for the country. And Napoleon asked: "What battle have you won, what great heroism have you displayed?" And the old soldier replied: "I have survived". And the fact that through two world-shaking wars, through depressions and periods of anxiety the principle of prison reform and prison improvement has survived and is in vigorous condition is to-day cause for congratulations.

So we need not despair nor need we feel that this action taken by the IPPC is a backward step. Rather can it be regarded as the calling to our aid of stronger allies and greater support.

Many of us may feel discouraged as conditions change in our various governments. We take our setbacks, we take our disappointments and our disillusionments. However, if we only look back far enough, let us say, to the first meeting of this Commission in the late 19th century, we can marvel at the progress that we have made. At least in theory we have abandoned the notion of revenge and retribution and have accepted the sole principle that prisons and reformatories and training schools exist for one purpose and for one purpose only: the protection of society. We are beginning to convince the people through a greater use of organs of communication that that protection is indeed short-lived which is satisfied with merely putting

a man in prison. As our illustrious attorney-general of the United States once said: "They all come out". And the ultimate protection of society depends on *how* they come out.

And so, as we look back over these 75 years we see the progress and development of the principle, the basic principle, of the new penology: the individualization of treatment; that men do not become any the less individual human beings after the sentence is pronounced over them. We have seen develop and progress the theory of classification, the establishment and growth of the so-called open institution, the application of psychiatry and the other learned disciplines to the problem of penology, the great advantages to be gained by group work and self-analysis by the prisoner. We are accustomed in many countries to the utilization of probation and parole and the juvenile court. But all of these modern and new devices have sprung into being since the inception of the IPPC!

And so I bid you a hearty welcome to this important session although I suspect that is more the function of the distinguished citizen of Holland, whom it is now my privilege to introduce. This splendid program which has been prepared for your edification during the week will, I am confident, guide us towards further advance in that slow and painful, but yet encouraging, progress towards the establishment of a sound prison system throughout the world.

It is now my happy privilege to introduce to you one of the foremost representatives of the Dutch Government who has honoured this meeting with his presence, and I may say that between the time when I call him to stand and he actually does stand, the translator will have to make an attempt to give this brief introductory speech in French and I sincerely trust that it will be improved in the process.

I therefore have the honour to present to you His Excellency the Minister of Justice.

(Strong applause)

His Excellency Mr. *Struycken**, [1]) Minister of Justice of the Netherlands, delivered the following address:

Mr. President, Excellencies, Ladies and Gentlemen:

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1) An asterisk after a title or a name indicates that the comments of the speaker have been translated from the French.

It is an especially pleasant privilege for me to bid you, on behalf of the Government of the Netherlands, welcome to this country, this city and these halls that have played so great a rôle in our national history. Begun in the twelfth century by a Count of Holland, named emporer of the Holy Roman Empire, and enlarged under his successors, this building has not only seen, to a large extent within its walls, the drama of the highest judicial functions of these provinces but has participated also in the greatest events in the political history of the Kingdom. The formal opening of the States General by her Majesty the Queen still takes place annually in this hall. By placing these premises at your disposal, the Government has wished to show what a very great value it attaches to the meetings of your Congress.

This Congress continues a tradition of some eighty years as a result of which the international penitentiary congresses are held regularly every five years; this tradition has been broken only by the two world wars. As you already know, the first of these congresses was held in London in 1872. The subsequent congresses were held in Stockholm, Rome, St. Petersburg, Paris, Brussels, Budapest and the eighth of the series, the last congress before the world war, at Washington in 1910. There followed a first interruption of fifteen years due to the first world war. In 1925, the tradition was resumed and the ninth congress was, like the first, held in London. The tenth took place in Prague in 1930 and the eleventh in Berlin in 1935. The plans for a Congress in Rome in 1940 were abandoned following the outbreak of the second world war.

To-day, after another break of exactly fifteen years, the twelfth Congress is being held here at The Hague. The Dutch Government considers it an honour and a privilege to be able to offer hospitality to this Congress. It regards it as a duty to thank, here and now, the Italian, Swiss and Belgian governments who renounced a wish to issue an invitation to this Congress. As you know, the Belgian Government has generously invited the official delegates to the Congress to spend some days in Belgium afterwards. The Belgian Government plans to afford its guests an opportunity to visit a certain number of important penal institutions, and re-educational establishments while at the same time they are given an idea of the beauties of the landscape of that country and a glimpse of the fine historic culture of the old provinces of Belgium. By this invitation, the Belgian Government enhances the brilliance of this Congress and strengthens

the close relations which exist between the two countries. I am very happy to express here, also in the name of the Government of the Netherlands, our gratitude for this gesture.

The problems which, according to the programme, will be submitted for your consideration deal with the most varied aspects of the prison regime as well as with the treatment of juvenile delinquents. Their scrutiny is a part of the continuous tendency of society to adapt its social institutions constantly to the exigencies of the evolution of social life and the gradual development of the ideals of a just society. These problems appeal both to your heart and to your intelligence, ladies and gentlemen. On the one hand it is justice that compels the prison to remain a prison and not become exclusively an institution for social re-education. On the other hand, as individuals animated by love for our fellowmen and as a group moved by social consideration we are obliged not to reject any more but to give aid to those condemned by the criminal law because of their more difficult character, their weak will or unfavourable circumstances or a combination of these factors. Later, we are duty bound to return them to society, when their punishment is over, as fullfledged members of society and as persons who posses selfrespect, insofar as it is possible to do so.

To achieve all this it is necessary to select a penal institution adapted to the personality of the prisoner and a treatment in that institution suited to that personality and it is necessary to classify the prisoner with discernment, problems that will be discussed in the first Section of the Congress. Then, the question arises of knowing whether it is necessary to create open institutions for certain classes of prisoners. The problems of the habitual criminal and of prison labour must be solved. These questions will be treated by the second Section.

Other pressing problems should also be solved: to what degree can short prison sentences be avoided and how can a long sentence be reduced through conditional release? These questions as well as questions touching on the organization of a penal register, will be considered by the third Section. The general aims which we have mentioned also require that attention be paid, last but not least, to the court procedure for juveniles. There is no group of convicted offenders whose chances for reformation should be regarded so favourably as those of children, who because of their age are still

receptive to influences and have not had time to become captives of certain asocial habits. The two questions dealt with by the fourth Section and referring to the jurisdiction and the penal treatment of juveniles do not seem to me to be less attractive than the others. Finally, the fourth Section will also discuss a problem which in a sense encompasses the entire field of the Congress, for instance the penal treatment both of adults and of juveniles; it is contained in the question: Can certain methods developed in the treatment of juvenile delinquents be successfully applied in the treatment of adult offenders?

This rapid survey of the questions that will occupy you shows well enough that your Congress will cover the whole field of penitentiary law and practice. I can therefore refrain from explaining how important the results of your deliberations will be for the governments of the world and to stress how these results may contribute to the maintenance of justice and at the same time to the increase of happiness or perhaps we should say to the decrease of the unhappiness of millions of our fellowmen. It is a grandiose task which awaits you. May it be granted to you to accomplish it for the well-being of society and in this city of our beloved fatherland. It is with feeling that I utter this wish of the Dutch Government: May God bless you, both you and your labours!

(Strong applause)

Mr. *Bates*:

Excellency!

We express to you our sincere gratitude for these warm words of welcome and for your brief preliminary description of the task that awaits us.

Now that we have formally opened this meeting and have heard the address of welcome of His Excellency, the Minister of Justice, it remains to organize the Congress proper. The rôle played by the International Penal and Penitentiary Commission in this connection has been explained. I shall ask a distinguished citizen of Sweden, who has a long and illustrious record of service in that country, Judge Karl Schlyter, Vice-President of the International Penal and Penitentiary Commission, to present some nominations.

Mr. *Schlyter** (Vice-President of the International Penal and Penitentiary Commission):

Ladies and Gentlemen:

As rapporteur for the International Penal and Penitentiary Commission, I have the honour to propose that you now elect the honorary president, the president and the secretary-general of the Congress. In accord with a motion adopted by the International Penal and Penitentiary Commission the offices of honorary president and president shall both be active in character; the first mentioned shall not be honorific only. On the contrary, there will be a division of the activities in such a manner that the honorary president wil occupy the chair at the opening and closing sessions and at the social occasions during the Congress, and the president will occupy the chair during other general assemblies.

Such being the case, the International Penal and Penitentiarv Commission nominates:

For Honorary President of the Congress, Mr. J. P. Hooykaas, Solicitor-General, Supreme Court of the Netherlands, Honorary Councillor, Ministry of Justice, and Honorary Vice-President of the IPPC;

For President of the Congress, Mr. Sanford Bates, Commissioner of the Department of Institutions and Agencies of the State of New Jersey, United States, and President of the IPPC;

For Secretary-General of the Congress, Mr. Thorsten Sellin, Professor of Sociology at the University of Pennsylvania, Philadelphia, United States, and Secretary-General of the IPPC.

The nominations were approved by acclamation.

Mr. *Bates* (President of the Congress):

I have now the great privilege of yielding the presidential chair to the Honorary President of the XIIth International Penal and Penitentiary Congress, our good friend Mr. J. P. Hooykaas.

Mr. *Hooykaas** (Honorary President of the Congress) delivers the following address:

Excellencies, Ladies and Gentlemen:

I am very conscious of the honour you have conferred, not upon me alone but upon my country, in naming me Honorary President of this Congress.

We Dutchmen are extremely happy to be able to receive this XIIth International Penal and Penitentiary Congress in our country. We are proud of this country. Since no doubt you are also proud of your native lands — a great Dutch poet once said: "The love for one's country is in each man innate" — I am sure you will understand and sanction our sentiments in this respect.

It is a very special privilege for us that Her Majesty Queen Juliana and His Highness the Prince of the Netherlands have honoured This Congress by manifesting their intention to receive its officers at the Soestdijk Palace next Thursday afternoon. This invitation evidences the great interest Her Majesty and His Royal Highness have in the penal problems to be discussed during this Congress.

The Local Committee on the Organization of the Congress has arranged the programme in such a way as to give you the opportunity to become acquainted, outside of meeting hours, with the most important aspects of the history, the art and the customs of our country.

His Excellency, the Minister of Justice has already mentioned that the Congress is held in some of the most historic buildings of the country.

At a distance of some two hundred metres from the Congress halls lies the *Mauritshuis*, one of the finest museums in the country, containing principally pictures from the Golden Age in Dutch painting. The building, which is a characteristic sample of 17th century Dutch architecture was constructed by Count Jan Maurits of Nassau, governor of Brazil. In the official Guide of the Congress you will find a reproduction and a short description of two pictures from this museum.

At the request of the Committee, the City Councils of The Hague and Amsterdam have agreed to receive you in the City Museum of The Hague where you will find, besides an interesting exhibit of modern French sculpture, a representative collection of modern Dutch paintings, and in the State Museum in Amsterdam which houses our most handsome 17th century art. At the moment, the latter museum

contains even more treasures than is usual, for it shelters an exhibit of one hundred and twenty of the most famous paintings of the *Kaiser Friedrich Museum* of Berlin.

At the museum in The Hague, the collation will not be served until after the inspection of the art treasures, ideal values taking precedence over material ones. For practical reasons it has not been possible to do the same in Amsterdam. I hope that you will, nevertheless, be able to concentrate on the pictures exhibited, for it is the wish of all Dutchmen that when you depart you will take with you many memories of our country and especially of our national art. In order that these memories may stay alive, some pictures from these museums have also been reproduced in the Congress Guide.

At the request of the mayor of Amsterdam, you can make a trip by boat through the historical canals and ports of that city before the visit to the *Rijksmuseum.* A large number among you will have the occasion to visit our national park *De Hoge Veluwe,* where there is a fine museum of modern art. For the ladies we have organized excursions to Volendam and Marken where they may admire the historic costumes of the country. When the Congress has finished you will all have the possibility, next Saturday afternoon, to get a general perspective, flying over it, of the barrier dyke, initial project in the tremendous draining of the Zuyderzee.

Thus, the Local Committee hopes that it has offered you the opportunity of not only devoting yourselves solely to the activities of the Congress, among which I include also the International Penitentiary Exhibit and the motion picture performance where films will be shown of the penitentiary systems of various countries, but also to collect ineffacable memories of the institutions, art and customs of the Netherlands.

I close by expressing my best wishes for your stay in our country and for the success of the Congress.

(Strong applause)

I have now the honour of proposing that the Assembly elect as vice-presidents of the Congress all the members of the International Penal and Penitentiary Commission, except those who perform other functions as officers of the Congress or its sections, as well as all those

persons who, although not members of the IPPC, are heads of official delegations to the Congress.

I also propose that the Assembly elect as vice-presidents of the Congress:

Mr. J. C. Tenkink, Secretary-General, Ministry of Justice of the Netherlands;

Mr. G. H. A. Feber, Justice of the Supreme Court of the Netherlands and Professor at the University of Amsterdam;

Mr. J. M. van Bemmelen, Professor of Criminal Law and Criminology, University of Leyden;

Count Carton de Wiart, Minister of Justice of Belgium; and Chevalier Braas, Deputy Chancellor, University of Liège".

These proposals were adopted by acclamation.

I have also the honour to propose that you elect as Associate Secretaries-General of the Congress:

Mr. J. D. van den Berg, Deputy President Judge of the Court Martial, The Hague, and a prominent official of the Ministry of Justice of the Netherlands; and

Mr. J. H. J. Schouten, Director, Bureau of Correctional Education, Ministry of Justice of the Netherlands.

These proposals were adopted by acclamation.

I shall call to your attention that the IPPC, in accord with article 10 of the Regulations of the XIIth International Penal and Penitentiary Congress, have named as Section chairmen the following members of the Commission:

Section I:

Mr. Paul Cornil, Secretary-General of the Ministry of Justice of Belgium, Professor of Penal Law at the University of Brussels, Treasurer of the IPPC;

Section II:

Mr. Lionel W. Fox, Chairman of the Prison Commission for England and Wales, Vice-President of the IPPC;

Section III:

Mr. Ernest Lamers, Director-General of the Penal Administration of the Netherlands;

Section IV:

Mr. Andreas Aulie, Attorney-General of the Kingdom of Norway.

(Applause)

These four Section chairmen have in turn appointed three secretaries for their respective sections, one Dutch secretary, one French language and one English language secretary. The following persons have agreed to act as Section secretaries of the Congress:

Section I:

Mr. D. van Eck, Professor of Penal Law at the Catholic University of Nijmegen, Netherlands;

Miss Yvonne Marx, Research Assistant, National Centre of Scientific Research, Assistant, Institute of Comparative Law, Paris, France;

Miss Dorothy Shipman, Company Director, London, United Kingdom.

Section II:

Mr. W. Nagel, Assistant Director, Research and Documentation Centre, Prison Administration of the Netherlands; Lecturer, University of Leyden, Netherlands;

Mr. Charles Gilliéron, Chief, Bureau of Corrections, Canton of Vaud; Lecturer, University of Lausanne, Switzerland;

Mr. Hugh J. Klare, Secretary-Elect, Howard League for Penal Reform, London, United Kingdom.

Section III:

Mr. A. D. Belinfante, Counsellor, Ministry of Justice of the Netherlands, The Hague, Netherlands;

Mr. Henri Mathieu, Director, Division of Pardons and Parole, Ministry of Justice of Belgium, Brussels, Belgium;

Mr. Walter Reckless, Professor of Sociology, State University of Ohio, United States.

Section IV:

Miss T. E. W. Lignac, Inspector of Police of the Netherlands, The Hague, Netherlands;

Mr. Maurice de Cnyf, Judge attached to the Office of Child Welfare, Ministry of Justice of Belgium, Brussels, Belgium;

Mr. Peter Lejins, Professor of Sociology and Criminology, University of Maryland, United States.

I have now the honour to present the Secretary-General of the Congress who has some important notices of a practical nature to communicate to you.

Mr. *Sellin* (Secretary-General of the Congress):

I am most grateful for the honour you have bestowed upon me. I shall do my best.

I have received a telegramme from the School of Criminology of Louvain which reads: "Best wishes, School of Louvain, represented by Professor Declercq. Signed: De Greeff, President".

May I call your attention to the fact that the lecture scheduled for to-morrow morning at 9 o'clock on *The problem of applied penal law in the light of new relevant tendencies* will be delivered by Mr. Paul Cornil, Professor of Criminal Law, University of Brussels, Secretary-General of the Ministry of Justice of Belgium and Treasurer of the IPPC. This lecture will be given in French.

Since Mr. Rappaport, President Justice of the Supreme Court of Poland, has been prevented by his official duties to attend the Congress, his lecture scheduled for Wednesday morning at 9 o'clock will not take place. I am happy to announce that Mr. J. V. Bennett, Director, Bureau of Prisons, United States Department of Justice, has just agreed to give, at the same hour, a lecture in English on *The organization and problems of the federal prison system in the United States.*

The third lecture, scheduled for Friday morning on the subject of *What measures would best replace punishment so as to comply with the requirements of a human system of social defence?* will be given in French by Mr. Marc Ancel, Judge, Court of Appeals, Paris; Secretary-General of the Institute of Comparative Law, University of Paris, and member of the IPPC.

Last year there was published, with the financial assistance of the IPPC, a book which traces the history of the international congresses held by the Commission beginning in 1872. This book was written by Professor Negley K. Teeters of Temple University, Philadelphia. We have procured a considerable number of copies of this work. They are for sale in the large room in the cellar, facing the travel booth, at a price of fl. 9.50 or $ 2.50 per copy. We hope that many members of the Congress will want to procure this book.

Mr. Sellin added some notices concerning the Belgian Tours of the Congress and various receptions and excursions.

Mr. *Hooykaas**:

I thank the Secretary-General very much. I thank all of you who have participated in this session for having been here and declare the Opening Session of the XIIth International Penal and Penitentiary Congress adjourned.

Section I in session

Section I

Chairman: Mr. PAUL CORNIL (Belgium)

Secretaries: Mr. D. VAN ECK (Pays-Bas)
Miss YVONNE MARX (France)
Miss DOROTHY M. SHIPMAN (United Kingdom)

Afternoon Meeting of Monday, August 14th, 1950

The *Chairman** [1]) opened the meeting at 2.35 P.M. He stated that the Section should discuss three important questions but that the time allotted was short. Therefore he asked the speakers to limit their interventions to ten minutes.

The Section began to examine the first question of its programme:

Is a pre-sentence examination of the offender advisable so as to assist the judge in choosing the method of treatment appropriate to the needs of the individual offender?

Mr. *Glueck* (USA), general rapporteur, in view of the fact that his printed general report [2]) was distributed only late last night and could not have been read since, asked for a little more than the ten minutes allotted to summarize it. Commenting on the high quality of the national reports [3]) made, he emphasized the almost unanimous affirmative view of the rapporteurs on the basic question, which is not surprising after all the researches that have been made since the days of Lombroso. Despite that fact, certain differences of opinion appear on minor details, such as the selection of cases to be examined. Some

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1) An asterisk after a title or name signifies that the remarks have been translated from the French.
2) See volume III, pp. 1 ff.
3) See list of rapporteurs, loc. cit. footnote.

would limit the pre-sentence examination to serious crimes excluding political crimes. The general rapporteur deemed it rather superfluous to mention the latter since they vary so much in the different legislations. Apart therefrom he thought nearly all offenders except traffic violators should be made the object of pre-sentence examination. Another divergence existed with regard to the stage of the proceedings when the examination should take place. Considering on the one hand that the "juge d'instruction" does not exist in all legislations and that, on the other hand, there are strict rules of evidence in the Anglo-American countries – the prohibition of reference in the proceedings to the record of prior convictions, the privilege against selfincrimination, etc. –, Mr. Glueck thought it better to eliminate any recommendation on the specific stage of procedure at which the examination should be made and simply to recommend in a general way that the examination should take place only after the accused has been found guilty.

As to the specific subject-matter, there is again general unanimity of views and variations are only a matter of emphasis. All rapporteurs recognize the need of going not merely into the circumstances of the particular crime but into the personality and the socio-cultural background of the accused. Some insist from the point of view of modern dynamic psychology and psychiatry on the investigation of the subsurface psychology of the offender, the mental conflicts and emotional tensions that may have been involved in his criminal career.

A more incidental question seemed to Mr. Glueck to be the one as to which agency, the judge or a special body, should be entrusted with the examination. The question had been discussed at the Berlin Congress in 1935, so he would merely give a reference to developments since that time in America, where the Youth Correction Authority System has been or is being established in California, Massachusetts, Wisconsin, etc., being a special board of experts for the young adult offender. Whatever agency be entrusted with the investigation, either system would require a pre-sentence investigation and report.

Mr. Glueck then referred to some subordinate questions, such as: How are the "needs of the individual offender" to be determined? What is "individualization"? To individualize means, first to differentiate the offender from other offenders in various respects, and second, to determine the treatment most adapted to him. It is one thing to have a theory about these matters and another to be able to

apply it in practice with a reasonable amount of success. Referring to a study mentioned in his printed report on an analysis made of 7000 sentences imposed by six judges over a nine-year period in a county in New Jersey, Mr. Glueck submitted that the chief reason for such a breakdown of individualization – as it must be called – is the fact that judges and parole boards are not using adequate instruments for the prediction of the future reform or recidivism of different classes of offenders. It is essential to determine which factors in the pre-sentence report on the case in question are most relevant in this respect. By systematically comparing the individual delinquent with a composite portrait of hundreds of others, in respect to characteristics previously demonstrated to be most relevant to recidivism or reform, the judge can truly individualize the treatment of the particular offender through noting his similarities and differences in relation to "norms" based on past experience.

As for a second subordinate question, the availability of an instrument that can aid the judge in determining which factors are truly relevant, Mr. Glueck referred to the prediction tables developed by Mrs. Glueck and himself on the basis of numerous "follow-up" researches as described in the general report. In more recent studies including one to be published in October, these prediction tables have been elaborated to cover different forms of treatment and the probabilities of reform or recidivism at different age-spans too. A series of these tables based on local experience, on a given country's own culture, on its own penal and correctional facilities, and disclosing which factors in that country are most highly predictive, enable the judge who gets the report on a particular person and looks at these tables – one for prison, reformatory, probation, fine – to see what treatment is most likely to reform or not to reform this individual.

Admitting that this process perhaps sounds more complicated than it is, Mr. Glueck stressed that these tables are not meant to be followed blindly but merely are designed to furnish an additional instrument to the judge.

After these summary remarks from his general report, Mr. Glueck moved the adoption of the three following conclusions:

(1) In the modern administration of criminal justice, a pre-sentence report, covering not merely the circumstances of the crime but also biologic and sociologic factors in the constitution, personality, character, and socio-cultural background of the offender, is an indispensable basis for the

sentencing and treatment processes, at least in the case of serious but non-political crimes.

(2) The scope and intensity of the investigation and report should be sufficient to furnish the judge with enough information to make a reasoned choice among alternative sentences permitted under a state's penal laws; but where local administrative provisions and clinical facilities permit, the investigation and report should be extensive and intensive enough to provide, also, at least a tentative plan of peno-correctional treatment.

(3) The judge, who has observed the accused during the trial, can bring to bear on the sentencing process the rich resources of his training and experience. However, in the delicate and difficult art of "individualization", he can be greatly aided by considering relevant characteristics of the individual offender in the light of "prediction tables" derived from the systematic correlation of personal and social factors with the recidivism or non-recidivism of many previous forms of peno-correctional treatment. It is therefore recommended that criminologists in the different countries conduct researches designed to develop prediction tables based on local experience, so that judges, as well as correctional administrators, may experiment with their use.

The *Chairman** thanked the general rapporteur and opened the discussion. He asked the Section to treat separately first the question as it figures on the programme and afterwards the larger problem also dealt with in the general report, namely the use of the information collected by means of prediction tables.

Mr. *Vrij* (Netherlands), dealing first with the question of what it is we want in this matter, stated that we have to assist the judge in his choice of the method of treatment, including all his decisions as to punishment and measures of security, not only decisions about minor or irresponsible delinquents or the placing in a labour institution instead of a prison, as suggested in one of the reports. Most decisions refer to normal offenders, whether punishment or other measures are considered. We want to help the judge to decide on the sort of punishment, its amount or duration, its conditional or unconditional nature and, in case of a deprivation of liberty, also perhaps on the sort of establishment and the regime appropriate to the needs of the offender. But how far may the judge's power and possibility to decide reach? It is the administration which during the execution of the punishment settles the details of the treatment. From the very start the work of both should be considered. The judge must be informed

about the offender before deciding. A study should be made of the prisoner for whose well-being and behaviour the administration will be responsible for such a long time. That is the point in which Belgium in the anthropological clinic of Dr. Vervaeck so early and effectively specialized. But that examination comes too late to prevent the judge from making unsatisfactory decisions. We all agree that it is before the sentence that the judge must know all in order to punish well. This requires a separate investigation of a special type. It may result in an advice not to punish at all or to inflict another punishment than imprisonment for at least six months, or a conditional one. In such cases no further examination by the administration follows. The scope of these examinations is different: in order to handle a man continually day and night other things must be known about him, and if he is imprisoned there are opportunities for further physical and mental examinations. These would not be proper in the case of a person who is still only accused and either at liberty or under preventive arrest. Mr. Vrij cannot agree with Mr. Pinatel [1]) that putting young offenders in an observation centre before judgment should be extended in general to adults. The case is different here, the measure is more drastic when applied to an adult, both as regards the public and the person himself. Observation should be restricted to cases in which the offender's behaviour is incomprehensible. Thus an examination to help the judge takes on another aspect and is necessary in many more cases than the one just mentioned, for even in cases demanding mild punishment, a wrong choice can, in our view, be no less harmful.

After knowing what we want, the two following questions are: how to get it, and what to do with it? Mr. Vrij thinks the natural way would be to see how the system has been organized in those places where it was born and to criticize and correct what was false. But nowhere in the reports has this golden rule been observed. Of the countries reporting, the practice of examining offenders prior to sentence exists only in the United States and the Netherlands. In Sweden it has begun but seems not yet to be quite settled. No other country seems to have studied the experiments of these countries. All the speculation devoted to this problem of organization ignores the experience obtained by jurists and probation experts among whom, in the Netherlands, Judge Muller has led the work for decades. The

[1]) See vol. III. pp. 155 et seq.

system does not have to be the same all over the world. In the United States itself it is not uniform. But it is reassuring to find the American and Dutch systems so much alike. For some countries the Anglo-Saxon system will be more convenient, others will prefer the traditional criminal procedure of the European Continent. Either type is open to whatever further improvement may be suggested by the Congress.

As to how to get the system we want, two classes of persons are involved: on the one hand, the police, the magistrate conducting the preliminary investigation (juge d'instruction) and the clerk of court, who would all keep the investigation too much in the legal sphere, thereby failing to meet the requirements of the task. But on the other hand, we should not confine the examination to the medical sphere. Not everyone who steals a bicycle ought on that account to be subjected to a complete study by a physician. The State cannot afford it, the need for doctors is too pressing and it is not adequate to our purpose. It must be brought into the social and psychological sphere. Every science cannot always be fully brought in here, for there are practical limitations. When the State assumes full responsibility for a man's body and mind by taking him in charge, we must know all about him psychologically. As long as a judge deems it right to remove him from society, what we need is not a lessening of that knowledge. An anthropological centre is therefore a false departure. Sociology with the aid of psychology must take the lead in this field. It is mainly the social worker who must make the investigation, calling in experts of course, if some abnormal feature suggests the need of medical aid. Even the very expensive New Jersey Diagnostic Centre has to confine itself to the more difficult cases. As a rule the pre-sentence investigation is the job of one worker collecting information from many others but unable to gather them into a case conference.

As for the third question of what to do with the results of the investigation, the social worker must put them into a report. In this connection there can be no question of a file. The judge should not be bothered with the investigator's notes and correspondence. Looking for a clear conclusion he needs one document only, a report. Afterwards the deprivation of liberty follows, or probation, and the recommendations relating thereto can also be consulted. Thus a real life can gradually be built up, a "dossier personnel" (personal case file) rather than a "dossier de personnalité" (personality file) because it

is not especially a question of the personality of the delinquent, psychologically speaking, but of a review of all previous punishments of this particular person. In the Netherlands, this case file – likely to be discussed also in Section III – is in use since 1930 and concerns, amongst others, all persons about whom a pre-sentence report has been made. It seems a pity that the Liège Congress of last October, paying no attention to the practice of neighbours, did not arrive in this connection at a clear distinction between theory and reality. Only when you start working along the line of present experiments do problems get solutions which are contrary to our theory. Mr. Vrij cited examples to show that a trained investigator will not work according to a rigid plan even though no relevant detail will be lacking in his report and that the cases in which a report is required cannot always be defined in advance. Here again the agreement between American and Dutch practice gives hope that we are on the right road.

The chief point is how to integrate the investigation in the criminal procedure. Mr. Chute, writing about the use of the report under existing court limitations, shows the difficulties.

Emphasizing the question laid before the Section : whether the pre-sentence examination is desirable, Mr. Vrij felt that Mr. Glueck had neglected points brought forward by the rapporteurs; he hoped the Section would concentrate on these many points which must be solved before passing to the scientific problems raised by Mr. Glueck which might well form the subject for another congress.

The *Chairman** reminded the audience of the provision of the Rules according to which speakers should not take more than ten minutes.

Mr. *Drapkin* (Chile) thought that all are agreed on the necessity for a pre-sentence examination, and that the first two conclusions of Mr. Glueck were quite easy to understand and might be adopted by the Section. But the problem arises of how to put these two conclusions into effect. Mr. Glueck suggests prediction tables. Such tables, not only by Glueck, but also by Burgess, Vold and others, have for a long time already been in use in the United States. But all such tables are on a statistical basis, and in spite of the scientific progress of statistics as a science, statistics are made to prove both

opinions even if they are in contrast; so Mr. Drapkin believed that this was a very dangerous way to work, especially in Latin-America. He was afraid that many judges would take these prediction tables not only as suggestions, as Mr. Glueck wanted them to be understood, but as word of law. On the other hand, prediction tables may misguide the clinical examination of the individual. After ten years of working in a criminological institute with delinquents. Mr. Drapkin believed the only and best way is still the thorough individual examination. In view of the rapid new progress of psychiatric science, Mr. Drapkin thought these tables must vary with the progress of science. Generally, in South America, criminologists have tried to work with prediction tables, but the experience so far has not been good enough. Mr. Drapkin agreed then with the first two conclusions of the general rapporteur, especially as regards the exclusion of political delinquents from the examination, but he could not support the third conclusion.

The *Chairman** reminded the Section of the decision to start with the discussion of the first part of the problem only.

Mr. *Germann** (Switzerland):

I shall restrict myself to a few remarks which I make in place of Mr. Clerc who is in a different Section. It seems to me that one can say to begin with that the examination of the personality of the offender should be made before the sentence in so far as the sentence depends on it. I could adopt the expression used by my colleague, Professor Clerc, in his excellent report: the examination has to appear indispensable in order to permit a decision in the case. Now, the sentence is subordinated to the substantive law in force, and the substantive penal law is still pretty far from being the same in all countries. One can see, however, a certain evolution in the sense that, according to most of the recent laws, the sentence depends chiefly on the personality of the delinquent rather than on the external characteristics of his act and its consequences. Our Swiss Penal Code, for instance, takes into essential consideration the personality of the offender, first in order to solve the question of guilt in the sense of the law (criminal intent, mental condition, specific intent, motive, baseness of character etc.) and afterwards to determine the sanctions, penalties and measures, differentiated according to psychological and criminological criteria.

It is true that those criteria are not easy to grasp, but they oblige the judge to examine the personality of the offender and his previous history.

How is this examination made? Here, too, one finds in our legislation some characteristic features which do not exist to the same extent in all legislations. Our laws, the Civil Code as well as the Penal Code, leave a wide discretionary power to the judge. They avoid excessive detail and often leave even the choice of the proper sanctions to the judge. And it is the judge also who decides most often to what extent he wants to use expert examinations by specialists, such as physicians, psychologists, psychiatrists, social workers, etc. I do not believe that it is either necessary or even possible to require such an examination in each case. In this year's first issue of the *Recueil de documents en matière pénale et pénitentiaire*, Professor Wyrsch has stressed the necessity of a thorough examination, e.g. by the psychiatrists, as well as the danger which the quality of this examination would run if one were to require his assistance beyond measure. For this reason I think it is right to limit legally required examinations by specialists, but to grant the judge the power to request one in other cases when that would appear useful (questions regarding guilt, choice of proper sanctions).

In my opinion, a thorough examination is especially necessary for young offenders. One must strike at the evil at its root. In Basle for example, where I teach at the University, the system of "personal case histories" is very elaborate with regard to them. Our Code prescribes a personal investigation whenever it proves necessary for the decision to be taken with respect to an adolescent and even in the most serious cases it is an educational measure which is applicable on the basis of the examination, a penalty being entirely excluded. In order to send offenders over eighteen years of age to a labour training institution, a measure applied nearly exclusively to offenders under 30 years of age, the Code expressly orders the judge to have the defendant's physical and mental condition examined in advance, and the decisions of our Federal Court have stressed the mandatory character of this special examination. *(Arrêts du Tribunal Fédéral* 1944 IV 4, 1949 IV 103) One realizes the importance which the legislator has attached to these provisions when one recalls that questions of procedure — and this is one of them — normally fall within the jurisdiction of the Cantons.

To summarize, I am of the opinion that it is hardly possible not to take into consideration the substantive law in this matter and that one must not ask too much of the specialists; that it is advisable to limit the legal obligation of the judge to seek their assistance to those cases in which it is necessary for his decision, and to devote a particular interest to the examination of the personality in cases of juvenile delinquency.

Mr. *Ancel** (France):

I should like to make a simple observation on a point which belongs entirely to the first part of the question under discussion.

We have all been extremely interested by the very vivid and very complete report of Mr. Glueck. As he touched many questions, he has necessarily been obliged to neglect some, and in passing he has – if I may say so – thrown over board the questions of procedure in saying that they were secondary questions. He no doubt thought that they involved difficulties of purely legal technique which might perhaps not have to be examined by the Section. Now, I fear that in reality these difficulties of procedure are very real ones and that it might be a little unwise to neglect them. The question before us is actually to determine if it is necessary to institute a pre-sentence examination of the defendant. But in order to know if it is necessary to institute it, we must ask not only if according to substantive law, as has just been said, but also if according to procedure we can do so, and it is here that the difficulties arise. As a matter of fact, Mr. Glueck has alluded to it, for he has been very complete even in those questions which he neglects. He has alluded to the rules of Anglo-American procedure according to which one cannot in principle mention the antecedents of the defendant before judgment or at least before conviction, before his guilt has been established. But it is about the same in the other systems and especially in the Latin system where, in spite of what people say about it elsewhere, the accused is presumed to be innocent until found guilty. He can attend his own trial somewhat like an outsider and refuse to say anything at all. Because he is presumed innocent he can object to any examination which might lower the dignity of the human person, this very dignity which we are now preoccupied in restoring and strengthening, and quite rightly for that matter. One notices, however, that an evolution is under way in the most modern law, for in

England the Criminal Justice Act of 1948 had to introduce for certain security measures, as for instance preventive detention, an exception to the traditional rules of English procedure. This has been noticed by all the specialists, not only in English procedure but also in the evolution of modern criminal law, as a sign of the penetration, if I may say so, of ideas of social defence into the most traditional of laws. Equally, in French or Latin procedure, the procedure of the Continental countries, one finds similar examples and it is certain that more and more, when it is a question of juvenile delinquents, one works to have a preliminary examination of the young delinquent: this is the whole problem of observation centres. I remember that in France, some years before the war, there had been instituted, even for adults, psychiatric annexes designed for pre-sentence examination of defendants and set up as result of a movement of criminal prophylaxis, which was inspired by the ideas to which I have just been referring. Consequently, we are here in the presence of a movement to reform the institutions of substantive penal law which, however, is likely to run up against some difficulties of procedure.

I do not pretend to examine those difficulties in detail and even less do I propose a solution in the few minutes which I have been granted. I just want to say that, in my opinion, if one wants to introduce this obligatory examination of the defendant, one risks finding an obstacle in certain rules of procedure which cannot simply be ignored or neglected if one wants to assure the success of the reform. I even think it might be dangerous to ignore the rigidity of these procedural rules.

The *Chairman** believed that one should not neglect the difficulties in substantive law and procedure which had just been pointed out by the two speakers. To him the point to decide seemed to be whether the objections arising from to-day's positive law were sufficient to make us halt on the way of a reform which would be considered worthwhile.

Mr. *Braas** (Belgium):

My honoured colleague of the University of Basle and Mr. Justice Ancel have drawn the assembly's attention to procedural matters. We are thinking about a general reform or the introduction into the laws of various countries of expert examinations

or the composition of a preliminary personal case history file. It seems to me that we are looking at matters rather theoretically without taking into account the procedure proper to each legislation. In Belgian law we are rather strict, especially concerning the introduction of rules into the Code of Criminal procedure. So long as it is a question of an examination in view of the execution of the sentence we agree entirely: this is a penitentiary and administrative question. But if it is a question of pre-sentence examination, it is a matter of knowing first in what form this examination will be ordered and in what way it will be carried out. Certain criminalists do not believe that one could introduce a mandatory provision to set up a personal case history in all cases. As the two honoured speakers preceding me have said this should, in my opinion also, only take place upon a formal request of the Court or, in a certain number of serious cases, upon the specific order of the legislator. I entirely agree that examinations of this kind should be ordered – preparatory examinations, if I may say so – in legislation concerning children. For that matter, I think that most of the laws in our countries concerning the protection of childhood require the juvenile judge to make a certain number of this kind of enquiries. I think this question is settled. There is another kind of case where from a legislative point of view one might successfully and in a practical manner introduce a semi-obligatory personal case history. This applies to a certain number of morals cases which mostly are related to psychopathy or psychiatry.

Finally, there is also the question of abnormal persons where the legislation of most countries allows the judge to charge a physician with the examination of an individual suspected of abnormal condition or mental deficiency.

I think, therefore, that if we can adopt a motion that a personal case history should be set up, we ought not, considering the legislation and criminal procedure of the various countries, make it a necessary and absolute requirement in all cases. We can adopt a motion that we would like to see this report or preliminary examination made obligatory in *some* cases. I am talking about cases involving children, morals or abnormal offenders. For the rest, for instance in cases of theft or homicide, we might leave to each court, as the case may be, the possibility, in accord with the rules and norms formulated in each country, to decide or to order, I would not say a preliminary expert

examination, but a certain number of special investigations concerning the offender. With regard to these investigations, we should also take into account the question of dignity, and we should sometimes fear – in some countries this question has even provoked polemics in the press – we should sometimes fear the intrusions of the police in this kind of case with all the dangers which this represents from the point of view of personality. I think that this is a local question which must be examined for every country in relation to the classical rules of procedure of each country. We can accept the principle, we can recommend it, but I do not think we could give it an extension which might perhaps become dangerous and which might lead to difficulties or conflicts.

Mr. *Pinatel** (France):

The question before us to know whether in the course of criminal procedure and before the sentence one should provide for an examination of the accused, is the capital question of to-day. Two lines of thought are already apparent: one line entirely in favour of that examination, so favourable indeed that people are already going beyond the examination and are exploiting its findings. There is a second line which, resting on legal facts and procedural considerations, tends to limit the scope of this examinations and allows its use only in clearly defined cases. I think that before taking sides and choosing between the two tendencies, one should devote one's attention to the solution of two preliminary questions which should throw light on the debate: first, to learn what the object and the aim of this examination is, and afterwards to know what method will be used.

With regard to the object and the aim, I believe that this examination is necessary in all legislations where a distinction is made between penal measures, punishments, on the one hand, and the security measure or social defence measure on the other hand. In this case, when the judge is confronted with an alternative, when he has, on one side, to hand out a sentence and on the other, subject a person to a regime of re-education and treatment, it is obvious that he can do it only if he is completely informed about the biological, psychological and social personality of the offender, and I think this is the case in all countries of the world with respect to delinquent youth. Therefore, we have to determine if in those countries where one is instituting

measures of social defence, side by side with punishments, for adults it is a question of knowing if one should not be compelled to transpose something that is so obviously accepted in the area of juvenile delinquency. I am personally of that opinion, and given the object and the well defined aim of the examination of the offender one cannot hamper this examination by restrictions or limitations. It is the opposite principle that should be adopted : the examination must be obligatory in all cases, with the restriction, however, that the judge may omit it when that would be expedient. That way of posing the problem seems to me much more appropriate from the scientific and social point of view than the inverse position.

I now come to my second question, the question of the method, and here I should say that in France – I am speaking mainly about France – we have been very embarrassed lately. We have had veritable struggles of conscience with respect to a new medical technique, narco-analysis. For nearly three years, we have been discussing, we have been examining the question in all its aspects, and we have been asking ourselves whether one might accept this technique as one of the methods for the biological and psychological study of the individual. Finally, I should like to mention here, by way of factual information, the stand recently emerging from the discussions of the *Société générale des Prisons* which – in one of its last meetings – completely and formally accepted the principle of narco-diagnosis, whenever the physician in his expert investigation thinks he is dealing with a malingerer and also whenever the defendant gives his voluntary consent (and here are the procedural difficulties to which Mr. Ancel just made reference) to the use of the technique of narco-diagnosis.

Just one more word on this topic: it has been clearly understood that this technique would be utilized by the physician under professional secrecy, that he could in no way report or communicate anything to the judge, and that the judge would not, under threat of penalty, be permitted to take cognizance of the accurate or inaccurate revelations which the defendant might have made during the narcotic state. There you have the final standpoint which emerged in a nearly unanimous manner from the discussions of the *Société générale des Prisons.*

These are then the two questions – object and aim of the examination of the accused and the method of examination – which seem to me to govern the solution of the problem which is submitted to your scrutiny.

Mr. *van Bemmelen* (Netherlands):

If there may be objections from the point of view of criminal law and procedure, as we have heard from different speakers, I would stress that it is possible to change these laws. I might also stress that it is often necessary to have an examination even in simple sorts of crimes, like cases of theft, etc. Our Dutch judges are very thankful that they receive these reports even in cases of thefts of bicycles, for these examinations in Holland ar not made by psychiatrists but by social workers. A social worker can get very good information not only about the person of the criminal but also about his environment. The investigations are often very useful and spread new light on the case. They may even lead up to a psychiatric examination. I remember a case here in The Hague where a man had stolen a bicycle – it was quite a simple case; he admitted it and there was no question of any difficulty. Afterwards we asked for an examination of this man and it came out that he had stolen the bicycle just to go to Rome and see the Pope; it was a man who was quite insane. So the simple investigations by a social worker can give results that are quite unexpected. Therefore, if you have any objections in view of your criminal law or procedure, I would advise you just to change these laws.

Mr. *Kelly* (Israel):

I speak with some diffidence as the representative of the youngest State, Israel, which has only been going for two years now and has not had enough time to gain its own experience. It must start from the experience gained on the basis that you have laid, on which basis we hope to help in raising a further splendid edifice. I am in very general agreement with Professor Glueck and quite unhappy about the last part of the first conclusion, "at least in the case of serious but non-political crimes". This throws the emphasis back again on the crime and not on the committer of the crime. To me that is a major fault with the resolution and almost begs the question raised by the first part of the resolution. After all, what are serious crimes? They depend on the social evaluation, or rather on a psychological estimate of the committer of the crime. It has been

mentioned already that infractions of motor regulations, or the stealing of a bicycle, are not serious crimes. Evasion of income tax laws in America might or might not be serious crimes. Infractions of rationing laws and regulations in England and Israel might also not be serious crimes. Furthermore, running through all this argument comes in the idea of motive again. Now, I was brought up in the hard school that taught that a crime was a crime whatever the motive was: that to rob the rich to support the poor was a crime and had to be punished as a crime, I suppose, in the same way as to rob in order to feed one's starving children might be a crime. So I think we must again bring into all our consideration various factors, such as the type of crime and the motive of the crime. We talk of restricting this to serious crimes. It has already been pointed out that minor crimes may be an index of major criminality. I very much believe that that is often the case. For all these reasons I think that it would be best to eliminate entirely the last phrase of the first conclusion. My own procedure is to have an accused examined, not very thoroughly but sufficiently thoroughly, to see if it is necessary to have a pre-sentence examination. And here I am in difficulties because I have no standard to go on, and it may be that the best standard, the best use of this moment, is such tables as Professor Glueck's prediction tables, to show us in what cases a thorough pre-sentence examination is necessary and what the factors are, excluding or including the question of whether the crime is serious or not. I do not think we ought to be deterred by questions of procedure at all. If our resolutions are to be of any value it is because they forecast changes in procedure that we hope to see enacted.

The *Chairman**, before adjourning this interesting meeting, said that he would like to give Mr. Glueck a chance to sum up the very different points of view expressed and to take a stand with regard to them.

Mr. *Glueck* (U.S.A.), general rapporteur:

I must bring forward the same excuse as in the introduction of my general report in attempting to digest the varied and brilliant comments that have been made.

First, I think it was Professor van Bemmelen who took up the illustration about the bicycle. I have a story of a bicycle too: there

was an offender who stole a hundred bicycles and nothing else. I think this indicates clearly that he needed a thorough examination.

The keenest observation of all has been made by Dr. Kelly; he has put his finger on the weak spot which I myself, I assure you, detected but which I did not know how to cope with. The problem presented here is to arrive at a common denominator upon which we could all agree with reference to the types of offences and offenders who ought to be examined. I confess that I should have either omitted the passage at the end of the first conclusion or said "serious offenders" – but that involves the preliminary question as to who is a serious offender. I am perfectly willing to delete that last clause, but that does not solve our disagreement here because, as you have seen, some people think that we ought to spell out in great detail the types of crimes or criminals who require examination. One or two persons have mentioned the idea that the judge should determine which cases are serious enough to require examination. Mr. Kelly thought there should be a pre-examination to see whether there should be a thorough examination. This is a difficulty inherent in the subject, but this problem of the *extent* of the application of the pre-sentence examination in the administration of criminal justice seems to me quite secondary to the main purpose, the principle that it *should* be operated in the administration of criminal justice; I am willing to accept either the solution of deleting the last clause of the first conclusion or, if it can be done – and this is always dangerous – of a spelling out of such offences as crimes against morals, juvenile delinquency, etc. It is dangerous because by including some you might omit others.

Now, I submit further that the question of *how* the pre-sentence report should be used is relevant and is embraced in the question as worded. You cannot speak of a pre-sentence report without indicating what is the object of the report, i.e. how it has to be applied. I submit that the separation of these two problems in this way is an artificial separation. One of the reasons why we have not made sufficient progress in this field is because of the accumulation of dossiers without knowing what to do with them after you have got them.

I want next to take up the familiar attack by Dr. Drapkin on statistics. I assure you that temperamentally I am not a statistical person. I have had to work very hard to work myself into the use of statistics. But I assure you that these particular statistics have been demonstrated in action to work, that is the pragmatic test. When the

tables that were used on one group of cases are applied to a brand-new group they predict in a large measure the outcome. I am not in a position to refer as yet in detail to a research my wife and I are publishing soon, but in the course of that research involving juvenile delinquents we have begun a check-up and have applied the prediction tables of the book "One Thousand Juvenile Delinquents" to a new sample of 500 delinquents and 500 non-delinquents, and I assure you that a really amazing efficacy of these prediction tables is being established. Now Dr. Drapkin tells us that that has not been the experience in Chile. I think he gave the right reason: perhaps the studies were not thorough enough and you did not check up enough. I do not say that was so, but it would surprise me very much if you made a really thoroughgoing study and found that the outcome did not have very high prognostic power. Of course, one of the answers is that these predictive factors screen or hide a great many complicated dynamic factors which are really at play. Dr. Drapkin would subsitute for the tables the individual judgment of the judge or the psychiatrist and his knowledge. But I ask him: what does the judge know? He knows only about the individual case. What objection is there to giving him an instrument that will aid him, or to giving the clinician such an instrument? We are, by the way, working right now on such an instrument for the psychiatrist, which will aid him in differentiating the individual from a sample of others who have gone before, with reference to those factors which have been submitted to the acid test of relevancy: do they predict recidivism or reform? I have no objection, as I said, to judges using their experience; many judges are either natively or by experience keen psychologists, they can read motives; but I submit that once they have one dossier before them they do not know what it means, and therefore the distinction between a personal report and a personality report which Dr. Vrij has made does not impress me at all. A mere personal report tells you nothing you can use, you can just guess with it : a personality report and a prediction table transform guess work into some sort of precision, or is at least an improvement.

It has also been mentioned that certain of these drug devices for the ascertainment of truth – truth-serums we call them in the States – are objectionable or cannot be used; there was an implication that it would not be proper to have the police make such examinations. Now I go back again to the Anglo-American philosophy. We have been

told that there has been a marked change in Anglo-American political constitutional and legal philosophy permitting an examination of the kind you have on the continent. Whatever the changes may be they have not overthrown the basic idea that before a person is found guilty you cannot make a thorough investigation of him. You cannot force him to answer, you cannot apply these drugs, you cannot apply any pressure; if his confession is not voluntary, it is not admissible in evidence. The experience of juvenile courts is of course different, but there you are dealing with an entirely different philosophy. The assumption is that the State is there to protect the child, and of course both in England and the United States there has been a loosening of these strict constitutional provisions. Now those provisions, unfortunately, even if we were to agree with you that it is advisable, prevent the intermingling of the information obtained before the trial and during the trial with the information to be used after conviction for the imposition of sentence and treatment. If, for example, you were to try to introduce in evidence in an American trial the fact that a pick-pocket had a long record of picking pockets before, that would be objected to instantly because the theory is that he is being tried for his crime, not for being a criminal with a long record. And so it is not so easy to say, as Professor van Bemmelen told us, why do not you change your laws? Well, these laws are not as permanent as the laws of the Medes and the Persians but they have a long tradition behind them and whether they are good or bad it is impossible to change these basic laws of evidence. Therefore I was in search of some common denominator upon which we could all agree, namely a pre-sentence investigation or examination. I hope that we can all agree at least on the principle of the pre-*sentence* examination and leave to each country the stage of origin. I hope Professor Vrij will agree to that, because we have to have some common denominator here.

Finally, there is the question of whether the examination should take place in all cases. It seems that it is here that we will have the most difficulty and I am perfectly willing to adopt almost any solution. I do not think it is a serious problem. If a country provides adequate pre-sentence investigation, the kind of cases, etc. for which it will provide depends on local laws, local facilities and practices. The important thing is the establishing of the principle.

I want to thank you all for the thoroughness with which you have – if I may say so – torn into me, with what gusto you have,

shall I say, attempted to destroy the position of the general rapporteur.

(Applause)

The *Chairman** merely wanted to call attention to a question which should be dealt with in to-morrow's discussion, namely the one raised by Mr. Drapkin about the validity of prediction tables: Are they applicable to all countries whatsoever, or does one in using them have to take into consideration the social conditions of each country?

The meeting was adjourned at 5.15 P.M.

Morning Meeting of Tuesday, August 15th, 1950

The meeting opened at 10.25 A.M.

Mr. *Cornil** (Belgium), Chairman, made the following statement:

I believe that there is one point on which we all agree — our general rapporteur said it very well yesterday — namely the necessity, the desirability of making an examination of the offender. Perhaps this appears to us as something perfectly obvious, but if our Congress proclaims it, and proclaims it in carefully chosen terms, we shall have taken a big step forward; for I think that this will be one of the first Congresses to proclaim in such a clear-cut manner the desirability of such an examination being made. It is when we come to the question of finding at what point of the procedure, in what manner and in what cases such an examination should be made that agreement vanishes. Here I take the liberty of calling your attention to something you all noticed yesterday: we cannot come to an agreement because we speak different languages and our procedures are basically different. Mr. Glueck pointed it out to you yesterday. Already in the title of our topic there is a deep ambiguity. In French we say "before the judgment", in English "before the sentence"; these are two basically different things. If we lose ourselves in questions of procedure, we shall not get ahead. We must, I believe, try to state the differences on this point and to leave to each the job of settling it in accord with the procedure of his country. Perhaps

we might arrive at an agreement on the fact that one should proceed to the examination at a moment when the guilt of the offender has already been recognized or established. We would already have taken a big step in saying that.

Concerning the choice of the cases which should be submitted to examination, our discussion might continue in a very useful way, many things not having as yet been said. It has been suggested to us that we limit it to serious cases. Immediately it was pointed out that there are seemingly non-serious cases which might be submitted to this examination with profit. So far no one has, or hardly has, referred to what we in Franco-Belgian law call the *contraventions* (petty violations). It is hard to imagine that in case of a traffic violation one might subject a person who has exceeded the speed limit to an examination. With respect to offences of medium importance, the small misdemeanors, it was said yesterday already that the bicycle thief might be dangerous. Here I suggest to you for discussion a solution which would be based both on the seriousness of the offence and on the degree of recidivism. This means that if a relatively minor offence like a bicycle theft is repeated a certain number of times, the examination would become at least advisable, if not obligatory.

We shall come to the third large question, the very interesting one of prediction tables. I suggest that you exchange views on that too, and prepare a separate motion on that point because this question complements the reply to the question stated but does not belong to it. The second reason why I propose the formulation of a separate recommendation is that I fear that, on this point, we might have more difficulty in reaching an agreement; nevertheless, I hope that we shall do so.

I now declare the discussion open with the warning that, unfortunately, I have to close it at about noon, and I shall immediately give the floor to anyone who asks for it, but insist that the speeches be short.

Mr. *Hendrickx** (Belgium):

After looking into more than a dozen reports on the question and the learned report of the general rapporteur and after hearing the pertinent remarks of the Chairman, I could restrict myself to some very brief observations because we have actually already

got, in advance and in a very clear manner, the answer to a series of questions which might be raised by the problem we are studying. But I think that, before knowing whether we can come to an agreement on the nature of a reply to be given to the question, it is necessary to see exactly if we are really in agreement on the manner in which the question is put. This is the question: "Is an *examination* of the offender advisable?" What is the exact meaning of examination? The rapporteur also talks about a report, and in point 2 of the conclusions he talks about the examinations *and* the report.

After reading the reports and the general report I think, on the whole, that we cannot interpret the word examination as being the equivalent of expert examination (*expertise*). We ought to go farther than that. We ought to consider that the examination should not be limited to the questioning of the offender himself, but ought to be extended to all social and family questions and, besides, to a biological or mental examination of the accused. This is a point which it would be useful to clarify in the way in which the reply to the first point was formulated. In that case we could have answered the objections formulated yesterday mainly in the remarks by Mr. Justice Ancel and Chevalier Braas, who introduced procedural questions at that juncture. That might depend on the fact that in their minds the examination mentioned in the question and the reply were in fact equivalent to an expert investigation. I think we are all agreed in saying that we ought to go beyond that : this examination should be much more extensive.

After this first remark I would say that under these conditions we agree, whatever may be the national legislation, to ask that an examination, thus extended and clarified, be made. Even if our legislations do not give us, for instance, the choice of the penalty, and we have to apply, I might almost say, a tariff, it is nevertheless useful for us to have all these data, these results of the general examinations, in order to be able to apply a dosage of the punishment in a more equitable manner, if only by admitting extenuating circumstances. Whatever the national legislation might be, I therefore think that we could easily reply in an affirmative manner to a question thus stated and refined. The very important question is to know at what moment in the procedure this examination, this expert examination, has to be prescribed, and to what judge, to what authority one should entrust this duty to investigate. As regards Belgian

law, I suggest it be the prosecuting attorney (*magistrat du Ministère public*) who has very broad powers and who is used to file quite a number of cases, especially on grounds of inadvisability of prosecution. I think of him precisely in order to permit the elimination of certain cases, because it is difficult to arrive by legislation at a definition of those cases in which an examination should be mandatory and of those in which it should be optional. Now, since we must reply in a general way that the nature of the social history is an indispensable basis for the sentencing process, we admit in fact by so replying that the examination is obligatory. It would also be proper to arrive at a suggestion which obviously concerns only our penal law and not the Anglo-Saxon law: it consists in ordering the prosecuting attorney to prescribe this enquiry because, after all, there is either an expert investigation or an enquiry, or both. I do not think that one should wait for the phase of the judgment because then we would run into procedural delays and a lengthening of the jail detention — and these considerations would make it rather difficult to apply this device.

Mr. *Nuvolone** (Italy):

In his learned report, Professor Glueck distinguished especially between two main sub-questions:

1. What should be the scope and the content of the examination?

2. Do we have, for the purpose of individualization, an instrument capable of helping the judge in determining what factors are really important for the choice of the sentence, and what weight should be given to such factors in the particular case before him?

The general rapporteur has proposed, on the latter point, the adoption of prediction tables. Now, permit me, gentlemen, to pose two other questions which to me seem to be preliminary to the one and the other of these problems.

First of all, I ask myself: Since we ought to take into account the fact that there are different legislations, can we institute pre-sentence examination of the offender in all countries, even when the system is inspired by a punitive and not a preventive idea? This is an important problem of basic character and, in my opinion, even takes precedence over the penetrating observation on procedure made by Mr. Ancel.

To this question I reply in the affirmative, although recognizing that the examination which is proposed to be set up has a primarily preventative aim, an aim which can never be reached without a thoroughgoing reform of the penal and penitentiary laws in all countries, a reform which I would like to see achieved in at least two directions:

1. Unification of sanctions (punishment and security measure) for the responsible offenders.

2. Progressive individualization of penitentiary institutions.

I believe that the Congress could make a special recommendation in this direction.

However, I think that the pre-sentence examination might be useful, though obviously to a smaller exent, even within a traditional penal system and with the following aims:

1. Penetrate to the psychological core of the crime by throwing light on the objective causes and the subjective motives of the offence;

2. Give the judge an important element for grading the punishment within the limits fixed by the law;

3. Give the judge essential indications for the eventual application of a security measure;

4. Give the judge and the executive authorities data for the conditional suspension of the punishment and for conditional release.

The second preliminary question which I take the liberty to pose is the following. The offence is above all a relationship between human behaviour and a law which is, in truth, the product of a human will. Now, is it possible to establish under these conditions a necessary correlation between the offence and the nature of the offender? The importance of the question is evident, for if the answer is negative all discussion is useless.

I believe that in this matter one ought to concentrate attention on the fact that all legislation includes both constant and variable elements; there is, in some sense, a law of uniformity and a law of variability even in the field of legislation. The constant elements correspond to certain actions which are considered crimes everywhere; the variable elements to certain actions, the incrimination of which depends upon contingent reasons of criminal policy. This is

an empirically established fact of fundamental importance, however, because the necessity for a pre-sentence examination, connected with the purpose of efficient social defence on a plane which I would like to see international, presents itself only for those offences which constitute important infractions of the social order.

That is why in my report I have called to mind the distinction between an ordinary and a political offence (the latter in its broadest sense) and have proposed to limit the pre-sentence examination to three categories of defendants:

a) Those accused of offences against life and against public and private integrity;

b) Those accused of sexual offence; and

c) Those accused of offences against public or private property, including all those offences which though not having property for their immediate object, are directly or indirectly committed for purpose of gain.

In this respect I want to emphasize to-day that though excluding political offences I except those committed for political ends, but which in reality are, from a criminological point of view, ordinary offences, only the *occasion* of their commitment being political.

Thus it is the constant objective and subjective quality of the offence and not its formal quantity (degree of punishment threatened by law) which must be given the decisive rôle on this point. I believe that a clarification of this subject will be indispensable in the conclusions of the Congress.

And now I come briefly to the second part of the report, that concerning *prediction tables.* I say right now that I am in favour of criminological prognosis, but also of the principle of freedom in the personal investigation. This means that it seems profitable to me to leave to the criminological expert, with respect to the study of offenders normal from the psychiatric point of view, the widest possibility of adopting those scientific methods which he considers best. One should not forget that one tends to individualize the penal sanction, and that the point of departure must, therefore, necessarily be the one of the variability of the individual offenders. The classification by types has had its day.

The prediction tables of Mr. Glueck are very interesting and I

believe that the factors to which Professor Glueck has given consideration merit our entire attention and can form the basis for fruitful criminological achievements, but what I should like to say is this:

Though affirming the suitability of a criminological prognosis which is the natural climax of the pre-sentence examination of the offender, one should not deceive oneself by locking the extremely variable substance of the individual soul in rigid formulas. Each offender is a particular case and as such he will have to be studied before one can give a diagnosis and a prognosis with a sufficient degree of probability. To that end, and without denying the utility of considering factors presenting a certain degree of uniformity, it would be necessary to emphasize in the conclusions of the Congress this need for reconstituting the psychological course of the offence from the point of view of the individual personality of the offender.

The *Chairman** noted two attitudes with respect to the selection of the cases to be submitted for pre-sentence examination. Some speakers want to make this choice on a practical basis, leaving aside cases of little interest, whereas others like to make it a matter of principle, including in the examination some kinds of cases and excluding others. This problem must still be clarified.

Miss *de Groof* (South Africa) would like to ask if the resolutions adopted at the Congress are to have international character as to their application. It would be necessary to clear up two points: Does "international" mean "universal", or is it merely restricted to such States as are represented and adopt perhaps a part of the resolution proposed? Secondly, as regards Dr. Kelly's statement yesterday that a crime is a crime, the point seemed to be : What act of commission or omission would constitute a crime from an international point of view?

Furthermore, with reference to the type of crime committed by a person to be subjected to pre-sentence examination, Miss de Groof said that she has had to work with very serious cases, especially with murderers, and has found that most murderers did not commit major crimes before but only petty offences. Therefore she thinks it is just as well to examine petty offenders also, especially from the neurotic and latent psychotic viewpoint. The examiner himself should be completely analyzed, not only from the psycho-analytical view-

point but from the analytic psychological view-point, so that he himself is free from every form of neurosis and latent psychosis. (Mr. *Glueck:* Would you apply that also to judges? Miss *de Groof:* Yes, definitely.)

Finally, Miss de Groof wanted to ask whether a suspect or person who has been examined could appeal later on to an international authority for re-examination by an international body of experts, should warranted doubt exist as to the correctness of the psychiatric diagnosis.

Mr. *Van Eck** (Netherlands):

I should like to make some concise observations on the first main conclusion proposed by Professor Glueck.

My first observation concerns those cases where a pre-sentence report is indispensable. Yesterday, I believe, we agreed that the words "at least in the cases of serious crimes" in the conclusion were too restrictive. They must be replaced by another more or less exact circumscription. For it is both impossible and useless to have a report made in all cases. I should like to propose – and here I agree entirely with what Mr. Braas said yesterday – to order a report for all offences by juveniles, for all persons of whom one knows from other sources that they are abnormal, for infractions against morals and perhaps for certain cases of recidivism. And, I should like to add, in all cases where an examination seems to be necessary or useful.

My second observation concerns the question of knowing by which authority the report should be ordered. If I have understood correctly there is question of an obligatory examination. It seems to me that we must let the law determine the groups of persons which can be specified from the beginning – youth, cases of infractions against morals, perhaps certain cases of recidivism and the cases of abnormal persons – while in other cases it seems to me preferable to leave the decision to the judge or the prosecutor. The third observation I have to make seems to me to be the most important; it concerns the method of the examination. Yesterday one spoke about the narco-analytical method and everybody agreed, I believe, that in the case of adult normal persons this method could not be used except with their consent. I should like to extend this resolution to any psychological examination apt to reveal the most intimate secrets of the heart, especially to any method of pure psycho-analysis. In my opinion,

nobody can be obliged to reveal, against his own will, his innermost secrets. Here, there is a question not only of an objection of a legal nature, but of a human right, and I hope to hear the opinion of other members present on this question.

The *Chairman** observed that Mr. van Eck's proposal as well as others made previously, to limit the examination to certain cases, would run into difficulties especially with respect to the definition of the abnormals.

Mr. *Constant** (Belgium):

We are looking for a formula which should determine the cases in which an examination of personality should take place. For my part, it seems that this question could find an extremely simple solution. I think that we should allow the personal case history to be used in an optional manner in *all* cases. That is, in my opinion, the judge or the public prosecutor desiring to inform himself on the antecedents and on the personality of an individual should at any rate have the right, if he considers it advisable and indispensable, to resort to this personality examination. Indeed, it seems to me impossible to say in advance that the personality examination will never be necessary when we are dealing with an insignificant violation. We all know that venomous quarrels resulting from bad neighbourly relations may be the beginning of extremely violent scenes ending in murder or manslaughter. We all know that a good many highway robbers started very young as little pilferers. It seems to me certain that if in the beginning, at the moment of the first or second violation, a thorough personality examination had been made, it is highly probable that, on account of the specialized treatment to which the accused or the prisoner would have been subjected, we would have avoided his going from bad to worse. I do think, therefore, that the first solution is very simple : in each case, whenever the judge deems it indispensable, he ought to be able to resort to a personality examination. Besides, there seems to me to be a certain number of cases in which the personality examination should always be made, and in this instance in an obligatory manner. Here, naturally, it is much more difficult to arrive at a general solution, because we have to consider it within the frame of our particular legislations. But I think that there

is a point on which we might all agree. Indeed, in all our legislations, whatever they may be, there are cases in which jail detention is authorized because it is believed that the defence of society should come into operation immediately in connection with certain offences. The conditions of jail detention are evidently not the same in different countries. In making a comparison only between two countries that lie close together, the Netherlands and Belgium, I see that in our country jail detention is possible for an infraction which is punishable by no more than three months, whereas in the Netherlands the infraction must be punishable by four years. But no matter, what is certain is that in all countries there are cases in which jail detention is possible or mandatory. I think that in all these cases of jail detention the personality examination should be made obligatory. This offers a solution for a question which has been submitted to you, namely that of knowing if the personality examination is not going to prejudice the defendant's case. Mr. Clerc, in his report, says that it is out of place, useless and even dangerous because it suggests that to a certain degree the accused has been pre-judged. I believe that here the prejudice is already created by the legislator and the judge, because in our country, when the warrant of arrest has been approved by decision of the *Chambre du Conseil,* it means that very serious indications point to the guilt of the accused and that there is every reason to anticipate that he will be tried reasonably soon. Consequently, the establishment of a personality examination in those cases where jail detention is mandatory does not do any harm to the personality and the reputation of the individual.

To summarize, I think that the judge should be able to order a personality examination in all cases and that for those cases in which the national statutes require mandatory jail detention a personality examination must be provided for automatically.

By way of conclusion, I should like to say simply two words about a problem which is dear to me and which has hardly been mentioned, but is, however, intimately connected with the one we are examining. We all agree in saying that there ought to be a personal case history in certain cases. But this case history, no matter how well constituted and how perfect it may be, what good will it do in the hands of magistrates who do not have any criminological knowledge? What will be its use if we submit it to magistrates – I do not believe that a

single one exists in any of our countries any more, but some might still occur – who want to judge the act alone, who do not want to know the personality of the individual and who will make a clean sweep of this nice case history which is submitted to them? I believe, therefore, that it would be desirable – although we have already repeated it many times in previous congresses, and especially at the first Congress of Criminology in Rome and at the Congress of Social Defence in Liège – to introduce into the motion which we are to adopt (that is at least my suggestion) a recommendation stating that this reform providing for the setting up of a personal case history file is intimately linked with the specialization of the criminal judge.

Mr. *Timmenga* (Netherlands):

Professor Glueck yesterday wanted to exclude political criminals from the pre-sentence examination. I know that Professor Glueck has much more experience in trying political criminals than I have, but I hope that he will forgive me when I say that I do not agree with him in this matter.

There are two objections. First the definition of who is a political criminal is very difficult. You can say that Hitler and Göring were political criminals, but I think they were criminals in the common sense, because they committed crimes against humanity. And so there are many more cases in which it is difficult to say if a person is a political criminal or "only" an ordinary criminal.

The second objection appears in practice. Here in the Netherlands after the last world war we have tried some hundred thousand political criminals and I can say that my experience as public prosecutor at the special court in Amsterdam for the trial of collaborators during the last war has taught me that in many cases reports were made, and with success communicated to the court, which many times gave them due consideration. I shall cite, for instance, the case of the so-called weapon-bearers, men who had served in the army of the enemy. Most of them were young people and the influence of their home, their youth etc. was in many cases of great importance in their committing their crime. You must know about these circumstances if you wish to punish correctly. Furthermore, in some cases a political criminal became a common criminal (robbery, murder), and for the purpose of taking precautionary

measures and the just measures for re-education a pre-sentence report cannot be dispensed with.

Therefore, I say that in political cases a pre-sentence examination is indispensable and the exclusion of the category of political criminals from the pre-sentence examination seems to me to be wrong. If you fear a mass trial which will take too much time, you can give the judge the power to allow or decline the pre-sentence examination in the same way as Professor Constant has proposed for all cases.

Mr. *Dawson* (United Kingdom):

There are just one or two brief points that I should like to make. First of all, I feel we are rather in danger in our discussion of becoming too mechanical and, dare I say, too scientific. I think we should remind ourselves that first and foremost we are human beings dealing with human beings. I should say that for any examination of this kind it is essential that the examiners should not merely have knowledge of psychotherapy and prediction tables but also have what does not always go with that knowledge : a deep understanding of human nature. That is an essential thing. We must regard the defendants who are being examined as human beings and not as a collection of guinea-pigs or cases upon which we may work our experiments. If we are going to do that, it is essential that some sort of examination shall take place for every crime. I feel that even petty crimes indicate a certain maladjustment to society and, as Dr. Kelly said yesterday, minor crimes often indicate major criminality. In my experience of the last five or six years in chaplaincy work in Great Britain I have found again and again that the major crimes of murder and violence can be traced back in the beginning, years and years before, to petty offences and to crimes of a minor nature, and if those had been dealt with properly in the early days we should have been saved these more serious crimes that have necessitated now some examination or severe sentence. I feel that we need to keep this human element right in the forefront and, although I do not put aside our scientific knowledge and prediction tables which are very necessary, I think we must keep in mind that we are human beings dealing with human beings.

Mr. *Hurwitz* (Denmark):

I do not think it is possible at this time of the discussion to say

anything new, but I wish to sum up some points and take a stand on these points.

The first problem is in which cases the examination should be undertaken. I think most of us will agree that we can vote for the optional all-around acceptance of these examinations. But I want to point out here that the word "optional" may mean optional in relation to the judge or optional in relation to the offender. As sure as I am that a judge should have the full right to decide if an examination should be made, I think there must be some restrictions in relation to the offender. Perhaps here we may make a distinction between the ambulatory examination and one that is institutional, meaning that the offender has to be deprived of liberty for perhaps a long period – weeks or months. I think there is no objection to giving him an ambulatory examination or treatment, but in minor cases it would be improper to take him to a hospital or a penal institution against his will.

The second point is, when should we have mandatory examinations without leaving discretion to the judge. Here there may be three different approaches: the type of crime, the type of offender and the type of measure or treatment.

As to the type of crime, it has been said by many speakers that of course we may make a list of crimes suitable for mandatory investigation, and here the question can only be one of making some exceptions, for example in relation to political offences. My point of view is that we should not make any such exceptions. Experience after the war in many countries has been that there was a great need of examinations, especially in these cases.

The types of offenders and of measures may be elaborated, of course, and I think it should be possible in a resolution to make some mention of the great groups, such as the young, the abnormal, etc.

The other question I would deal with briefly is *when* the presentence investigation should be carried out. Here I think we should not limit the authorities to conditions that are too rigid. In Denmark it is very common that the prosecuting authority, with the consent of the offender, decides at an early stage of the prosecution to let him undergo such an examination, and things are going fairly well on that score, so I do not think we should make too rigid prescriptions nor recommend that only a judge should have authority to decide on the investigation.

The third point concerns method. A previous speaker has warned against using psychological tests, psycho-analysis and narco-analysis against the will of the person because one cannot subject him to giving up the innermost secrets of his heart against his will. I think that is a really controversial problem; you cannot limit the psychiatrist to finding out only what the person is willing to tell him. If you submit him to an investigation you must give the psychiatrist a full right to investigation, his methods depending on the culture of the country and the ethical standards of psychiatrists. There are, of course, difficult questions as to whether this material should all be submitted to the court. I think this is a question that cannot be discussed here. I would only object to having in any resolution of ours any restrictions on the methods employed by the psychiatrist.

Finally, just two words about the prediction tables. I think that Professor Glueck's books on prediction tables are of the utmost importance; they have been studied very fully in my country, we all know about them and are deeply interested. I think this whole empirical approach to the treatment of these questions with which we deal in criminology and the treatment of offenders is of the greatest value. But I think in any case we are not fully ready to put these things into practice and it seems to me that Professor Glueck thinks so himself. We have to concentrate on the preliminaries leading up to the possible use of this method in the future. One is the follow-up studies. We do not have in many countries follow-up studies which in any way resemble the valuable follow-up studies which form the basis of the prediction table system. I think that, whether we come to use such tables or not, it is of the highest importance that in all countries, also for comparative purposes, we really go to work on follow-up studies of various groups of offenders and of various treatment institutions. Only when we have – and this will stretch over a couple of years – really reliable follow-up studies, will we have any possibility of making prediction tables. And only when we have such follow-up studies will we, even without such tables, have a real foundation for treatment measures.

The other thing I would stress is what Mr. Constant has said about the high importance of giving our judges, prosecutors, etc. a real knowledge of these things. These two main ideas – the follow-

up studies and the training of criminal judges – we have to carry out in practice before going on to the controversial matter of prediction tables.

The *Chairman**, without wishing to abandon his impartial rôle, wanted to observe that, in his opinion, one problem has not so far been sufficiently dealt with in the discussion of the optional or mandatory examination and of the consent of the individual, namely the question of knowing whether or not the pre-sentence examination is profitable to the offender.

While being happy to see Mr. Pinatel ask for the floor again, the Chairman pointed to the provision of the regulations according to which each speaker can speak no more than twice on the same subject.

Mr. *Pinatel** (France):

I beg your pardon for speaking again, but if I do so, it is because yesterday, in adopting the work plan, it was said that this morning we would mainly discuss prediction tables. And therefore I put off to this morning the few remarks that I wanted to make on that subject. It is evident that in Mr. Glueck's general report a very important part has been devoted to prediction tables, and I personally believe that this is very desirable. I believe that the day we can have certainty on the result and the subsequent development of the personality of offenders and pre-offenders a great step forward will have been made, a long lap on the road of criminological progress. But the question submitted to us to-day is to determine if at the present moment one can force these prediction tables on the judge. Do they possess such a degree of certainty that one could profitably take them as basis, or on the contrary, should one encourage – very vigorously, however – criminological research in all countries in the direction of a more thorough study of these tables?

As for France, we have been busily working for four or five years already, not on prediction tables properly speaking but on the study of recidivism and the nature of recidivism, both as to juvenile delinquents and adult offenders. The idea by the way, was brought to us by a Swiss magistrate, Mr. Erwin Frey, who, in a conference made in Paris, presented to us the first results which he had got by a study of the case histories of juvenile delinquents who had grown up. And the study was resumed later; on the sociological plane I made a

modest contribution by studying the statistical results of juvenile delinquents who had recidivated. But I believe the great step taken was the setting up of a committee headed by Professor Heuyer, which will study, over a ten-year period, 20,000 case histories of juvenile delinquents who have passed through the Seine juvenile court or who have been seen only in mental hygiene clinics; they are now trying to find out what has become of the children. We cannot supply you with positive conclusions at this time, but I have an impression I want to communicate to you. Mr. Heuyer, after studying the first 500 cases treated, told us in a lecture organized by the Institute of Comparative Law that, after a thorough analysis, he has become more and more aware of the necessity of taking into account the circumstances, the hazards of life, and that actually many unfavourable prognoses which he had made had proved false. Now, I believe one can draw the following conclusion from these first studies, these first results: they must be continued, founded more firmly and increased in number, but I think that, for the moment, it would be premature to adopt a motion tending to give them, with regard to courts, a mandatory character which they cannot have.

Mr. *Grünhut* (United Kingdom):

May I say just a few words with reference to the controversy between Professor van Eck and Professor Hurwitz. I should say it is not so much a controversial question, that question of the consent to the personality analysis, but an academic question, because I, as a layman in psychiatry, cannot imagine any analysis without the patient's cooperation. But the question has a significance in principle and even a political significance. We live in times when we hear about the use in some countries of drugs and other devices to break down the personality and the obstruction of the defendant. In such times it seems to me a great obligation for an international association like ours to make perfectly clear that we stand in this matter for the rights of the individual in the sense in which some codes of criminal procedure declare that the defendant is to be asked whether he wants to make any statement at all with regard to his being charged wiht a crime. And it is for this reason that even if we admit that a physical examination can be ordered against the will of the defendant, he remains, even as a defendant in the criminal procedure, master of his own soul and it is for him to

decide whether he shall reveal the secrets of his personality to others. It is for this reason of principle, if not for political reasons, that I should like to put on record my sincere sympathy with Professor van Eck's view.

Mr. *Stürup* (Denmark):

I would make only a short remark to answer the President's question whether or not it is in the interest of the man to be investigated. I wonder who can know that beforehand. What is the interest of the man? To get a short prison sentence which he will serve quickly and then continue to commit new offences because it was not found that he was in need of special treatment? Or is it in the interest of the man to get a special treatment and then perhaps not run the risk of any further criminality? It is the same in practical life. Suppose there were the possibility of using narco-analysis with the consent of the man and he says: "No, I don't want it". Would not perhaps a jury before which the case is tried say: "That man has special things to hide, he is very afraid of telling these things"? I think we are here on a ground which is so new to all of us that it is very difficult to make up our minds. What, then, should we do now? I feel that for an international congress it would be terribly difficult indeed to make any statement that this should be done and this should not, because psychiatrists are still experimenting and still do not know really what the result will be for some five years.

Mr. *Fenton* (U.S.A.):

I think that I am speaking in part on behalf of the group of the members of the American Prison Association who in an official report – of which copies will be available here – discuss the question of prediction tables and very much in the same manner in which it has been discussed here. We have the feeling that the prediction tables should be studied very consideredly by penologists, and especially, since our question was one of release, by groups who are concerned with the release of inmates from the penitentiaries. Consequently, I hope that the group will take the same broadminded point of view as our Committee on Classification and Casework in America, namely encouraging very strongly the development of prediction tables and perhaps also the thoughtful

and considerate use of them, rather than coming to some conclusion contrary to the tables or omitting mention of them in the resolution which may be forthcoming this afternoon. I think we should encourage very strongly the further study of the prediction tables in countries outside America, since they represent an important development of penology, but emphasize also that the results of the prediction tables with an individual inmate or defendant is merely, as I am sure Professor Glueck will confirm, one phase of the total picture of the individual and to be considered as data, important data, but not to be used in any mechanical, autocratic manner in deciding whether a man should be released from prison or whether he should go there in the first place. The title of the report to which I referred is *Handbook on Pre-Release Preparation in Correctional Institutions;* it is a companion text to the Handbook on Classification. Mr. Cass sent a hundred copies which are available on the ground-floor.

The *Chairman** pointed out that after a summary of the discussion by the general rapporteur a drafting committee of three or five persons would have to be appointed who should submit a draft to the Section early enough so that the question might be presented to the General Assembly in the morning.

Mr. *Bates* (U.S.A.):

I hope that this resolution will not put too much emphasis on the point that my good friend Hurwitz raised, whether the consent of the defendant must be a prerequisite for examination. I understand we are not talking about pre-*trial* examination. We are not trying to curtail or abridge any legal rights of the defendant, but we are trying, on a scientific basis, to get knowledge of facts before the court. Now, as intimated in the report from my country, we have a fully equipped Diagnostic Centre in New Jersey. We do not find the question of consent to be important at all. The law says that persons go there on three bases: They go after the finding of guilt or delinquency when the legal question is over – that is, in our theory it is, if we penologists separate the question of guilt and innocence from the question of treatment. The second class are those who are asked to go and are recommended by a responsible social agency or a public department. We do that now in questions of insanity or feeblemindedness or the presence of disease, and the

matter of consent does not enter into it. And the third class who may avail themselves of the diagnostic facilities are those already in our institutions, where the institution preparatory to parole or transfer wants some light on the character of the individual. We have never, so far as I know, in the Diagnostic Centre, had a straightout refusal of a man to take an electro-encephalogramme or to draw a picture of what he thinks the world ought to be or any other of the newer diagnostic aids that our psychiatrists and psychologists use. Our people have worn white coats instead of blue ones and that is very important to them. These men who come there know that they are coming to professional men, to doctors, and their resistance evaporates. Now, that is the way it works. The way to get a defendant to "dummy up" (that is an American expression) is to hold the club over him and say: Where were you on the night of August 27th? The way to find out about him is to let him help in the investigation. So I think we ought to make it quite clear in this resolution that the diagnostic process after the sentence, after conviction, has no necessary legal significance. In another year or in two or three years, as our own evaluation of the diagnostic processes proceeds, I think we will be able to be more dogmatic than we are now. But I should think that it would be a cause for great regret if anybody embraced the idea that the judge should not have the facts about the convicted defendant unless the convicted defendant wanted him to. Because after all, when we are talking about the interests of the defendant, we are also talking about the interest of the community.

The *Chairman** thought that the drafting committee would have to take Mr. Bates' interesting remarks into consideration. Besides, this committee would not be able to meet until after the afternoon session and its draft would be submitted to the Section to-morrow afternoon. A resolution, therefore, would only be ready for the second General Assembly.

Mr. *Glueck* (U.S.A.), general rapporteur:

I will not attempt here even to mention all the points which have been raised but will try to summarize the issues as I see them.

Since Mr. Bates, the President of the International Penal and Penitentiary Commission is present here, I want to tell you that it was really on his encouragement that my wife and I as students many

years ago began our series of follow-up studies. Mr. Bates was then Commissioner of Correction of Massachusetts and unlike so many public officials in many countries – the United States is not exceptional – he saw that something more than the mechanical administration of justice and prisons was necessary. Those who know his history since then have realized that he has followed that vision throughout. He encouraged us very much in working on "500 Criminal Careers" and when we published our findings, some of which were not too pleasant, he gallantly acknowledged the parts with which he thoroughly agreed; he continues down to this very day to have certain reservations about others. However, I want to take this occasion to thank him publicly for having put us on the highway of penology.

As to the points raised, I think the issues boil down to this:

In the first place, is a pre-sentence report desirable? I think, as I said in the report and as has been brought out in this debate, we can arrive at unanimity on that question. But to say yes in 1950 on that question is almost like saying: Do you believe in Santa Claus? Of course, we all believe in Santa Claus. The problem arises as to certain technical details. First of all, in what classes of cases and offenders shall the examination apply? We have had two views expressed here, especially with reference to political crimes. As I think I made clear yesterday, I hold no brief for excepting political crimes from the pre-sentence investigation if that be the sense of the majority; we will find that out when we vote on the resolution and that is perfectly alright with me. I had in mind the fact that owing to certain occurrences in certain parts of Europe that are perhaps darker than the rest of the Western world, the fears of some of the people who wrote these reports, with reference to the abuse of the pre-sentence report in the case of political criminals, ought to be given weight. I think one of the speakers yesterday emphasized that. On the other hand, a speaker to-day pointed out to us that in many so-called political crimes a pre-sentence investigation is just as important.

Then we have the approach as to whether we shall try for a formula listing crimes or listing types of offenders, juveniles, recidivists, morals offenders, etc., or arrive at some other solution. I am afraid that as I see it we shall have to arrive at a harmless generalization if we are to arrive at any unanimity of view, leaving variations to the

different countries in the light of their own political and legal systems and their cultural traditions and, particularly, their clinical facilities. So my view is, subject to correction by the other members of the drafting committee to be appointed, that the best way to handle this is to make some generalization such as that we approve the principle of the pre-sentence examination in as many cases as the laws of the country and its facilities permit. I do not like any sort of evasion even if it masks as a generalization, but we have to come to some agreement here, and I think we are all agreed that this pre-sentence investigation is important in as many cases as possible.

Now, as to the scope and intensity of the investigation, it seems to me that when you re-read conclusion No. 2 you will find a statement which sounds reasonable to me at least. The difference of opinion that I noted is whether the examination should be limited to facts that the judge can use in the sentencing phase and which in that event would be relatively superficial, or whether it should go farther and provide at least a preliminary plan of treatment. Now, in a place like New Jersey, where under the inspired leadership of Mr. Bates we have an amazing new experiment of a diagnostic centre in which thoroughness is the rule, time is taken to study these cases thoroughly during a period of remand *after* conviction and before sentence. Where such facilities exist, of course, it would seem that the examination and the report should cover those two aspects, that is, aid the judge in choosing between the several alternative bottles of medicine that society provides in its statutes, on the one hand, and on the other, more discriminatingly, at least prepare a preliminary plan of treatment or plan of probation.

Now we come to a question which was debated a great deal in the reports and has been alluded to again to-day to some extent, namely the stage at which the examination is to be made. Mr. Bates was not here, so he does not know that I pointed out that there is an unreconcilable difference in political and constitutional background and criminal procedure and rules of evidence between the Anglo-American system and the Continental. We would never admit examination by a "juge d'instruction" or by police, we would never admit the results of such examinations in evidence without the consent of the accused; we have a privilege against self-incrimination, we have a rule of evidence which prohibits mentioning the prior crimes of the accused when he is being tried for a particular crime unless he himself

puts his character in issue by taking the stand, claiming to be a good character. Consequently I think we should adopt the suggestion I made yesterday — and I am glad to see that Mr. Bates, without knowing about it has made a similar suggestion — namely that we look upon this provision literally: this is a *pre*-sentence report. The question is how far back before the sentence it should begin, whether it should begin at the "juge d'instruction" level before trial and before conviction, or after the accused has been transformed into a convict by a finding of guilt. That is, I say, an unreconcilable, fundamental difference of jurisprudence which we must accept, and so I would say that we should just stick to the pre-sentence examination and leave the rest ambiguous on purpose, taking into account that every country will operate according to its own traditions and criminal procedure. At all events, it does remain a pre-*sentence* examination and that means that before the judge can act he must have this information.

Now, just a word about prediction tables. Several speakers have evidently misunderstood, or perhaps forgotten, the wording of conclusion No. 3. I thought that both in that conclusion and in my discussion yesterday it was made perfectly clear that the aim is not to have judges and parole authorities adopt prediction tables the day after to-morrow at 11.10. The conclusion distinctly says: "It is therefore recommended that criminologists in the different countries conduct researches designed to develop prediction tables based on *local* experience...." — and Dr. Fenton has again alluded to that and so has Professor Hurwitz — so that judges as well as correctional administrators may experiment with their use. I am glad that Professor Hurwitz reminded us — I overlooked it, it is so obvious to me — that before we have prediction tables we must have thoroughgoing and reliable follow-up studies. And so I hope you will not throw out No. 3 under the mistaken assumption that this is a recommendation that should be adopted soon by judges and releasing authorities all over the world. On the contrary, it is no more a dangerous recommendation than the innocuous one that we encourage criminologists in the different countries to get busy and do some kind of research as we are doing.

Just one more point in that connection. I think Professor Vrij yesterday alluded to the fact that there was no money for these things. I do not know whether I am expected unofficially to be a sort of advance agent for a new type of Marshall Plan. But if you have not

yet the money my advice to you is the advice of Jago to Roderigo in the play Othello: Put money in my purse!

(Applause)

The *Chairman** closed the general discussion on the first question of the Section's program and proposed as members of the drafting committee Messrs. Glueck, Hurwitz, Constant, Pinatel and Drapkin. This committee would present its proposals at the meeting of the following afternoon, and at that moment one would vote on the proposed resolution and also if necessary on admendments which might be presented by some member of the Assembly.

In the afternoon the Section would start the discussion of the second question of the program. The meeting agreed.

The meeting was adjourned at 12.30 A.M.

APPENDIX

Statement of Mr. José Agustín Martínez (Cuba) 1)

1. The general evolution of ideas cannot fail but influence penal law. It would be inconceivable that penal law and the foundation upon which it rests would remain unchangeable in a world subject to constant evolution and change.

One of the concepts which has undergone the influence of the incessant transformation of ideas has been the meaning of *punishment.*

In the beginning, *punishment* was considered as a grossly physical measure of retribution, as exemplified in the Lex Talionis. Gradually this concept has suffered such transformation that at present we have come to consider punishment as a *treatment* which should be applied to the individual offender: such treatment is an *obligation* incurred by society, and a *right* pertaining to the offender.

Furthermore, this *treatment* is not a *punishment* in the primitive

1) Mr. Martínez, President of the National Institute of Criminology of Cuba and delegated by the Republic of Cuba to be its representative at the Congress, was unexpectedly prevented from attending but sent the above communication with respect to the first question of Section I (pre-sentence examination).

sense of the word. A penal code or, more correctly named, a Code of Social Defence, should not contain a rigid catalogue of penal measures. On the contrary, it should provide an arsenal of different measures applicable to each individual transgressor of the norm, taking into consideration not so much the *transgression committed,* as the *personality* of the individual transgressor.

2. For this reason, before choosing adequate treatment, it is indispensable that the judge may have before him the necessary details with respect to the personality of the delinquent; for the same obvious reason that one cannot logically prescribe a successful medical treatment without previously arriving at a *perfect diagnosis of* the illness which is to be cured.

3. It is evident that this previous examination of the individual offender prior to the sentence would be useless unless we have a Code which permits the judge to make the proper selection of adequate treatment.

We do not refer at this time solely to cases of mental derangement. The laws of all civilized nations determine that, faced with a mentally afflicted offender, the judge is under the obligation to determine his mental condition before pronouncing sentence. The laws likewise provide for the treatment to be given to this type of offender, should the judge determine that the transgressor was mentally deranged when the crime was committed, or became mentally deranged after committing the offence.

When we consider the problem of adequate treatment we refer to all *offenders*; we must not only determine their mental conditions, but also take into careful consideration their more or less dangerous characteristics, their pathological, hereditary, social or family antecedents, etc. The judge should be in possession of all the data before he can choose among the measures provided in the legal text the one which will prove most beneficient and appropriate to the individual involved.

4. The examination should be medical, somatic, psychiatric, educational and social. It is necessary to determine the state of sanity of the individual offender; whether he suffers from any illness or trauma which may modify or alter his phyche; if he is under a pathological hereditary strain which can be removed, modified or cured. It

is necessary to determine with exactitude the *motive* of the crime, and to this end it is indispensable to know the family and social background of the individual, his means of livelihood (modus vivendi), and the environmental influence he has been subjected to until the time of the transgression, as well as the circumstances connected with the crime itself.

Our present system is useless as it stands. The judge has no choice but to pronounce sentence over sealed tombs; justice is literally, in the most alarming sense of the word, blind. It judges the *case*, never the *offender*. The immediate result of this vicious practice is the absolute uselessness of the entire system of penal repression employed up to the present time.

It is sufficient to study statistics before us in order to convince ourselves of the unhindered advance of crime and of the frequency with which we are confronted with multiple offenders and incorrigibles, who have been submitted to various jail terms without the slightest resultant reform of their unsocial characters or bad habits. On the contrary, we all too frequently see that imprisonment, and particularly short jail terms, have exerted a corrupting influence, leaving the prisoners in a worse moral condition than when they first entered the house of correction.

5. The International Group of Criminologists which met at Lake Success in August 1949, under the auspices of the Social Defence Section of the Economic and Social Council of the United Nations, and of which Professor Thorsten Sellin was rapporteur, agreed on the necessity of recommending to the nations forming a part of the United Nations Organization that they give primary and urgent consideration to this matter. As a member of the aforementioned International Group of Criminologists, representing the Latin American Countries, I was in complete accord with this recommandation.

Conclusion:

I formulate the following proposal for a Resolution to be adopted by the XIIth International Penal and Penitentiary Congress:

"The XIIth International Penal and Penitentiary Congress recommends that each member nation study the adequate procedure to provide for the examination of accused offenders, *prior to the sentence,*

in order to aid the judge in choosing a just and adequate treatment of the individual offender."

Afternoon Meeting of Tuesday, August 15th, 1950

The *Chairman**, Mr. Cornil, opened the meeting at 2.40 P.M. and gave the floor to the general rapporteur of the second question on the programme:

How can psychiatric science be applied in prison with regard both to the medical treatment of certain prisoners and to the classification of prisoners and the individualization of the régime?

Mr. *Stürup (Denmark)* [1]), general rapporteur, said that he would try to underline some of the most important things contained in the valuable reports put before him.[2]) First it is interesting to note that psychiatry has now taken up duties outside mental hospitals. What is going on here is just the same as in the field of child psychiatry and other aspects of social psychiatry. The difficulty is that many people do not really understand what the psychiatrists are up to and what they want to do. That is especially seen in some of the reports where the authors talk about people believing that psychiatrists are only interested in coddling prisoners. It is important to stress that psychiatrists must feel, when they work in social fields, especially in forensic medicine, that they are there as servants of the State, in order to make the public security better because they understand human nature perhaps a little bit better than the average man in the street, in view of their special experience with really psychotic, deranged minds.

Another thing to stress is that the terminology in all these reports is not uniform. It is very interesting to note that Dr. Young in his valuable report remarks especially that he finds very few genuine neurotic reactions. The word "genuine" is worth stressing, because in the Swedish report Dr. Sondén shows that he finds a lot of neurotic reactions; the difference may be in the word "genuine". In this way

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[1]) General report, see volume III, page 165.
[2]) See list of rapporteurs, loc. cit., footnote.

many difficulties arise if the words are taken at their face value. One must try to find out if many of the authors mean different things when they use the same word. That makes comparison very difficult. One should go through histories and see what sort of cases was thought of when using the word "neurotic". Take for example, an emotionally cold man, a very hardened man whom everybody many years ago would have classified as a constitutional psychopath of the worst sort. Following such a case, one comes to feel that behind all this coldness there is only a very sensitive man, who has put up a barrier, a shield, so that nobody might know his real self. This has been the experience in many a murder case. Should such a man be called a neurotic? The only symptom of this neurosis is a very long series of bad criminal acts; not much else can be seen. In some countries, as in Sweden, they are called neurotics, but this is not quite the proper word. So much for the terminology which made it difficult to compare these reports.

As for the very important points made by Mr. Oppenheimer, he stresses that it is just as important to educate the people who have to make appropriations as it is to investigate the people who are going to have psychiatric treatment. This point is important because if we move faster as psychiatrists than the general public can be taught to follow, we shall lose ground very soon and that would be a very serious setback for us.

A big problem, also stressed by Mr. Oppenheimer, is whether this sort of special psychiatric service should be arranged to include every sort of psychiatric problem or if it should be given in different hospitals, far enough apart so that the inmates cannot get into too close contact. It is very important to have the possibility of treating the criminals, who are psychotic but still on the borderline and not clear-cut schizophrenics of the old-fashioned type, together with the others, that is with the character insufficients, because it is sometimes best for a man in these two groups to be treated now as a sick person, now more as an ordinary man. It depends on the period in his life. It is important that the treatment can be changed easily and to have, therefore, these two groups under the same head. But Dr. Stürup said that he would be afraid to have the mental defectives close to these two groups because the mental defectives will hate a bit more clever ones of the character group and the character group will ridicule them and enjoy getting the mental defectives

upset. When one has too low-grade people together with the character insufficients, one always has a lot of trouble in that direction.

In Denmark such an institution was set up in 1933 by law and the building was finished in 1935. The experience in that work is, of course, the basis of the general report. We hope it will be possible to show during the Congress a film, which ought to have been shown before discussion, so that a much more vivid impression would have been gained of what is going on in such an institution. The script of the film was prepared by the detainees themselves and then worked over by the staff and finally by groups of the staff and the detainees together. It should be possible from this to see the life going on as seen from both sides, the detainee's side and the staff's side.

Instead of explaining these different things, I think it much more important to go through, point by point, the conclusions which I have stated, and to do so without too much elaboration.

1. *The purpose of prison psychiatry is to contribute towards a more efficacious treatment of the individual prisoners, thereby attempting to decrease the probability of recidivism, whilst at the same time affording society better protection.* This has been put first because it is important that all people should know that the aim of the psychiatrists is not coddling prisoners, but the protection of society.

2. *The psychiatric treatment should be extended to comprise (i) the recognized psychically abnormal prisoners — all agree upon that, I believe —; (ii) a number of borderline cases that may, possibly for comparatively short periods only, require special treatment (this group also includes prisoners who present disciplinary difficulties* — that means the old type of prison psychosis, prison neurosis, etc.; *(iii) prisoners with more or less severe disturbances resulting from prison life; lack of treatment would lessen their chances of resocialisation.* Of course these ought to have a special psychiatric treatment. As for the borderline cases, the most important and biggest group which is the group I deal with personally, the problem to discuss will be the degree to which the psychiatrist should interfere with disciplinary measures. When a prisoner reacts against the rule of the house, to what degree should the psychiatrist interfere, not

in aid of the prisoner but to restore discipline? What measures should he use?

3. *The forms of psychiatric treatment should depend on the degree of development of the general prison treatment, on the nature of the prison treatment in the country or locality in question, as well as on the number of psychiatrists available.* Through all the reports runs the idea that there is a great need for psychiatrists, and that many of the countries want to have better services than the available number of psychiatrists allows. Therefore, I think that we must go on record that we know that it is not an easy job to train psychiatrists suitable for this type of work. It cannot be done overnight. It takes years after a man has been trained to be a psychiatrist, to make him a real prison psychiatrist who is to be generally helpful.

4. *It is desirable, and would be highly advantageous, to have prisoners classified and separated into groups for special treatment, e.g. groups of morons and groups of characterologically abnormal persons. An establishment for the treatment of characterologically abnormal prisoners should have facilities for dealing only with a suitably homogeneous* – not fully homogeneous – *group, not exceeding about two hundred persons.* In the first years of our work in Denmark we had up to 150. The work went marvellously well; it was easy to handle a group of that size. When we came to about 180 we started to have difficulties, and when we passed the 200 mark (we have now about 300) it became worse than ever. I cannot know all the prisoners. I feel it is impossible to handle them and to talk over the cases with my assistants when I cannot know everything beforehand about the cases. I know half of them but I do not know them fully. Suppose a man phones during the night and asks what we are going to do in his case. He has just been arrested somewhere and the policeman wants to know something. I shall not be able to answer and then something drops out and you come too late. For this sort of work it is necessary to keep the group small.

Then: *It is of decisive importance that the treatment be not limited to a previously fixed period, and that the end of detention should not mean cessation of treatment – this should continue after discharge until complete rehabilitation is obtained.* I really think the most important period of treatment is the first year after the man has

left our institution. I want to stress that it is during the institutional period that you establish the good relationships which you can use in the period of treatment later on so that a man will come to see you because of the work you have done in the years he was in your institution. He trusts you and tells you the things he would never tell anybody else and says: "Doctor, I need your help in some way; you must explain to me why it is so and so". Then you are in reasonable contact with the man. That means that, seen from my point of view, it is impossible to transfer the treatment from a group of officers in the institution to a different group after release; if you do that you have to start anew. And in that connection I feel that parole is an experiment which I should be allowed to use. In Denmark it is the court which decides if a man is to go out on parole or not; I do not do it. Of course, I propose it to the court and as a rule they follow me, but not always. But then I do not mind too much if a man returns. Of course he is bound to return in a certain number of cases. But I feel that it is a very great mistake of mine if a man recidivates after *final* release. I tease all my staff if we have one of these cases, because we are allowed to stretch out the period of parole as long as we need, which means that it is a medical error if he recidivates. In the first 140 – 150 cases we had 3 who returned. Since then, these 3 cases have been so discussed that the staff dare propose a man for final discharge only if they feel absolutely safe that it will work.

5. *The general methods of psychiatric treatment – shock treatment, psychotherapy (including group therapy) – may advantageously be applied to criminals with due regard to occupation and prison routine.* We should not limit ourselves in any way. We should take up every sort of idea that comes from general psychiatry, occupational therapy, and so on. But when we put it in practice in a prison or in a similar institution we must always think of using it in such a way that it does not disturb the general rules, the general daily way of life. Therefore I feel that it would be very difficult to introduce ordinary group therapy as it is used in private practice and in ordinary hospitals. I would not dare to advise it done in that way; it must be fitted into the general occupational way of life inside the walls.

For characterologically insufficient prisoners it is necessary to work out indirect forms of treatment, not attempting to force

upon them definite patterns of response. That is a point especially stressed in the Danish report, because I believe that if you work in too direct a manner on this sort of character problems, if you make a front attack, you will develop a counter-attack. The patient will do everything to save his face and adopt the attitude, "I'll never change". You must take a roundabout way so that he finds out for himself that he needs to change. You must never tell him too directly how to change; he has to tell you. Of course, how this is done must depend on the mentality of the patient and on the psychiatrists.

Direct and active cooperation on the part of the prisoner is of decisive importance, and his readiness to be treated is, therefore, a necessary condition. Frequently, this state of readiness is stimulated only under the pressure of the indeterminate sentence which is morally justified on the grounds of public safety. Such severe measures can, therefore, be applied only when public safety is endangered, even if such pressure may frequently be necessary to focus the prisoner's interest fully on the treatment, without regard to the inconveniences caused to him. The indefinite term element must, in all cases, be utilized with due regard to the risk to society which the prisoner would constitute if at large. The prisoner must be ready for treatment. You can give him this readiness through an indeterminate sentence because he feels that it is of importance to him, that something must change. I have worked in the same institution both with groups with fixed and groups with indeterminate sentences, and there is an enormous difference. The indeterminate sentence is a tool for the psychiatrist. Take this tool away and you do not need the psychiatrist. Such severe measures as indeterminate sentences can only be applied, however, when public safety is endangered. Of course, if the offences are too small you cannot get the court to give such a sentence. On the other hand, it has been proved in Denmark during the last 17 years that the courts have been using this sort of sentence more and more, so that we have no rooms now; we have twice as many people in detention as we expected. That has happened after about 15 years, when suddenly the system started to work. It takes about that time to train the people responsible for giving the sentences to use the laws as they were meant to be used. It is very important to know that, when you are planning your institutions. Therefore, I

think it is necessary to formulate some sort of statement along this line showing that we know that it grows slowly and then suddenly breaks out, at which time you must have sufficient assistance to take up the job. If you do not prepare for that during the waiting period the court will be disappointed and then it will stop using the sentence.

6. *The assistance of the psychiatrist is necessary in the classification of prisoners. Only when psychiatric centres are established within the prisons, permanently employing skilled forensic psychiatrists, is it possible to direct the special treatment of the psychic troubles ascertained at the general classification, besides those spontaneous reactions that may manifest themselves in prisoners previously classified as fully normal.* I think the way they do it in Sweden should be very important. There the psychiatric centres are established in the prisons and have permanently employed skilled forensic psychiatrists. With such aid it is possible to direct the special treatment of the mental troubles diagnosed at the time of the general classification and to treat spontaneous nervous disorders.

7. *By his own example and by the practical guidance of his collaborators, the psychiatrist can contribute towards making individualized treatment a reality. In his guidance and teaching, the psychiatrist should build on careful analyses of individual cases actually encountered, and he should avoid all temptations to theorize.* You have it perhaps somewhere on paper but individualized treatment is difficult to transform into reality, although it must be done. I would propose that if a psychiatrist starts such a new institution he should devote two thirds of his time to discussing things with the staff and training his staff, explaining why he thinks so and so about each special case, and perhaps one third to select the case he wants to tell the staff about, and not the opposite. It is very important that you spend enough time for guidance, for teaching, not on theoretical but on practical levels, in daily routine. In staff meetings with the general staff, the men in the lowest ranks have to be there. You do not need the others, but the *low* ones are important to have there. Let them know directly why you are proposing this or that. Have them ask enough questions so that you feel that they really understand things.

Those are my points for discussion, they are drawn mostly from my experience. In my general report, however, I have tried to take up

the many important views of collaborators throughout the world.

(Applause)

The *Chairman** thanked the general rapporteur and opened the discussion on the conclusions which he presented.

Mr. *Glueck* (U.S.A.):

Without attempting to follow the particular points I just want to say that I register full agreement with Dr. Stürup's entire philosophy and psychiatric therapy. I was particularly impressed with his stressing the fact that very often you have to use a tangential, indirect approach to a personality before you get rapport and a change of attitude. We all know that, for instance, as to children. When you tell a boy who has done something wrong: "Don't do that!" he will defy you and do it if he has any spirit at all. But if you indirectly indicate by your own behaviour, without a direct assault on his personality, what is right and what is wrong and he has an affective emotional relation to you he will ultimately do what is right. I think that is also true of many prisoners who perhaps from a psychiatric point of view are not specially classifiable in one category or the other but may be regarded as normal. If the probation or parole officer uses the direct method he is nothing but a "cop" all over again. If by his behaviour and attitude and the respect and affection which he brings out in his charges he sets an example to emulate, a sort of belated ego ideal, to use an analytic term, he is much more likely to get results.

I was impressed with the simple, yet startling and important, idea that in staff conferences you should have everybody present, even the janitors. When you stop to think of it, that is the best way to get results from all your personnel and to break down a sort of division and even a suspicion that exists between guards on the one hand and the educational personnel on the other. As you know, guards often are very shrewd, intuitive psychologists; they watch these men for a long time, and it is surprising how sometimes in a case conference they will make a startling observation which impresses everybody, even though it is not stated in fancy psycho-analytic terms.

Those are the two points which impressed me very much in Dr. Stürup's learned presentation.

Mr. *Oppenheimer* (U.S.A.):

May I express my admiration for the way that Dr. Stürup has summed up a programme of action which is yet consistent with the precepts of the field of which most of you know so much more than I, the concepts of what psychiatry is equipped to do in modern penal administration. It seems to me that these seven points which Dr. Stürup has set forth not only combine the scientific approach with the pragmatic one, but are also adjusted to the varying needs of our respective countries. For example, I have become aware that in Dr. Stürup's own country, as in Sweden and, I believe, in England, some of the recommendations here made are already in effect, such as the specialized institutions for neurotic defectives and the indeterminate sentence, and yet the recommendations are worded in such a way that they are applicable not only to countries which have already adopted some of them but also to other countries which are still in earlier stages of development in this particular aspect. I should like therefore to move the adoption of Dr. Stürup's conclusions.

At the suggestion of Professor *Glueck*, the end of the last conclusion was changed so as to read "all temptations to *dogmatize*" (instead of "theorize").

Mr. *Fenton* (U.S.A.):

I think possibly that this statement might be strengthened by indicating the relationship, as Dr. Stürup has done in his explanations, of the psychiatrist to the other personnel in treatment. The treatment group consists of the teachers, the social workers – or sociologists, as we call them – the psychologists, the other medical practitioners, the general practitioner and the specialists, who come in for various reasons; you also have the recreation group and possibly others, so that the psychiatrist is a member of a team – a treatment group that are attempting to change the attitudes and the behaviour of the inmates. It is essential that this team-relationship be understood, otherwise you have, as in many institutions, the psychiatrist working alone and not doing as Dr. Stürup suggested, not mingling with the staff but having the tendency to make his diagnoses and possibly deal with the higher officials but not working closely enough with the rest of the treatment personnel.

The second point that might be considered is emphasis upon the fact that treatment in the institution is related to the total morale of the institution. In other words, you may have the finest psychiatrists and teachers in the country, but if the group in charge of the institution are not in sympathy with treatment, if they are punishment people — custodial people, as we call them — you lose the main factor in treatment, which is the impact of the morale of the institution upon the individual inmate. That is a significant point. The psychiatrist has a great deal to offer in assisting other members of the staff in recognizing instances of poor morale, attempting analysis of causation, often in terms of the personality defects of the personnel, their limitations, their ignorance. And then he has, as Dr. Stürup pointed out, a leadership rôle in the training of the personnel to appreciate the needs of inmates, their personal problems, and why the psychiatrist and his colleagues in treatment are recommending the things and approving the programme that has been recommended for the man. I agree with Dr. Glueck's point of view that the more one can bring in and accept the rank and file personnel of the institution, the more the professional people accept the correctional officers, the more likely it is that good will come to the inmates from our professional ideas and our professional treatment. I remember very definitely, in St. Quentin, asking the correctional officers to attend our staff conferences with regard to individual inmates and, as pointed out, that their interest was exceedingly valuable. Their point of view was changed and, as Dr. Glueck has pointed out, their contributions often were most valuable, not only from the standpoint of custodial care, but often actually from the psychological standpoint, in understanding the inmate and making suggestions for his welfare.

So I think that I am just supporting Dr. Stürup's points in saying that we want to stress:

1) the leadership of the psychiatrist in in-service training;

2) his leadership in the analysis of the morale of the institution with a view to doing something about this tremendously important factor; and

3) the importance of the acceptance by the professional staff, led by the psychiatrist, of the personnel in this whole treatment programme.

It is rather interesting that the latest concept or nicest newest term that I have encountered — and it may be familiar to you — with regard to the treatment of the kind of people we have to deal with, is "acceptance therapy": if we accept these people we can help them, if we do not accept them we may be able to remove their tonsils or teach them arithmetic or history but we will not change their attitudes towards society and their feelings about themselves. And in addition to the acceptance therapy for the personnel, the psychologists and psychiatrists and the other professional people need an acceptance therapy toward the lower ranks of the personnel in order that you may get an institution that is totally integrated in terms of the treatment philosophy.

Mr. *Drapkin** (Chile):

I have very little to add because it seems that we are more or less agreed on the general basis of Dr. Stürop's report. But I want to stress two points, especially because they are very much related to our type of work in Latin-American countries.

The one is that he said that it is absolutely necessary for the psychiatrist not to remain enclosed in his clinic but to go out and talk to the other people of the prison administration and teach them. This is very important because in our country the general administration of the country believes that the way to administer a good penal treatment consists in building new prisons. I am opposed to such a viewpoint because I still believe that you can do good work in a very poor and humble prison, if you have a well trained personnel, a very good staff. This is what I want to point out especially for our Latin-American countries. I still believe that skillful preparation of the personnel is much more important than constructing wonderful prison buildings.

Secondly, I want to say a few words in relation to the word "team". The psychiatrist cannot remain isolated from the people of the administration, he must keep in close touch with the other sections of the prison that work with the same purpose in view, the readaptation of prisoners. We have in Chile, as in other countries of Latin-America, what we call an Institute of Criminology. We have a team composed of social workers, psychologists, doctors of internal medicine, psychiatrists, etc. who work together with the people of the school, of the recreation programme, of the labour programme, and

we have found out after fifteen years' work that this is the only way. If each of these persons works in isolation, making his own statements without any regard to the statements of the other people, we will never arrive at any constructive conclusion.

I will end by adding my enthusiastic endorsement to Dr. Stürup's report.

Mr. *Upright* (United Kingdom):

I speak with a great sense of temerity in the presence of so many experts in the field of psychology because I want to confess at once that I am a very tyro in the field of psychology and, what is perhaps a further handicap, I find that on looking at the Guide which gives the ages of a great many members of the Congress I am one of the oldest members and it may quite readily be thought that I am somewhat old-fashioned in my views and perhaps somewhat out-of-date. But I do want to emphasize and corroborate what was said by our friend here about the real need for co-operation between the psychiatrist and the other members of the prison staff. And I was rather interested to note when he gave his somewhat lengthy list of the other members of the staff with whom a psychiatrist might co-operate — I may be mistaken, but I listened carefully — I think he left out the Chaplain. So I want to put in a word for the co-operation of the psychiatrist with the chaplain. I have never actually been the chaplain of a prison, but for a great many years I have had charge of the prison work of the Methodist Church in England, the supervision of the chaplains, and through the kindness of the Prison Commissioners that has given me freedom of entry into all the prisons, Borstal Institutions and Home Office Approved Schools of the country I have seen quite a considerable amount of the inside and of the work that goes on there. And I have seen some wonderful results through the co-operation of the psychiatrist and the chaplain. In a congress like this there are speakers from various countries and representing many different faiths, many different creeds and beliefs, some of them very ancient creeds, others perhaps much more modern, and yet most of those creeds, the ancient ones particularly, have certain ideas in common. And one of them at least has regard to human beings and human nature. It was the old Latin poet Ovid, who was himself a pagan philosopher as well as a poet, who used some words which are worldfa-

mous because they were quoted afterwards by the Apostle Paul in one of his letters. Ovid says: "The good that I would I do not, and the evil that I would not that I do". And many of the faiths of the world would agree that there is something that needs correcting in human nature even in what be regarded as the ordinary normal human being. And by co-operation between the psychiatrist and the chaplain a great deal can be accomplished along those lines. I know that psychiatry has a great contribution to make toward the rectification of the aberrations of the individual. But I think it is a mistake to imagine that all the aberrations of the individual are due to something that has just happened within the lifetime of that organism or individual. There is a streak in human nature that seems to run right through it. The old theologians — this is the old-fashioned bit — called it natural depravity, and some of them called it original sin. These are not popular ideas, I know, but they cannot be dismissed off hand, and with the aid of the psychiatrist and the chaplain working in co-operation, I think that a great many of these cases that are likely, as it seems, to turn out human wreckage may be recovered and altogether salvaged, and I would like to see that co-operation very much closer than what it has been hitherto.

Mr. *Baan* (Netherlands):

Much of what I have heard this afternoon sounds like music in my ears, and I think that the excellent report of my colleague and friend Dr. Stürup has been the basis of all this music. I fully agree in saying that we must have a team of psychiatrists, psychologists, social workers, and the chaplain of course. In our country there are fifty-two confessions; we have many kinds of chaplains and we have to work very carefully with them and we are trained with them. Once we have that co-operation between all the members of that team that cannot be large enough as to the qualities of the co-operators, I think all is clear with the diagnosis. But as for the therapeutics I must say I do not have a very clear view of it, and I should like to ask the chairman, the general rapporteur and the members of this conference to give their opinion on the constitution of this team. Is there no hierarchy? Is there a hierarchy in which the psychiatrist, being the man with the greatest experience in these problems, must have the final responsibility for the team? Is the psychologist subordinated to the psychiatrist? In his excellent

report Dr. Stürup must have misunderstood me, for I do not think that as a rule the psychologist should have responsibility for the treatment. But I can imagine that with the enormous mass of problems we have to handle there must be some division of labour. I would like the opinion of the assembly about what we should have to do. Are there cases in which the psychologist, and the social worker perhaps, must co-operate also in the treatment, or is it always the poor psychiatrist who must do all that must be done and only has to collect some data from the other members of the staff? I am not sure what is the best solution. We are trying and experimenting but have not found the solution. So I hope that Dr. Stürup will give his opinion on this matter.

The *Chairman** asked Mr. Baan whether or not he intended to propose a definite amendment to the conclusions. Though there seemed to be a rather general agreement on their content, he would like to see them read attentively so that even slight modifications or additions might be presented in time.

Mr. *Young* (United Kingdom):

I believe that in the prisons we are dealing with a problem which is not identical with that met with in the general community. In other words, the type of case we have to deal with is one which is rarely seen in either the mental hospitals or the psychiatric clinics in the country. Therefore, the prisons will have to develop their own orientation towards the treatment of offenders who are convicted. Methods which are effective amongst the population outside are not equally applicable to those who are serving sentences in prison. That does not take away from the views, I hope, that the psychiatrist who is working in prison and who should be, in my view, a man who is thoroughly well-versed in the ordinary day-to-day prison reactions has experience with prisoners of different age groups, starting from the juvenile offender and working up to the local prisoner (in England) and the recidivist. Until he has had that experience he has no real means of measuring that particular individual who is before him. Taking that into account, I think that the psychiatrist working in prison should also be engaged or partly engaged in work outside the prison. The question itself puts the point: How can psychiatric science be applied in prisons?

Well, in England we have had a psychiatric unit for a number of years in a part of a large prison. This has created very considerable difficulties, in particular the kind of difficulty where an offender is relieved of certain conflicts and as a result develops or releases aggressive tendencies which are apt to produce trouble in the prison; the patient may have to be punished for carrying out precisely what the psychiatrist wished him to do. For that reason I feel that the treatment of offenders in prisons is not right for certain cases. There should be an institution which is separate from the prison but a part of the penal system, in which sufficient elasticity can be given for the expression of such tendencies and for the general loosening of the régime. You cannot afford in a large prison to have two different types of discipline running side by side. The only way this can be overcome is by providing a separate institution in which there will be this elasticity.

It may be rather beside the question, but the last point that I wish to make is this: We find that after successful treatment of certain offenders in prison, whether by the ordinary psycho-therapeutic measures or by group therapy or whatever it may be, the offender who has been a recognized part of a group in the prison finds himself on release without any sort of anchorage at all. I would ask the Congress to consider the immense importance of some form of aftercare for prisoners who are released. We have recently in England arranged for this to be done, through social psychiatric centres. And although we have no experience with the results I think that what we have found of the failure of men who have gone out from a stable environment, where they were supported both by the prison organization and the psychiatrist, has been that they are able to stand up to the stresses and strains which are put upon them as ex-prisoners.

In conclusion I would just say that I think that we have to make a fresh orientation towards the problem of treating the offender in prison and that we must ensure that those who undertake that treatment are very familiar with the material with which they have to deal.

The *Chairman**, before closing the general discussion, asked the general rapporteur to express himself on the various points that had been raised.

Mr. *Stürup* (Denmark), general rapporteur:

I am very thankful, of course, for all the nice things said about my report. I need add only a few words on some special points. I am very glad to hear that I have misunderstood you, Dr. Baan, but when you wrote on page 8 of your report that you would most emphatically point to your conviction "that the psychiatrist should in general stick to the psychiatric problems in the more narrow sense of the word, although as a collaborator with other specialists he can always give his views on psychological and characterological questions", I still feel it was a bit difficult for me not to misunderstand you. And as to the question of the psychiatrist's relation to the psychologist, it is also a bit difficult to follow you completely. As I feel it, in practice there is no problem if we have a real co-operation; in the daily life we do not feel any sort of hierarchy. When we work together, someone of the staff, a social worker or somebody else (I have no trained psychologist on my staff — I hope to get one next month), often takes the lead and convinces me and the others as to what we have to do.

On the other hand, as to what was said by Dr. Drapkin, I want to stress (and that is also in relation to what Dr. Young said) that I feel that the psychiatrist — the man who is responsible for clearing up the psychotic or neurotic reactions which may be produced by the indeterminate sentence and by whatever sort of stress you feel it necessary to put on the inmate in order to obtain your goal — in some way must have influence on administrative decisions. Everything that happens out in the fields or inside the walls is part of the treatment. It may happen in the workshops, in the gardens, in the spare time, but everything that happens is part of treatment. In the end, one man must be responsible for the treatment, as is right, taken as a whole. We have had the same experience as Dr. Young, namely that it is a lot of trouble if the psychiatrists have to clear up the problems which are created by the administration, by the governors, etc.

For this reason I think it is necessary that the psychiatrist has in some sort the final say, that he can make a decision which he uses perhaps once every second year. For instance, if the administration has stopped some work in the workshops because it feels it is too expensive, the psychiatrist must say: But I need it! He must be in a position to fight for his own cause; he may lose it because there is

no money, but it is very difficult if he has to rely upon other men to fight for his cause. So I should like to have the psychiatrist as the formal chief of the group which has to treat psychiatric problems.

Now as regards the remarks of Reverend Upright. Of course I should be glad to accept the work of the pastors. In Denmark we do not have so many problems in that respect as seem to exist in Holland, for we have a State religion and not much friction with other religious societies. So I do not feel very much troubled by that. The pastor in Denmark works as a very valuable social assistant in some way, who knows about a part of the social life or personal life of the inmate and can therefore give us valuable support.

I was very grateful to learn from Dr. Fenton about acceptance therapy. That is worth stressing, as well as working on the morale of the group. These two things — work on the morale of the group and acceptance therapy — I feel is much the same thing because my group is the lower ranks *and* the detainees. They make one group, not two, and that is the point. You have a staff which includes the detainees. If you do not have that, in any case in the sections where the inmates stay the last period they are in the institution, then you have not succeeded. Then they are not ready to go out, they are not mature when they are not feeling that the institution is something like home and do not later want their wives to see where they lived before; of course they would not do that if they did not feel some sort of staff responsibility for the honour of the institution.

That is perhaps why I did not stress so much the acceptance from the lower staff's side: I felt it was acceptance on the part of all the group, the detainees and the lower staff.

Just a few words about my conclusions. I should be very glad if you could make them a bit better because I feel that the wording somewhere is a little difficult. As I told you before, it is difficult to express such things in a foreign language, so I would be very grateful if you would assist in putting these ideas in the best possible wording. Thank you.

The *Chairman** invited the Section to proceed to examine the conclusions point by point. [1]).

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[1]) See text in *italics* in the statement of the general rapporteur pages 61 to 65 above.

Conclusion 1

Mr. *Drapkin*[6] (Chile), referring to what had been said about the necessity for a team, said that he would like to change clause 1 of the conclusions so as to say: "The purpose of prison psychiatry is to contribute *with other members of the staff towards*...."

Mr. *Glueck* (U.S.A.) noted that in this case it would be necessary to replace the words "prison psychiatry" by the words "prison psychiatrists".

After a brief discussion it was decided to leave the words "prison psychiatry" and introduce after the word "contribute" the phrase "by the cooperation of the prison psychiatrist with other members of the staff".

The amended text then read as follows: "The purpose of prison psychiatry is to contribute, by cooperation of the prison psychiatrist with other members of the staff, towards a more efficacious treatment...."

Mr. *Fenton* (U.S.A.) suggested introducing after the words "individual prisoners" the words *"and to the improvement of the morale of the institution"*.

This suggestion was adopted as well as the entire first clause as amended.

Conclusion 2

The word "comprise" in the opening sentence was changed to "include". This change did not affect the French text.

In the phrase marked (i) the word "psychically" was replaced by the word "mentally".

The phrase marked (ii) was changed to read as follows: "(ii) a number of borderline cases (including those with disciplinary difficulties) who may, possibly for comparatively short periods only, require special treatment".

At the end of the clause, the words "chances of rehabilitation" were substituted for the words "chances of resocialization".

Clause 2 was adopted as amended.

Conclusion 3

Mr. *Glueck* (U.S.A.) said that in its present formulation clause 3 of the conclusions merely stated the obvious; he therefore suggested either its deletion or a more supple phraseology.

On the proposal of the *Chairman*, this clause was passed over in order to add it eventually to one of the other conclusions.

Conclusion 4

Mr. *Glueck* (U.S.A.) asked Mr. Stürup whether by "characterologically abnormal persons" in Conclusion 4 he had in mind a character neurosis from the analytic point of view, or psychopathic personality.

Mr. *Stürup* (Denmark) replied that the expression "psychopathic personality" meant so many different things to American, English, Scandinavian and German ears that he had tried to avoid it. He had in view the whole group of people who have abnormal personalities, those with abnormal caracter, the emotionally maladjusted being only one special group.

The text was amended as follows: "e.g. groups of feeble-minded persons and groups of inmates with abnormal personalities". The beginning of the second sentence was worded in English as follows: "An establishment for the treatment of inmates with abnormal personalities...."

The end of the clause was modified as follows: "until adequate rehabilitation is obtained".

On the proposal of Mr. *Glueck* (U.S.A.) who took up an earlier suggestion by Mr. Young, the following sentence was added at the end of the clause: "It is desirable that social psychiatric after-care facilities be provided".

Conclusion 4 which became clause 3 of the resolution, was adopted as amended.

Conclusion 5

The beginning of the second sentence of conclusion 5 was amended as follows: "For prisoners with abnormal personalities it is...."

With the approval of the general rapporteur the entire fifth sen-

tence was deleted as well was the words "frequently", "only" and "pressure" in the fourth sentence. This last sentence then read as follows: "This state of readiness is stimulated under a system of indeterminate sentence which is morally justified on the grounds of public safety".

Conclusion 5, becoming clause 4 of the resolution, was adopted as amended.

Conclusion 6

In the first sentence of clause 6, the word "necessary" was replaced by the word "essential" and the words "and in the training of the staff" were added at the end of the sentence. In the second sentence, the expression "of the psychic troubles" was replaced by "of personality problems".

The text of clause 3 of the conclusions was added at the end of clause 6 in the following wording: "The forms of psychiatric treatment would, of course, depend on the degree and nature of the development of the general correctional system in the country or locality in question as well as on the number of psychiatrists available".

The text, becoming clause 5 of the resolution, was adopted as amended.

Conclusion 7.

The text of the first sentence of clause 7 was modified as follows: „By his own example and *in collaboration with the other members of the staff,* the psychiatrist can contribute...."

The end of this clause had already been amended previously (see p. 76 above).

In this new wording the text was adopted, becoming clause 6 of the resolution.

The *Chairman** noted that the Section would be able to present the text of its resolution to the General Assembly in the morning. Mr. Stürup accepted to serve as rapporteur of the Section in the Assembly.

The meeting was adjourned at 5.05 P.M.

Afternoon Meeting of Wednesday, August 16th, 1950

The *Chairman** opened the meeting at 2.45 P.M. and said that he regretted having to announce that the draft resolution on the first question of the programme, which was supposed to be in his hands at the beginning of the meeting, had not been delivered to him. Under these circumstances, one could only postpone the discussion of it until the last meeting of the Section which would take place Friday morning. The Chairman then proposed to take up the third question of the programme.

What principles should underlie the classification of prisoners in penal institutions?

Mr. *Muller* (Netherlands) general rapporteur, [1]) summarized his general report as follows:

I am afraid the problem of classification is one on which it will be difficult to disagree, so I presume it will be rather the task of the rapporteur general to stress points on which disagreement might be possible. The question in itself is simple. When we abolished the cell – to a great extent at least – all over the world we were confronted with the heterogeneous mass of the prison population and it was clear to everybody that there was no possible way of handling that heterogeneous mass. So we have to classify and I think we shall not be able to disagree upon this general point. The only questions are: (1) On what criteria are we to classify? (2) Why must we classify? and (3) By whom? – three very simple questions.

The criteria of classification are manifold, almost as many as the number of prisoners. The main criteria are supposed to be, and are, sex, age, mental and bodily status – that means the insane, mental defectives and psychopaths (with a large question-mark); the fourth general basis for classification is previous criminal experience.

But these four main criteria which are generally supposed to be sufficient for classification are not sufficient. Of course there are numerous other minor possibilities for classification, a division of prisoners according to characteristics, according to personality, and

[1]) General report, see volume II, p. 303.

that is what classification is aiming at. By a good many people, especially American experts, it is stressed that if we classify on the basis of these four general characteristics, it will be necessary not to use hard and fast rules, as they put it in their warnings, but to classify partly on these general rules and then put in a fair amount of individualization after that – that is, general rules and after that individual classification. The most efficient way of classification is, of course, to use classification centres as they are administered in the United States. I suppose you all know what they may be aiming at in a far future.

More difficulties will arise from the second question: What is classification meant for? It is meant chiefly for training and treatment of prisoners, to make it possible to treat them according to their special characteristics, adapting the training and treatment to their character. But it is not only for training and treatment; it is for all aspects of modern prison management that classification is necessary, for safe custody, for economy even, for the organization of prison labour, for discipline, for education, for the training of prison officials, briefly, for everything in modern prison administration.

I think three objects should be achieved by classification. The first and the oldest is to avoid contamination. That is clear and simple. We should only be aware that the moment we avoid contamination and protect the better type of prisoner we ought to double the intensity of the training and treatment of the rest, i. e. the less desirable prisoners. That is what we forget sometimes.

The second object is to make homogeneous groups amongst prisoners in order to be able to adapt treatment to the requirements of the prisoners. That also seems to be no subject likely to provoke much disagreement.

But perhaps we may have the chance to disagree about the third object of classification: the forming of workable groups within which life is so stimulated and shaped that the group life in itself is a means of training and treatment of the individual prisoner. That is a subject which is referred to in only two or three of the reports. I may better explain the group-forming by giving an example, perhaps the most interesting example, which I found in the English report of Mr. Duncan Fairn, who writes about the experiment which has been going on in Maidstone for a few years. Maidstone

Prison used to be a prison for Star prisoners, that is for good prisoners. People in England thought it was hardly any use to make the excellent prisoners still better and that some further use should be made of that prison, considering that it might be wise to mix its population in such a way that there would be 60 per cent good prisoners (Star prisoners)and 40 per cent less desirable prisoners, called Ordinaries in the English terminology. The idea behind this experiment is that it is not rational to be afraid of contamination of good prisoners by the bad; on the contrary – and there is a fundamental difference in the way of viewing these question – the better, more optimistic way would be to use the prison as a means not of avoiding contamination but of promoting contamination in the reverse, that is to make the better prisoners draw the less desirable up to their level. This is an enormous change in outlook, is it not? And it is not only theoretical, because this experiment has been carried on for five years or so, and the results up to now are fairly encouraging. There are groups of about ten prisoners in this prison, and the group life is stimulated in such a way that the good ones in the group of ten are likely to get the upper hand over the evil ones who might be in that group. That is popularly expressed, but it is simple and therefore we have to say it that way. The moment a less desirable prisoner appears not to fit into what is expected of him and of his group, he is supposed to be, and in practice is, expelled from the group by a decision of the group itself. In my opinion it is a most encouraging experiment and the beginning perhaps of a new era of prison training. Yesterday I was at our Congress Exhibition and saw there the Highfields plan of New Jersey: that is exactly the same idea. The interaction within a group of selected young prisoners is supposed to operate in such a way that it will be possible, by giving them three or four months of active group training, to achieve at least as much as was formerly considered reasonable in 15 or 18 months of customary reformatory training.

That is indeed what in my opinion is one of the most encouraging features of modern prison life, and the basis of it is, of course, classification, and very minute forms of classification, because the way of group-forming, if it is to be worth anything, should be done in an exceedingly careful way. I expressed this in my general report by saying that what was considered up to now as the object of classification, the forming of homogeneous groups, is not altogether right, but that it

might be better to say that the object is to form groups that are not too homogeneous – this is not reactionary, but a step in advance, I think – but contain a judicious mixture. I hope some of you will disagree on this and that there will be a lot of discussion. I stress this point because there is very little of it in the fourteen reports [1]) which are excellent but do not express this view. Only the English report and some reports from America, for instance the one of Mr. Branham of Washington, say something about it. Mr. Branham speaks about an experiment which he had the chance of observing in the institutional treatment of mental defectives. He says it is not useful to bring all the mental defectives together in one institution; it is necessary for them to be together with a certain number of low-grade normal people because they need that feeling that they have to work themselves up to the higher level of the other category. That is not theory but an experience they have gained in Woodburne. It is the same idea.

These two examples are in my opinion very interesting and point to a fundamental problem in classification. It is a matter for further discussion and perhaps for disagreement.

Perhaps the most fruitful subject for disagreement will be our third question: Who will do the classification? I must confess that in this respect there is no common view in my own country, Holland. Some people hold – and that is perhaps not limited to Holland, which looks for international guidance on this particular problem – that it is the judge who has to do the classification. That means that the judge on convicting a man would have to decide that a man is fit for that kind of prison or for that particular prison. Others hold that the administration is best fitted to do the classification. A mere statement of the problem is enough to permit you to give guidance and to disagree with one or the other view.

These are the main points which I think are suitable for discussion on this most interesting subject.

The discussion was opened on the general rapporteur's conclusions which were the following:

I

Classification of prisoners is indispensable for their proper training and treatment – which is the main object of prison. Classification is recommendable

1) See list of rapporteurs, loc. cit., note.

for other prison aims also: for safe custody and discipline, for efficient prison labour and for economy.

II

The most important criteria for classification are: sex, age, mental and bodily status and previous criminal and other experience (segregation of criminal insane, feeble-minded – with certain modifications – incorrigible habitual offenders). Not the sole fact of previous criminal experience, however, but only the prisoner's personality as a whole should be decisive for classification.

III

The object of classification is to divide prisoners into "more or less homogeneous groups". A supplementary principle, however, is to make the groups not over-homogeneous but on the contrary judiciously mixed, so that a limited amount of variety stimulates group life and gives an opportunity to the forces of regeneration in the group to pull up the weaker group-members.

IV

Classification means group-forming. Individualization and programme-making for the individual prisoner – admirably and widely applied in the United States – are run on partly similar lines as classification, but this is not what is commonly understood by classification.

V

Classification should not be executed automatically along hard and fast lines, but according to rules used only as directives, so as to give a chance for a certain amount of individualization.

VI

Fact-finding for classification should not be limited to observation of the individual in the penal institution but should be supplemented by the facts relating to his social life when at liberty. Fact-finding should be started – if possible – before sentence (pre-sentence reports).

VII

Classification – group-forming – is a function of institutional life, not of the court.

Mr. *Oppenheimer* (U.S.A.):

The thoughtful and thorough conclusions Judge Muller has set forth and so clearly explained, meet, I venture to suggest, the needs of various countries in a judicious and practical manner. I should like to stress – as I am sure you all would like to do – the supplementary principle which Judge Muller has expounded, that in the classification of prisoners into more or less homogeneous groups, the "less" should be emphasized rather than the

"more". I am wondering if perhaps in practical application that principle is as new as some of the reports might indicate. Is it not rather an outgrowth of practical experience by trained penal administrators, of whom I hasten to add I am not one? I know, however, that in our small State of Maryland we have the supplementary principle established as a working practice and carried out during a number of years by our very able Superintendent of Prisons, Mr. Harold Donnell, a former President of the American Prison Association. For example, we have one institution used as a reformatory for young offenders from 18 to 26. Ever since that institution was built, however – about 15 years ago – the Maryland Prison System has sent some older inmates to that institution as a stabilizing influence, as leaders, as Judge Muller suggests. And so we take as a matter of course the infiltration in a group, otherwise separated here by age, of representatives of other groups. Of course, sometimes that result is predicated not upon theory but upon the exigencies of practicality. I hope that most of you have the unlimited funds at your disposal which all of us would like to have – in Maryland we do not. Sometimes the leavening of a group is a matter of necessity. And necessity in this case, as so often in others produces valuable and sometimes unexpected by-products. Maryland also is building a new institution for defective delinquents, one of the units of which will be an entirely separate group of buildings for the feeble-minded or the low-grade morons. We do not intend to put all the feeble-minded inmates of our prison system in that unit. We recognize that some of that group are better off in existing institutions. They are adjusted there, they seem to get some benefit from association with persons of more intelligence. On the other hand, the mixing of a group of feeble-minded with more intelligent persons obviously cannot raise the level of intelligence of those who have not intelligence to start with. So what we intend to do is to work it out on a trial-and-error basis: the group will be primarily the feeble-minded, there will be some persons probably of low normal intelligence as leaders. But, of course, the object there, as at Napanoch and Woodburne in New York and as in California, is to have a group who will have their particular mentality. I would suggest that perhaps the ideal is to make these more or less homogeneous groups workable, workable not only in the sense of the maintenance of discipline but workable from the standpoint in which we are all interested, the development and the rehabilitation of the inmates.

Mr. *Abrahamsen* (U.S.A.):

I have listened with a great deal of interest to Dr. Muller's report. I am very much interested in the classification of prisoners because I think it is very important. It is not only indispensable for their proper training and treatment but also for their rehabilitation so that they can be returned to life in the community. In the course of this classification one thing is important and I would like to stress it here, namely the psychiatric examination of every offender. My experience in Europe and in the United States leads me to think that the psychiatric examination of the offender is possibly the most important one. I do not mean the run of the mill examination but one which is coupled with psychological reports and so thorough that the psychiatrist or the prison official may have an adequate impression of the personality make-up of the offender. If the prison official or the warden, or whoever it is, has an adequate picture of the offender he can determine what can be done with him. I may have misunderstood Dr. Muller when he said that classification means group-forming. This expression is not quite clear. If we decide that it means group-forming, then I would think that classification means also the forming of the individual as an individual at the same time that he is being formed as a part of the group. When it is said in this report – conclusion IV – that "individualization and programme-making for the individual prisoner, admirably and widely applied in the United States, is run on partly similar lines as classification, but this is not what is commonly understood by classification" – then I must admit that I do not understand what this is all about. Does not classification mean that the prisoners are classified according to their personality make-up whatever that may include? Is that not so? Yes. Well, if it is possible for us to have prisoners classified properly, then only would it be possible for us to do treatment. But I would like to say at once – and I have seen several prisons both here and abroad – that for the time being it is extremely difficult, if not impossible, to classify all prisoners adequately because of lack of staff. It is said in this report, and I would like to take an exception to it at once, that "the most obvious obstacles to the introduction and carrying out of the ideals of classification are the lack of knowledge of human nature and the absence of definite and certain methods for the diagnosis and treatment....". This is not really correct because we have to-day a great deal of psychiatric skill and a great deal of

psychological knowledge which make it possible for us to classify prisoners adequately. This may of course seem like bragging, since I am a psychiatrist myself, but I do not mean to brag about psychiatry. Please do not misunderstand me. But just as I do not want to see psychiatry oversold, neither do I think that it should be undersold. The statement mentioned is, of course, only a remark quoted from somebody else but I would wish that it could really be modified. What I mean to say is this: If we to-day had enough psychiatrists and enough psychologists and enough money I feel that we would be able to do more for the prisoners than we have been able to do so far. In conclusion, I think this report is a very nice piece of work. I hope that the few things I have said will be taken in the constructive spirit in which I have tried to express them.

The *Chairman**:

Before the next speaker begins, I would like very cautiously to make two observations which the general rapporteur has also stressed. I think there are two crucial points in that question:

1) How far do these groups have to be homogeneous, and after all, what is homogeneous? We do not know exactly.

2) That very mysterious thing Dr. Muller alluded to: how is it that a century or two ago, and perhaps even more recently, we have found that when we put several people together the bad people would influence the good ones, while now we have a tendency to believe the opposite.

I would like to hear something on these two points.

Mr. *Kelly* (Israel):

I agree that the conclusions are so well drawn up that nobody can take exception to them, and while I do not criticize them at all I think there are a few points that arise for discussion.

In the first place, I think that classification requires a certain amount of definition of terms. It has been pointed out, notably by our Danish rapporteur, that many terms are used in different senses in America, in Europe and in the Scandinavian countries. I particularly find it difficult to take over the term that our learned rapporteur mentioned this afternoon with a big question mark, that of psychopaths, which term I think would be used in most systems of

classification to-day. We are, after all, an international conference and we ought to be using terms that are understood in the same sense by all of us. And I would like to get some information as to what we mean. Do psychopaths mean moral defectives, people with an in-born constitutional defect, or do they mean psycho-neurotics, or do they mean that class which is not insane and yet not sane? And if so, to what extent can they be put together, in what sense can they be treated as a group from a treatment point of view, to what extent can they be mixed with others, and to what extent are they treatable at all?

Then, with regard to the mixing of groups, I think from my own experience I might say that evil is far more potent than good. In other words, one or two people of evil tendencies have a preponderating effect on those with good tendencies rather than the other way round. I feel sure of two things: first, that in any group there is a saturation point beyond which you cannot introduce evil members, and secondly, that you cannot influence one evil member in a group, say of ten, whereas if you put in two, the two together form much more than a double union and influence one another a good deal. So what is our saturation point in regard to that?

And the final point I want to make is to draw attention to Mr. Bennett's very excellent address of this morning in which he described the ideal system, the very ideal system of federal prison administration of America, and in which he said – with which I quite agree – that it is for the probation authorities to make the classification quite decisively and distinctly, and not for the judge or for any other people. In other words, it is for the team that receives an offender after sentence to decide what group he is to be put in, and what treatment he is to get.

Mr. *Drapkin** (Chile):

I should like to say a few words about this very well-made report of Mr. Muller and about the question raised by the Chairman: What do we mean by homogeneous groups? Classification is, as the general rapporteur has very well said, a method of work, of preparation of the prisoners. To what purpose? What is the object of this classification? To prepare the prisoners for a free life in society. This is the only way in which I could conceive all prison effort. If that is the case, we must not forget that in social life

in freedom we are precisely in the presence of a very heterogeneous society, and that there are no homogeneous groups. If you go to school, to a factory, anywhere, you find heterogeneous groups. That is the case here too, as you saw yesterday (Laughter). I am, therefore, completely in agreement on the point which the general rapporteur emphasized, that the group should not be too homogeneous, and I agree also with Mr. Oppenheimer when he says that this is not something entirely new. I remember that at the second Latin-American Congress of Criminology, held at Santiago in 1941, I had the occasion to be the rapporteur on the same subject, the classification of prisoners, and that I arrived at the same conclusion: one must avoid grouping the prisoners into too homogeneous groups; one must make a mixture. Naturally, certain groups have to be segregated, for example the too old, the sick, the children, the mentally abnormal, for we do the same in society; we put them apart because they hinder the development of a normal social life.

Then, it is true that psychiatry is important, for the study of prisoners as well as for classification. But, one should not forget that psychiatry, as we have already seen with regard to the first question of this section, is *one* of the aspects of the problem; one must also take into account the social workers, the psychologists, the physicians, etc. It is true that the psychiatrist studies the personality; but classification has a different purpose which is to discover the needs of each personality. Properly speaking it is not a classification of personalities that we must have, but a classification of the needs of each personality in accord with its particular demands for reformation, rehabilitation and return to society. Thus, personally, I find myself generally in entire agreement with Mr. Muller.

With the permission of the Chairman, I should like to say one more word now because otherwise I shall not have the occasion to do it. The point in question is entirely outside this subject. I should like to see among the questions for the next Congress of the IPPC an aspect of the problem of prisoners which up to now has never been touched. I have just been studying the book of Professor Teeters and note that in the 78 years that this Commission has existed and the twelve Congresses it has held, 215 questions have been formulated. Now, none has dealt with a problem which, I fully understand, one could hardly have examined at the beginning of the work of this Commission, but which to-day one cannot go on ignoring, a

hidden problem, a little mean, a little odious, if you wish: This is the sexual problem of prisoners. I do not want to make this a formal question at the moment, but I might not find another occasion to speak of it and I would like to have the proceedings contain at least a reference to this question for a future Congress. This subject is not so scandalous as one might think; it is a scientific and especially a human problem of the utmost importance [1]).

The *Chairman** said that he was ready to submit the proposal to study the sexual problem of the prisoners to the Executive Committee of the Commission, and that if the Commission continues its activity after this Congress it might attempt to start such a study. Personally the Chairman considered it a very important problem.

Mr. *Rafael* (Denmark):

The first thing I want to point out is a question of terminology. It is very unfortunate that the word "classification" means something completely different in the American literature and in Europe. I fear it will be a source for misunderstanding in the discussion if it is not possible to find another word for "classification" in the American sense of the word. Classification in the old meaning will perhaps not in our time be a superfluous thing, and it should be practical to keep the word in the sense it has had hitherto. But I suggest to the Section to use a special term for classification in the American sense of the word. English is not my mother-tongue and perhaps I am not the man to suggest another word, but I would propose that we use the word "classification treatment" for classification in the American sense of the word.

Furthermore, I want to emphasize point II of the conclusions. I think its formulation is a little too narrow, since the causes of crime are not mentioned. I realize fully that to-day we know very little about the causes of crime but we do find, or think we find, them. The assistance of prison psychiatrists is here of the utmost importance. We often see that a description of the personality may give sufficient basis for treatment. But all offenders are not abnormal, and yet there are causes for their misbehaviour. It seems to me that

1) The speaker later submitted a motion on this subject, the text of which is found on page 474 infra.

classification is a procedure which, if it keeps what it promises, is apt to be helpful in finding out the causes of crimes. Only when you get at the cause of the crime can you really hope to establish adequate treatment. Of course, we are in this connection, I think, about where medicine was when Harvey found that the blood circulated, but I think we may hope that the methods of investigating the criminal's personality, his background, his surroundings, etc. shall proceed so far that we shall be able to find, in a greater number of cases, the real causes for misbehaviour, and then find a relationship between such cause and the measures we are able to use in the penal treatment, such as labour, schooling, discipline, etc.

I am sure that the time is not yet ripe for setting up any cure-all systems of treatment of prisoners, but we are far enough along to-day so that we are able to see what may be done to find out the causes of crimes. Therefore it seems to me most important that the conclusions of this question contain a remark about this, pointing to the future, and I suggest that the last part of point II be worded as follows: "Not the sole fact of previous criminal experience, however, but the prisoner's personality as a whole *and the discovered causes of his social misbehaviour* should be decisive for classification".

Mr. *Cannat** (France):

I am in complete agreement with the remarkable and very conscientious report of Mr. Muller. I would simply like to make a few general remarks, especially to clarify this very delicate and difficult problem of classification. It is a very serious problem because it is on the basis of classification that re-education will be made — we all agree on that — and we are a little like physicians who apply a medicine, the effects of which they do not know yet entirely. In my opinion, there are two kinds of classification very different from each other. There is (1) the classification before commitment to the institution; that is, if you please, the classification which is going to permit the distribution of the prisoner throughout the network of the institutions of the area, and (2) the classification inside an institution; the one which is closer to the treatment, the very one, which was suggested to us a moment ago under the title of "classification treatment". With respect to classification before commitment to the institution, for an empirical system of choice based on rather imperfect criteria (less or more than 30 years of age) like first offenders or recidivists, one tends to substitute

selection centres, called "guidance centres" by the Americans, which evidently present the advantage of permitting a more thorough and more scientific observation, since one can place there all equipment and all modern personnel necessary for such examination. Yet, what I have seen of these selection centres gives me reason to think that there are sometimes disadvantages which should perhaps be underscored. First of all, in spite of the existence of the selection centre, one notices that it is generally necessary, in the selected institution, to begin anew the examination that had been made in the selection centre. I have noticed this, especially in the penal institutions in the United States. In California, I saw an examination done in an excellent manner at St. Quentin; I take off my hat to Mr. Fenton who was a prime mover in the creation of that *guidance centre*. I must add, however, that at Chino, an outstanding institution, one partly resumes the examination on arrival, not because of distrust of the initial examination, but because the institution wants to add something to what has been done at St. Quentin. The same methods prevail at Elmira where the institution is cut in two. In one part of the institution of Elmira I saw a *guidance centre* in action for youthful offenders; some of these are transferred to the other side of the wall, to the other part of Elmira, and in that other part there is a quarantine and observation section where one partly resumes the examination already made. This is a minor disadvantage which, by the way, can be removed by mutual agreement but to which I should call attention. Furthermore, the existence of a single centre of selection and observation should not be an obstacle to a continued observation during the whole period of punishment. The examination is not something that begins and ends at a fixed date, with the end of a quarantine period for instance. Personally I look at the examination as an indispensable instrument for re-education and it should continue till release. If in any country anybody should believe that everything is ended with the examination in the selection centre, I think that it would be a disservice to the receiving institution to take away from it all that interesting and fundamental part of its work which consists in studying the prisoners thoroughly. Finally, a third disadvantage of the *guidance centre* is that the work of probing done there must not interfere with the new probing done later in the institution during the entire punishment. You know by professional experience that the prisoner does not much like to open up and in

a screening centre give all the information demanded of him about his past, about himself, his health, his family. If he has been asked too many things the first time I do not know if he is very inclined to submit to new investigations of the same kind two or three months or a fortnight later, in the establishment to which he has been sent. I think, therefore, that in the centre of selection – which I would not perhaps call "and of observation", but only "of selection" – one has to think of the subsequent work of the personnel of the institution and be rather careful not to hamper that work.

With respect to the classification made in the institution, i.e. the second kind of classification, it is obviously necessary to divide the institution into several sections. I do not think that re-education can be done in big groups. Also, this classification within the institution cannot, in my opinion, be based too much on conduct, and on the security of the institution. I would agree that in the beginning one should separate a certain number of dangerous people, whom it would be better to place in a maximum security institution, but afterwards, if one puts too much emphasis on security one puts less on other factors which seem more fundamental to me. I am thinking, for instance, that the moral value of the prisoners, that is their past and hence their probable future, to the extent that we succeed in re-educating only very partially, has certainly greater importance than even the security of the institution. Now, this moral value cannot be evaluated at the screening centre because it takes a long time to know a man and to appreciate exactly what he is worth. Obviously, to agree to this is to agree that the battle against promiscuity holds first place in a penal institution, and perhaps some of you, especially those from the new world, will regard us as backward. I beg your pardon, but here I believe I should doff my hat, in spite of all, to that man who lived a hundred years ago and whose name was Ducpétiaux and who, after all, was right. In spite of all, I think that if Ducpétiaux' ideas were rejuvenated a great number of his treatment ideas still remain valid to-day.

I shall add, in the same vein and in order to give more emphasis to what I say, that there is a difference which has to be taken into account between the offender in the New World and the one here. To plan to set up in European penal institutions classification strictly founded upon the criteria of our American friends, either South or North American, would certainly mean making a mistake. There are

things that cannot be transported in our luggage, and classification is certainly one of them.

Finally – I add this to answer one of the speakers who has just spoken – no doubt one should try to shape the prison on the model of the free world. But in the free world, the percentage of abulics, of people without will power, is infinitely inferior to the percentage of abulics inside a penal institution, and, for this reason, promiscuity in the penal institution makes, and will in my opinion always make, much greater ravages than in free society.

I might add some words about the authority charged with classification, but I do not want to delay the next speaker. I think that perhaps the Chairman will segregate and treat separately the question of the authority charged with classification, and I reserve the right to give my ideas later on that subject.

Mr. *T. Eriksson* (Sweden):

I think I must start by apologizing for not having such an expert tongue and such a rich vocabulary as the other speakers possess. But if I do not bore you too much I should like to give you, during a couple of minutes, a Swedish viewpoint, although I may not be able always to find the right terms, I am afraid. Well, I think that Sweden has experimented in classification, within the meaning of the word presented in the report, more than any other country in one particular field of penology, namely the field concerning juvenile delinquents, especially the field of the approved schools, the training schools. We have some 1000 pupils in 25 training schools. Now you can understand that when for example Professor Teeters from Philadelphia says that institutions should be small, about 100, that is too big an institution as we see it. We have no institution as big as 100, most of them can take only 25 or up to 40 or 50, which gets to be rather too big, we think. Every one of these 25 institutions is used for classified homogeneous groups. I think you cannot go further in classifying them. Thus, we have the very intelligent youngsters in a separate school and the normally intelligent in another school, and the less intelligent divided into small groups according to their level of intelligence. We have, for instance, girls who are keen on gymnastics – Swedish gymnastics – in a separate school. As I said, I do not think you can go much further. We also have a separate school for absconders from our schools, and separate schools for psychopaths. Now, we

have this system, and I am ashamed to say that, as manager of the approved schools for a couple of years, I have brought it to perfection. I am ashamed of it and I am very happy to say that we are going to ruin it all, starting this very year! Why? Because we found out that these groups do not correspond to real life. One never finds such homogeneous groups in real life, and the life in the schools – in Borstals, and in prisons too, I think – must match real life as much as possible; it cannot be too unlike it. So, when reading Dr. Muller's conclusions, I thought at first that it is a pity we must adopt those resolution unanimously. It would be much better – and I think you could alter that, considering the other things you have altered – only to summarize the different experiences and proposals. Since we must reach a resolution of some kind, I would suggest that. I have nothing against Dr. Muller's conclusions except one thing: I would like to have them all written in the shape of an interrogation point – a very big one.

The *Chairman**:

As regards the point of order raised by Mr. Eriksson, that he prefers the listing of experiments made to unanimous conclusions, I agree with him insofar as it would be a pity to draft a resolution which, in order to be acceptable to everybody, means nothing. But what should be done first is to find out if we really disagree. Do we? What Mr. Eriksson told us is that they started in Sweden with a very precise and elaborate classification in different establishments and now they are going away from that. Does that mean that they have completely abandoned the idea of classification? Or is it because they discovered that people like gymnastics or that people are absconders? This does not make a homogeneous group, and again I raise the question: What is homogeneous? That kind of homogeneity is very superficial. Now again, is it your idea, Mr. Eriksson, that what is proposed here – to classify and try to make groups, either homogeneous or otherwise – should be abandoned? Or are you trying to arrive at classification on another basis? Let us leave that question open for the moment, but I wanted to make it clear.

Mr. *Rose* (United Kingdom):

First of all, I should like to make an observation about what Mr. Eriksson has just said – and I think he would agree with

me in this – namely that to try to make an institution too much like real life would be defeating the purposes of the institution to some extent, because after all the idea of having classification and a particular group in the institution is that you can get that group together and subject it to a particular type of treatment. I think, perhaps, it is too bad to have groups which are too homogeneous and too bad to have groups which are not homogeneous at all. But what I really wanted was to say a few words about what we do not know rather than what we do know about classification. It does seem to me that there is an enormous amount that we do not know about methods of classification and methods of treatment. And a classification centre, guidance centre, allocation centre or whatever you like to call it, is not really fulfilling its function unless it is allied to some sort of research plan or programme which can tell you how far the classifications are fulfilling their purpose and unless it is continually experimenting with different forms of classification.

Perhaps it would be a good idea, if we are formulating a resolution later on, to say something about the need for continuing research in this field. There are very many ways of classifying people, there are very many different kinds of tests one can apply, there are different ways of classifying personalities.

Another problem, I think, is that one has to join the type of classification to the type of treatment that you can give in practice. It may be that in some cases we are trying to classify too deeply. The implications of research – if we can really call them implications – are that our treatment of delinquents is to some extent superficial. The fact that we do not get as good results as we would like to – indications are that we do not – is probably due to the fact that we simply have not found methods of dealing with delinquents except purely superficially. The problem is much more complicated than we originally thought, and we are disappointed about the results we get. Now, if that is the case, it may be that the sort of classifications we require is classifications which take into account the more superficial aspects of personality and in some way try to relate them to the deeper aspects. Perhaps we should try to find out what are the relations between the more superficial aspects of personality and the deeper maladjustments within. Perhaps there are many people for whom we do not need a considerable treatment programme, who need what we might call minor psychotherapy, what I suppose we would not even

call housemastery, and need no more, in which case we would be just wasting money to operate a tremendous classification programme. I would rather like to suggest that perhaps the International Penal and Penitentiary Commission would examine the possibility of keeping such research projects as are in progress in general view and perhaps issue a bulletin of projects in progress. I know that is a very difficult thing to do; I know it is being done in the United States, but certainly it is not being done here, and I do not know if it is being done in other countries. It is perhaps something at least that might help.

Mr. *de Groot* (Netherlands):

It is only after some hesitation that I take the liberty of making a few remarks here, because I am not a very learned or even experienced man. I am only a probation officer who is interested in the many problems with which we are confronted whilst trying to prevent offenders from staying offenders. I have read with very great interest the different reports and the final conclusions. There is only one thing I would like to make some remarks on. In conclusion II of the general report there are mentioned some important principles underlying the actual or desirable classification of prisoners. I do not think it is meant to be complete. However, I missed one principle which in my opinion might be important enough to be added explicitly. There is a thing which is, I think, getting rather important in a number of countries, namely alcoholism. I think alcoholics have got a great many things in common, and it might therefore be advisable to give alcoholics a special treatment. In other words, it might be necessary to classify them and to treat them in a special prison or in a special ward of a prison or even in no prison at all but in a medical institution. I mean by alcoholics everybody who has come into difficulties and in this particular case has become an offender by excessive drinking, whether or not he may be an alcoholic in the medical sense of the word.

Though I realize that the causes of excessive drinking vary considerably, I think, as I said, that alcoholics and alcoholic offenders have got very much in common. In any case all of them are confronted with the same problem on their return to society, namely, that it is of the utmost importance for them that they do not drink alcohol at all for the rest of their lives. Now it is not at all my idea to bring the principle of total abstention into the picture, but I think it is

commonly agreed upon by most psychiatrists of to-day that for an alcoholic there is only one cure and that is not to drink alcohol at all. This has to be taught to him because very often these people themselves do not realize it, the friends and families do not realize it and society generally speaking does not realize it always. Many of these offenders may be brought to excessive drinking and recidivism again by their closest friends or their wives, through a single drink which may – and mostly will – be the cause of this excessive drinking again. In this respect I think they differ generally speaking from other offenders. The advantages of putting the alcoholics together – with the exception of some with mental defects – are in my opinion:

(1) that they can receive a treatment by psychiatrists and social workers who really have specialized in this particular subject and who can make them realize their future position in society and the specific problem of alcoholism;

(2) that under careful supervision they can amongst themselves discuss their problem, which, as proved by the movement of Alcoholics Anonymous, first in America and later in other countries, is of the utmost importance;

(3) that during the period of after-care, which in these cases is particularly necessary, they will very often keep contact with each other and help each other to stay firm in their decision not to drink anymore.

I think that the number of offenders, especially first offenders who committed their crime as an indirect or direct result of excessive drinking, is much bigger than is commonly known or believed, and therefore I would like to put this question to you for consideration:

(1) Is there ground enough for holding previous excessive drinking as one basis for classification?

(2) If this is agreed upon, is it best to put alcoholics in a special prison with specially trained personnel, or is it better – I think it is – to keep them out of prison completely and give them treatment in a medical home?

It is my experience that for this type of offender, at least in my country, a stay in a normal prison is just a waste of time and does

not in the least contribute to his rehabilitation. This being so, I think that special treatment would considerably contribute to the prevention of recidivism. If I am mistaken as to the importance of these few remarks, please forgive me for having taken so much of your time.

The *Chairman** announced that the draft resolution on the first question had been handed to him. The text would have to be examined and voted upon at the beginning of the last session on Friday morning at which time the discussion of the third question should be continued and terminated.

The meeting was adjourned at 5.10 P. M.

APPENDIX

Statement of Mr. José Agustín Martínez (Cuba) [1])

1. The question can be formulated in two different forms:

a) An ideal system of classification.

b) A possible system of classification.

The recommendation adopted might be in terms of an ideal system of classification, but such a recommendation might be difficult or impossible to realize in a great many cases.

Bearing this in mind our recommendation will be of a more practical character and within the actual possibilities of the penitentiary systems in many countries.

2. There is a strong objection to the promiscuous mixture of inmates. After the separation of the sexes followed the segregation of the adults, following the axiom first postulated by Garçon that *"minors should be kept out of the penal law"*.

The problem now is the classification of adults by themselves and a corresponding classification of the juvenile delinquents also. All modern systems should be guided by these principles.

1) Mr. Martínez, President of the National Institute of Criminology of Cuba and delegated by the Republic of Cuba to be its representative at the Congress, was unexpectedly prevented from attending but sent the above communication in respect to the third question of Section I (classification).

3. Any classification of adult offenders to be practical will require at least the following different institutions:

a) Preventive Custody institutions,

b) Institutions of Prevention,

c) Institutions of Repression,

d) Open Institutions for the pre-release preparation.

Within each of these institutions there must be special rules for the classification of the inmates.

4. Institutions of Preventive Custody should be reserved for unconvicted offenders. In these institutions first offenders shall be separated from recidivists.

5. Institutions of Prevention such as colonies (farms), shops, workhouses, hospitals and insane asylums, schools, and institutions of re-adaptation, etc. should be used for dangerous individuals not criminals *(individuos en estado peligroso)* as a measure of security *(medida de seguridad)* and for delinquents to whom the judge applied a post-punitive measure of security.

6. Institutions of Repression, such as penitentiaries, jails, prisons, *ergastula*, etc. In these institutions the progressive system shall be established with four or more grades according to the principles set forth in this part of our proposal, or in any other similar way.

7. When the progressive system adopted includes a fourth grade as described in our paper, this grade should be served in an open institution of pre-release preparation, such as the one already functioning in Argentina.

8. Possible bases for the classification of the inmates should be roughly the following:

a) Segregation of specially dangerous criminals. Segregation of the criminals presenting no symptom of danger. Segregration of criminals convicted of serious offences.

b) Segregation of recidivists from first offenders, and of both from offenders from passions, such as love, or from poverty, ignorance, etc.

c) Segregation of the wayward who offend against the rules of the institution or the orders of superiors, etc.

Our suggestion to the XIIth International Penal and Penitentiary Congress is to adopt the following recommendation in regard to the principles that should underlie the classification of prisoners in penal institutions:

a) Separation of the sexes in different institutions.

b) Separation of the adults from the juvenile offenders in different institutions.

c) Separation of the mentally abnormal or subnormal offenders from normal offenders.

d) Segregation of specially dangerous offenders this class to be formed of offenders with permanent characteristics of dangerousness, such as degenerates, drug addicts, pimps, dipsomaniacs, professional gamblers, etc.

e) Segregation of recidivists from first offenders.

f) Segregation of those who violate the rules of the institution or disobey the orders of the authorities.

g) Segregation of offenders suffering from moral turpitude, homo-sexuality and alterations of the psyche.

h) Segregation of individuals in the highest grade prior to release.

i) Special recommendation is made in favour of the adoption of so-called open institutions for individuals in the highest grade of reform and for those soon to be released.

Morning Meeting of Friday, August 18th, 1950

The meeting was called to order at 10.15 A.M.

The *Chairman** called for discussion of the draft resolution on the *first question* of the programme: *Is a pre-sentence examination advisable so as to assist the judge in choosing the method of treatment appropriate to the needs of the individual offender?*

The text of this draft resolution was:

(1) In the modern administration of criminal justice, a pre-sentence report, covering not merely the surrounding circumstances of the crime but also the factors of the constitution, personality, character and socio-cultural background of the offender, is a highly desirable basis for the sentencing, correctional and releasing procedures.

(2) The scope and intensity of the investigation and report should be sufficient to furnish the judge enough information in order to make a reasoned selection amoung alternative sentences ("peines ou mesures").

(3) In this connection, it is recommended that criminologists in the various countries conduct researches designed to develop prognostic methods ("prediction tables" etc.)

(4) It is further recommended that the professional preparation of judges concerned with peno-correctional problems include training in the field of criminology.

Mr. *Glueck* (U.S.A.):

I would like to suggest merely some grammatical changes that do not go to the substance of this resolution. In section (1), after the word "sentencing" I would put "and", and delete "and releasing", because after all this resolution is emphasizing sentence and not release. So I think it will improve it and prevent needless debate if we just make it: "sentencing and correctional procedures".

In section (2), instead of "sufficient", say "adequate", and instead of "in order", substitute "to enable him", and for "selection" substitute "choice".

Mr. *Constant** (Belgium):

I find it hard to understand the reasons for which our general rapporteur proposes to delete the words "and releasing" in clause 1. Indeed, when we consider the necessity of a personality report that should serve as basis for the processes of penitentiary treatment, I do not see why this report might not serve in a similar manner for that procedure which is the normal end of a process of penitentiary treatment, namely release. It seems to me that if one takes the personality report as basis for the treatment of the offenders, one must also take into account the elements of this report in deciding to what extent, at what moment and in what way release could suitably be granted. That is why I propose to keep the words "and releasing" in the text which we have drafted.

Mr. *Glueck* (U.S.A.):

I have no objection whatsoever to leaving "and releasing" in the text. The only reason why I proposed to delete it is because, as Mr. Constant will agree, when it comes to releasing, a great deal

more information, which is obtained later on about the reaction of the individual to the penal régime, must be taken into account. I was afraid that some of the American delegates who emphasized parole as a separate function might object. However, if you want to leave in the words "and releasing", it is perfectly alright with me.

The Section decided to keep the words "and releasing". The other amendments proposed by Mr. Glueck were adopted.

Mr. *Pinatel** (France) proposed to substitute, in the French version of section 2, the words "de nature à" to "adéquat à", and the Section so decided.

Mr. *van Bemmelen* (Netherlands):

I should like to propose to you two additional parts of section (1) and of section (2).

In section (1) I should like to insert: "(1a) Even if a psychological and/or a psychiatric report is not necessary, it is often advisable to have a report of the personality and social background of the criminal given by a social worker". I would like to propose this because practice in Holland has shown that the judge very often lays value on the things he can learn from the social worker.

Then I should like to propose: "(1b) The question whether a report is necessary should be decided by the judge or by the prosecution or by a special committee (probation council)."

I make this proposal because in most cases the judge or the prosecution will ask for a report. But there are many cases when either the defence attorney or the defendant wants such a report and then there must be another authority than the judge or the prosecution who can authorize the social worker to make it.

Furthermore, at the end of section (2), I should like to add: "and especially among probationary and non-probationary measures". For here too, the practice in Holland has shown that this choice among probationary or non-probationary measures is often very much influenced by a report of the social worker.

The *Chairman**:

I suggest, as a matter of procedure, that the proposed

amendments are dangerous. If everyone of us, thinking of the situation in his own country, is going to suggest that we speak about psychiatric examination or about the choice between probationary and non-probationary measures, we will never finish. So, while I agree with Professor van Bemmelen's suggestions in substance, I think it would be much better to leave our resolution very general, as it is, unless we have objections about what is said in the proposal.

Mr. *Glueck* (U.S.A.) was willing that the amendment suggested by Professor van Bemmelen with reference to section (2) be accepted in these words: "including placement on probation". He saw no harm in that because there might be a difference of opinion as to whether placement on probation was a sentence or not.

Mr. *van Bemmelen* (Netherlands) agreed to the wording: "including placement on probation". He continued:

As regards the fear that my proposals might be dangerous, I might say that I should like to have inserted in some way that the pre-sentence report need not be a report by psychiatrists and psychologists. In very many cases it is usual to have a report only from the social worker. And I am afraid that if we make our proposal in the way you have done people might think that a pre-sentence report always consists of a psychiatric and psychological report. You know that it can be most useful for the judge to have a very simple report from a plain social worker about the home and the previous life of the defendant, and that is the way I meant my suggestion. Perhaps Mr. Glueck will find another simple method to insert something like that, so that we can agree on it.

The *Chairman**:

If I am right Mr. van Bemmelen suggests that in some cases the pre-sentence examination should not be complete but include only the social investigation.

Mr. *Glueck* (U.S.A.):

As I see it, the way sections (1) and (2) are stated, particularly (2) with reference to the scope and intensity of the investigation report, I think that Professor van Bemmelen's fears are without foundation. It stands to reason that the scope and intensity of the

report will depend on the facilities existing in the particular court, and what we are aiming at is a rather high standard which may some day be achieved. I am afraid that if we put in that alternative we will get ourselves again involved in a basic contradiction between Anglo-American and Continental procedures. Im am sure that Professor van Bemmelen has in mind, on the one hand, cases in which a rather rapid examination of the home situation is helpful to the judge, and, on the other hand, a thorough psychiatric examination even before trial which may be ordered in an individual case where the accused is about to plead insanity on the ground of irresponsibility. But we do not want to confuse anything pertaining to preparation for trial with anything pertaining to preparation for sentence; it is unnecessary, our subject is the pre-sentence report. And I am sure that the statement here is general enough to include both an intensive investigation and the less intensive one which is all that is possible in some jurisdictions.

Mr. *van Bemmelen* (Netherlands):
If this is clear, I agree.

The *Chairman**:
I think it is difficult to accept the second amendment of Professor van Bemmelen because the procedure is not the same here and in other countries. If you have to specify that the choice should be made by the judge or the prosecution or by some other agency, we have not got very far.

Mr. *van Bemmelen* (Netherlands) agreed.

The *Chairman**:
Now we come to the third one, and here, although it may be out of order, the chair will make a proposal. The end of section 2 now reads: "in order to make a reasoned choice among alternative sentences (peines ou mesures)". The proposal of Mr. van Bemmelen is to add: "and especially among probationary and non-probationary measures". I think that here we are going to have a repetition of the difficulties we had at the first General Assembly about the examples of methods of treatment. So I would suggest that we delete the end. But there is more to it than that: Are you sure that a choice among

alternative sentences is enough? It is not enough to make a choice among sentences, the judge also has to measure the sentence. If he gives imprisonment he has to decide if it is to be ten years, and so on.

Mr. *Glueck* (U.S.A.):
That I take for granted. A sentence indicates the term. I think my wording is complete.

The *Chairman**:
My proposal would be to put at the end of the paragraph simply: "to determine the sentence".

Mr. *Glueck* (U.S.A.) objected because the parole board comes in later on.

The *Chairman**:
I think that "in order to determine the sentence" includes everything. We do not say it is "peine" or "mesure de sûreté" or what it is.

The word "judgment" was proposed.

Mr. *Glueck* (U.S.A.):
No, no. "Judgment" immediately gets us into confusion between a judgment of conviction on the one hand and the imposition of the sentence on the other. That is *our* system. We have to have a wording that covers both the Anglo-American and the Continental approach, and therefore I think the suggestion of the Chairman is wise. But there is one difficulty with that suggestion, and that is that there is a form of probation in the United States which in a sense cannot be called a sentence because it is a preliminary placement on probation. That indicates a slight variation in practices in some States. So you might instead of "determine the sentence" put: "make a reasoned disposition of the case". "Disposition" is a broader word and includes sentence, placement on probation, fine, etc.

The *Chairman**:
Does everybody agree to that? It would read: "in order to make a reasoned disposition of the case". I think it makes the thing more general. It indicates very clearly that the judge has material enough,

information enough to take a decision, and it does not limit and does not specify by any confusing example what choice he has to make.

Mr. *Glueck* (U.S.A.):
That is right; and it covers both probation and imprisonment.

The amendment proposed by the Chairman was adopted by the Section.

The *Chairman** stated that there were no proposed amendments for sections 3 and 4. Consequently, he called for a vote on the entire resolution as just amended.

The text of the latter was unanimously adopted by the Section.[1])

Mr. Glueck was designated as rapporteur of the Section in the General Assembly.

Mr. *Glueck* (U.S.A.):
Before I leave, may I say that the study that I have mentioned with reference to the validation of prediction in an army research just came in the mails this morning and I have enough copies for anyone who is interested.

The *Chairman** thanked Mr. Glueck.

The Section resumed the discussion of the conclusions of the general report of Mr. Muller on the third question of the programme: *What principles should underlie the classification of prisoners in penal institutions?* [2])

Mr. *van Rooy** (Holy See):
I would again like to draw attention to point II of the conclusions of Mr. Muller's excellent report. The text seems a bit contradictory to me: "Not the *sole* fact of previous criminal experience, however, but *only* the prisoner's personality as a whole should be decisive for classification". If one says that it is only the personality which should be considered, one has the impression

1) See the whole text of the resolution adopted by the Section in the Proceedings of the General Assembly, p. 429 infra.
2) See the text of these conclusions, pp. 82–83 above.

that previous criminal experience is excluded from consideration. But the first part of the sentence gives the impression that this experience is not excluded. There one finds that this experience is not the sole factor to be considered. My first question, therefore, is to find out whether one should not say here: "Not the sole fact of previous criminal experience, however, but *also* the prisoner's personality, etc."

Then I have the impression that generally, up to now, one has considered too exclusively the personal factors relating to this question of classification of the prisoners. Besides, in this second conclusion it is especially the physical and mental factors, character traits and deviations which are mentioned as the most important criteria in this respect. I believe, however, that besides these intrinsic factors of the personality, one must take external factors into account too. I am thinking especially of the factors of a social order, of the environment. Take, for example, the factor of the urban or rural origin of the prisoner. Considering the great differences which I find between the offenders of the cities and of the country, especially as to recidivism and also as to the results of suspended sentence and of conditional release, I believe that this factor has great importance also for measures of re-education, and consequently also for the classification of prisoners. In the same way there are many other factors, for instance the religious environment, the confessional or denominational group to which the prisoner belongs. In order to avoid an overemphasis on intrinsic personal factors and to express that we do not want to forget the importance of the social and the environmental factors in general, I propose an amendment to the amendment already proposed by a Danish delegate, I believe, two days ago.

I should like to propose the following text for the last sentence of conclusion II: "Not the sole fact of previous criminal experience however, but also the prisoner's personality in connection with all the criminogenic environmental factors should be decisive for classification."

Miss *de Groof* (South Africa):
Under section IV, classification means group-forming. There is a special type of person who I think is really the only type we can call a psychopath. Dr. Kelly has also mentioned this type of psychopath who is not mentally deficient and is neither psycho-neurotic nor psychotic. He is perhaps latently psychotic.

but quantitatively not sufficiently for the psychosis to become manifest. It works as a sort of ferment and causes conflicts all the time. I must say that some of the practical experience Dr. Kelly and other people and I have had shows that we are practically helpless in regard to any form of treatment for this type of person, who is highly intelligent, explosive, aggressive, extremely vain, completely egoistic, even narcissistic, absolutely without any insight, but not insane enough to be interned, yet so abnormal as not to be left loose. I must add that it is my experience that they generally have a very pronounced strain of psycho-sexual sado-masochism and they provoke aggressiveness. They know that what they are doing is wrong but they are generally deficient in their awareness of the quality of the wrong. What we would like to see done is really classifying the groups. We need to get some international proposals as to what is to be done with this type of person, because we are really practically helpless now. If we could adopt some proposals – not ideal but really practical proposals – I think we would be doing something worthwhile here.

The *Chairman** thought that there was much good in what Miss de Groof had said; that category of prisoners difficult to manage was known to all prison officials. But he raised the question whether the assembly was again trying to go into examples and to be complete with respect to categories under which prisoners would be classified.

Miss *de Groof* (South Africa) did not ask for a direct answer to her proposal, but since the Congress would not meet again for five years she only wanted to draw the attention of the meeting to that difficult problem so as to see if in the interval some solution might be considered. On a further question of the Chairman she confirmed that she did not propose any amendment.

The *Chairman** stated that this would be on record.

Mr. *Coopman* (Netherlands):

It seems that after the eminent and well thought-out general report of Dr. Muller there should be no place left for discussion. Nevertheless quite a large number of speakers have come with interesting remarks, a succession of composers who are composing the unfinished symphony on classification.

What has struck me most as something new in this matter is the idea of a purposely – judiciously – mixed group, which gives me an opportunity to say a few words about this matter. In his report Dr. Muller gives this cautious advice: "*Do* classify into more or less homogeneous groups – but do not *over*-do it." As we just learned at the the session from Mr. Eriksson of Sweden, the principle of classification has been applied so extremely in the grouping of prisoners in Sweden that it seems to be a failure and that they shall have to start all over again in this field. Thus over-classification into extremely homogeneous groups has failed in practice.

The idea of bringing more variety into the groups seems to originate from the fact that free society itself consists of all different kinds of personalities. Why not substitute this lively mosaic for the monotonous prison population? If we should do that, in the same degree as in free society, the whole principle of classification would be sacrificed. We ought to be careful when we bring the idea of mixture into prison life. Prison is no free society, but sociologically, we know, an artificial, purposely organized group. Therefore, the fascinating and courageous English experiment which mixes 60 per cent Stars (good) with 40 per cent Ordinaries (bad) in one group, demands our special attention. It is something new and something dangerous.

The purpose of classification is to choose the proper means of training and treatment of the individual. This purpose has become at the same time the principal aim of imprisonment itself, which includes protection of society, for if the prisoner leaves the institution as a law-abiding citizen, society also will be protected.

Now the question arises: Is it justified to lay upon the shoulders of the 60 per cent good inmates the burden to educate, to improve their inferior brothers? Even though they may not be conscious of their task (though their task will not be kept secret in a community like the prison), they are made an instrument to cure the weak. And instruments have a tendency to fail, even human tools. We must not forget that the 60 per cent Stars have themselves violated the behaviour patterns of society. They may be trustworthy or good prison inmates, but they do not seem to be of strong character in free society.

So I like to warn the experimenters in this most interesting experiment to watch their work with the greatest caution and to draw their conclusions after not too short a time (as we have seen with the Swedish experiment which was not well enough founded).

They must take good care of the 60 per cent good but weak population, who will suffer, even if the measure seems to be favourable for the 40 per cent inferiors.

Mr. *Fenton* (U.S.A.):

I enjoyed reading Judge Muller's paper and also appreciated the scholarly impromptu comments which he presented to us. I want to point out that our question is : What principles should underlie the classification of prisoners in penal institutions? If we are defining principles, I think we are likely to give a biased point of view when we emphasize or over-emphasize application. For example, under "application" we may say that the classification is the prelude to individual psychotherapy, whether it is psycho-analysis or something else. Or we might say that the classification group acts in a prison, in relationship to maintenance and industrial operations, as a personnel department operates in a large industry, namely in the selecting of people for the different industrial operations which take place in the institution. Likewise I think that the report overemphasizes group-forming, which is again merely one type of application and brings in this issue of the quality or kinds of groups, which I think is not staying within our directive of principles but rather going over into applications which actually raise more questions than they answer, at least from the standpoint of group-forming as it is presented here.

So I propose certain rather drastic changes in the conclusions and do so with due humility and a realization that these represent formulations which I worked at earlier this morning and previously and which of course would be subject to discussion and disagreement. I would like to take my time on formulation rather than on further discussion. I would change number I of the conclusions to read in this way: "Classification of prisoners, that is, their study as individuals, is indispensable for institutional and post-institutional training and treatment. Classification is valuable also for prison management, including adequate custody and constructive discipline, efficient use of the labour of prisoners, the planning of future prison construction, and finally in the critical consideration of the extent of the use of institutions themselves in the correctional programme."

I would propose the deletion of nos. II, III, IV, and VII. In no. V, I propose to change the word "rules" to "procedures". In no. VI,

I would propose to add after the brackets: "and the study of the individual would continue throughout the term of imprisonment or parole". As I said, I would prefer to present this material rather than to elaborate it in further discussions.

The *Chairman**:

Before I open the discussion on these very important amendments I should like to say that among other qualities they, to my mind at least, make quite clear what is the meaning of classification. Up to now, as pointed out by several speakers including Mr. Rafael, classification in English meant something else than classification in French and was much broader. The way it is defined here shows, I think, in the first part that it is to become more what we call classification in French. It remains to be seen if the last part, and especially the added sentence, does not come within the English, or American, meaning of the term. That is one point to which I wanted to call your attention.

Mr. *Bates* (U.S.A.):

I must say I think it is a little courteous of Dr. Fenton to refer to his suggestion as an amendment to the resolution. (Laughter) Nevertheless, I am in favour of it. I am extremely conscious of the almost insuperable difficulty that Judge Muller has had in wrestling with a problem of this sort, which is almost hopelessly incomprehensible unless you accept what we think is a rather specific definition of the word classification. As I read this resolution this morning it seemed to me that, while the rapporteur wanted to tie in the idea of individualization with the idea of group-making, he found, as certainly do I, a difficulty and inconsistency that cannot help but be confusing. That is why I believe that we ought to start again, in much the same way that Dr. Fenton proposes, to get some kind of a definition of prison classification.

I might say quite frankly that I have hoped for a long time for a new word that would explain the process that we call classification and be a little more precise than it is. I do not know whether I can say in a few words what we have in mind. We refer to classification as the placing or the assignment of an individual prisoner in the proper category, in the proper classification, at each point in the prison administration. It is folly to suppose that segregation can be carried

to the extent, especially in small jurisdictions, of having the correct type of institution for each individual. We recognize that. The second point we recognize is that you cannot subdivide into groups, within a given institution, of sufficient size and congruity to apply the right kind of individualization to each prisoner. For example, there is a certain grouping in the church or chapel, there is another grouping in industry, there is another grouping under the head of custodial classification, and if these different groups were specifically applied, you would have about one person in each group before you got through. So we have evolved a device which involves three important principles, and perhaps somewhere you might, Dr. Fenton, want to include the principles which, with us, underlie the classification system.

These principles are, briefly, a consensus whereby the doctor, the educator, the industrial man, the disciplinarian, all focus their recommendations on the individual whose needs we are trying to meet. That is certainly one of the underlying principles of classification, as we see it. Second, this results in a plan based upon the individual needs of the prisoner, as we have discovered them through various converging types of investigation. And the third principle, without which, of course, classification is an empty gesture, is the type of management or administration that secures cooperation in the development of this plan.

There are advantages to that, it seems to me; two advantages which I have not heard advanced here. One is that this type of effort towards individualization brings to bear on a prisoner's case all of the advantageous influences in the prison. At least for one brief moment each prisoner is the centre of attention by the whole institution. In the second place, it substitutes informed and intelligent judgment for an arbitrary one. So long as one individual, whether he be the principal keeper, as we call him, or the warden or deputy, makes the decision for classification, it is likely to be, and sometimes almost certain to be, arbitrary. And you lose the feeling of acceptance among prisoners. One prisoner will work here because the chief clerk needed another typist, not because that assignment is what the group in the prison determined to be the need of the prisoner. If I had time I could, of course, multiply those illustrations.

Once the consensus is made and the plan is evolved, that is where the technical uses of classification come in. As a citizen of America or Holland I do not group myself, I do not adopt a static group and put

myself in it, go to church, work, play golf and have a good time and everything in that group. I join the group that is adequate for my needs at a given moment. And that is what this device is intended to do in an institution, so that when a plan is evolved, the prisoner will be in one group so far as custody is concerned, in another group so far as his need for education is concerned, in a totally different group so far as his physical or even mental needs are concerned, and in still another group to exercise his religious beliefs.

In other words (and here again I think the rapporteur has consciously tried to express this opinion), classification is not group-forming as an end, classification is not (as says his first sentence in section III) to divide prisoners into more or less homogeneous groups, but it is a device to make those groups serve the need of the individual prisoner. Now I think, as I have heard Dr. Fenton's suggestion, that it very nearly meets this description. But I still feel that if this principle of classification is to mean anything more than the principle of segregation, we must first give some reasons why it should be employed, and secondly we must try to state the principles which underlie it.

Now, I realize again that I have not done much to reconcile the two ideas of segregation, of grouping, and the idea of individualization. But we in America, for example, were forced to this device because in no other way could we utilize, to the best extent, the various influences of the prison and still make them adequate and make them applicable to the individual needs of the prisoner.

(Applause)

The *Chairman** thanked Mr. Bates for his illuminating remarks. As for the procedure, the question was whether a drafting committee was to meet after the meeting. Since the Section did not meet anymore, it would have to rely on that drafting committee to present, probably through their chairman, a resolution directly to the General Assembly. The Chairman suggested that the Section should try to reach a conclusion during the forty minutes left.

Mr. *Cannat** (France):

It is neither in forty minutes nor in a day and a half that the American conception and the European conception of classification can be analyzed. I said a word about that yesterday when I pointed out the difference between the classification of the *guidance centres*

and the classification within the prison. I think it would be better for this matter if the Congress agreed not to make a decision immediately, in order not to present erroneous or hasty conclusions. And it would perhaps be better to set up a kind of committee which would examine this, not for the sake of the General Assembly which will be held this afternoon or to-morrow morning, but either in view of a later congress or of the preparation of a common written resolution which might be published later.

The *Chairman** suggested going on with the discussion until 12.20 and at that time see how far the assembly had gone and then decide on the procedure.

He had a definite question to raise. He said that he was afraid the discussion would go on about a question of wording and not about the meaning. It is obvious, he said, that in America something else is called classification than in Europe. The term in French is quite clear: classification means putting somebody where he has to be and nothing more. After the American definition, classification means not only placing the man where he has to be but defining his treatment, treating him, releasing him, etc., that is all included. The day before yesterday, Mr. Rafael proposed to change the word classification to "classification treatment". Although having some doubts as to that double term which does not work very well, it shows very well that the meaning of classification in the United States includes (1) classification as meaning the definition of the treatment to be applied, and (2) the treatment itself. The Chairman said that if his recollection was right, he remembered having seen in the excellent Handbook on Classification a remark tending to indicate that American penologists had come to much too broad a meaning of the word classification. He wondered whether it would be a fine piece of work for the present Congress to try to agree on the question of terminology just as it already agreed on the point that what American penologists are doing is excellent and is approved by everybody; he suggested that the term classification should only be used for what in Europe is called classification and that another name – treatment or some other term – be given to the application of the treatment.

Mr. *Stürup* (Denmark) said that he would just like to have one

point in Dr. Fenton's amendment made clear. He was not quite sure whether the problem of re-classification was included in that amendment. He understood, especially after what the Chairman had said, that Dr. Fenton stressed the change in the different groups. But there is another change. The man himself changes at different times and therefore the grouping must change when you keep a man for some time in the institution. Dr. Stürup would like to stress that if the Section were to use the American terminology – which he would prefer – it should take the further point into consideration that something may happen which would necessitate making the classification temporary, especially when one considers the use of that method during the period *in* the institution and *afterwards.*

Mr. *Drapkin** (Chile):

I should like to say some words about the very well-defined notion that we have of classification in our country. We do something very similar to what physicians do in their work; it is an examination of the sick, if you please, of the prisoner. This is a very well defined problem. The second problem is what the physician calls the diagnosis, and this is, with respect to the prisoner, the equivalent of classification. Classification is based upon the examination of the prisoner. A third aspect is the treatment. It is only at the moment when the physician has made the examination and has arrived at the diagnosis of the case, that he can prescribe treatment. Just as there are entirely specialized hospitals, for instance for mental diseases, and general hospitals with sections for surgery, internal medicine etc., we conceive of the problem of prisons absolutely in the same way. There are highly special prisons for offenders who need this kind of institution, and there are general prisons for prisoners who are suitable for life in common at the same time that they receive individualized treatment. Thus, examination, diagnosis and treatment by the physician are equivalent to examination, classification and treatment of the offenders in the general or special institution. That is what I wanted to say in order to make more clear the idea which we have in our country of what is meant by examination, classification and treatment.

The *Chairman**:

There are then three ideas instead of only one.

Mr. *Drapkin** (Chile):

Certainly, but these are three parts of the same process; the process is the same. One needs three words because these are three stages: the one is the examination by experts, the other the classification where the expert has made contact with the administrative personnel, the chaplain, the supervisor of the workshops, etc. and the third the treatment in which everybody collaborates. I am making no motion; I just wanted to express my idea on the subject of terminology.

The *Chairman**:

I would prefer that you make a motion.

Mr. *Drapkin** (Chile) abstained for the moment from doing so.

Mr. *van Bemmelen* (Netherlands):

I have not heard one remark in this whole debate, which in my opinion is of the utmost importance, concerning the fact that the whole question of classification depends very much on the director of prison. During the last century the Germans said: "The Obermaier system is Obermaier". I think this whole question of classification is, first of all, one of personnel and not so much a classification of prisoners as a classification of prison directors. When we have a man who is able to manage a large group of very different prisoners, as for example Mr. Jansen at Leeuwarden, then we can place a variety of men in his prison. But when we have a director who is specialized on certain prisoners, for example a certain type of psychopaths, and can only manage a small group, then we must give him the opportunity to do that.

So I think that the whole question of classification can never be solved without considering the people who are directing our institutions; that is the main difficulty in the whole question. We say in Dutch: "You must row with the oars you have". As long as you do not have a man who can manage a big heterogeneous group, you must make small homogeneous groups, and if you have a splendid man who can manage a very big, heterogeneous group, then it is possible to make experiments with such a group. In the end, I think that the proposal our American colleagues have made is to be underlined and supported, for the whole treatment in my view depends more on the

man, the prison director, and not so much on the classification made by the law or made by the judge, notwithstanding the fact that the treatment begins already when the judge makes the first choice for the treatment that afterwards has to be followed.

Mr. *Pinatel** (France):

I shall be very brief. I want to define more precisely the French legal and penitentiary terminology. We more and more use the word "individualization" for the court phase, i.e. for the judicial individualization of the punishment. Question no. 1, the pre-sentence examination, corresponds to this phase of judicial individualization. Afterwards there comes a second phase, namely the phase of the commitment of the prisoner to an institution, determined on the basis of the different categorization of institutions. Finally a third phase, the phase of selection, when the prisoner has arrived in his institution, that is to say the assignment of the prisoner to a group. I believe it is impossible, in French terminology, to cover those three aspects by a single word and a single concept. They are indeed very different things.

The *Chairman**:

Could we not hear one of our American friends on that question of subdividing the concept of classification? Do you think the concept of classification should be subdivided into several separate concepts as has been pointed out by several speakers? It is just a question of wording.

Mr. *Glueck* (U.S.A.):

I wonder whether a definition I have in mind would not be broad enough and inclusive enough to cover the various aspects, and I suggest that some such definition followed by a brief statement of three or four principles of classification – which, after all, the question laid before us calls for – would solve most of our difficulties and differences of opinion:

"Classification is the careful application, through the case conference method, of a plan of treatment specially prescribed for each inmate in respect to the chief aspects of correctional administration – custodial, medical, educational, industrial, recreational, etc."

The *Chairman**:

I am very much afraid that we shall again fight about words and those words have different meanings in America and here. Mr. Bates, are you going to....

Mr. *Bates* (U.S.A.):

I am going to a gree with you. (Laughter) I think that while that definition of Sheldon Glueck's is a substantially accurate one it does not help your difficulty. What *we* say classification means does not make it what *you* think it means. You might bridge that difficulty by frankly admitting in this resolution that there is a conception of classification which is so and so, and there is another conception of classification, which has valuable ideas behind it, which is so and so. We ought to have enough command of language to find a word that means what we think and does not collide with any other meaning. I have been trying to think of one; whether "prescription" would be a good word, I am not sure, but the idea is making a prescription for each prisoner – but then *you* have got a word "prescription" which means something entirely different, so that we would get into just as much trouble.

Miss *Marx** (France) suggested the English words "personal" or "individual programme".

Mr. *Bates* (U.S.A.):

That does not quite suggest the idea of class; the utilization of classification somehow has to be kept in the notion.

The *Chairman**:

I think that we are approaching the solution. But I would like to make one remark on what Mr. Bates just said : are we going to try to find what corresponds to words or are we going to do something much more important, that is, find out that we do the same things here on the Continent and in America, although we call them by different names? After all, we are here to study and to compare methods, and to make ourselves understood we should speak the same language. But first of all: are *we* doing anything else than *you* do? I should say that in the best institutions we do exactly what is defined here by our American friends. Only we do not call that

classification, we call only a part of it classification. For instance, take my country which I know better than others : we speak first of observation, at the end of the observation comes the determination of treatment, then we apply the treatment, and from time to time we revise the treatment – this is exactly what you call classification, but we do not.

Mr. *Cannat** (France):

To include the whole penitentiary question, the treatment from the beginning to the end, in the word "classification" would mean to go far beyond the bounds of the subject.

The *Chairman**:

Our American friends will agree that in the term "classification" they include the whole process of determining the treatment and applying the treatment up to the end. Well, I call upon your sense of etymology: is classification a good word for that? Classification means, in every country and in every language, I think, to classify, that is to say: You belong – not necessarily to that or that group, but – to that kind of treatment. And then comes another thing, namely the application of the treatment, but that is not included in the word classification.

Mr. *Bates* (U.S.A.):

I do not think you are quite right, Mr. Chairman, because classification – Mr. Drapkin or somebody else mentioned it – is more a programme, a prescription, an indication of what needs to be done; and the performance, the whole process of reformation, while it depends upon classification, is an additional process. You cannot say that classification *is* treatment. Classification suggests the treatment in the same way as the doctor's opinion precedes the application. And then, of course, there are mass activities in a prison and there are individual activities, and I would not go so far as to say that classification represents everything that we do. Why don't you have an etymological committee to think up a word before 2.30?

The *Chairman**:

It is a really hard situation we are in. We have five more minutes before adjournment and I would object to a continuation

after 12.30, as our schedules are loaded enough. Now, are you ready for one of these two solutions : the appointment of a drafting committee composed of some Americans and some other members, in which case you agree to rely on that committee which reports through its chairman to the General Assembly, or you come here to-morrow morning at 9.30 to hear what has been done by the drafting committee.

Mr. *Muller* (general rapporteur):

It seems to me quite clear that we are speaking on different subjects, and it is clear also that different subjects require different sets of conclusions. I think it would hardly be of any use to form a committee to consider what kind of conclusions have to be considered on these two quite different subjects. I take it that the only thing that it is possible to do at present is to make it quite clear what we are speaking about. I am going to ask you if it would satisfy our American friends if we made it quite clear what these conclusions, as now drafted, are about; for instance, by adding in the first conclusion the words: "Classification *taken in the sense of division of delinquents over the prison system and in the prison* is indispensable etc." That would make it quite clear that the American view is not treated in the conclusions; the American classification might be reserved for the next Congress for instance.

It was decided to appoint a drafting committee of six persons. The *Chairman** proposed three Americans and three others as members.

Three American texts having been submitted, the Chairman suggested their authors as members, namely Messrs. Bates, Fenton and Glueck. He proposed in addition three non-American members, namely Messrs. Muller, general rapporteur, Cannat and Drapkin. Since Mr. Bates did not want membership on the committee, it was decided that it would consist of only five persons, under the chairmanship of Mr. Muller.

The Section would meet the following morning at 9.30 A.M. to take cognizance of the text of the draft resolution prepared by the drafting committee.

The meeting was adjourned at 12.40 A.M.

Morning Meeting of Saturday, August 19th, 1950

The *Chairman** opened the meeting at 9.30 A.M. and submitted to the Section the draft resolution of the drafting committee for the third question of the program: *What principles should underlie the classification of prisoners in penal institutions?*

This draft resolution read as follows:

(1) The term classification in European writings implies the primary grouping of various classes of offenders in specialized institutions on the basis of age, sex, recidivism, mental status, etc., and the subsequent subgrouping of different classes of offenders within each such institution. In the other countries however, notably in many jurisdictions of the U.S.A., the term "classification" as used in penological theory and practice lacks philological exactitude. The term should be replaced by the words „diagnosis (or, if desired, classification), guidance and treatment", which more adequately portray the meanings now inaccurately included in the *one* term "classification".

(2) In view of the foregoing, it is concluded that the purpose of distributing offenders to the various types of institutions and for sub-classification within such institutions the following principles be recommended:
   (a) While a major objective of classification is the segregation of inmates into more or less homogeneous groups, classification should be flexible and not too rigid.
   (b) Apart from the imposition of the sentence classification is essentially a function of institutional management.

(3) For the purpose of individualizing the treatment programme within the institution, the following principles are recommended:
   (a) Study and recommendations by a diversified staff of the individual's needs and his treatment.
   (b) The holding of a case conference by the staff.
   (c) Agreement upon the type of institution to which the particular offender should be sent and the treatment plan therein.
   (d) Periodic revision of the programme in the light of experience with the individual.

After having gone over the text with the secretaries of the Section, the *Chairman** proposed certain slight changes in the French text.

Mr. *Cannat** (France) proposed that number 3 (c) read "and *upon* the treatment plan therein". With regard to number 2 (b), Mr. Cannat thought that the French text did not at all convey what the imposition

of the sentence does. One would understand it better if one were to say: "Apart from the classification *that sometimes results from* the imposition of the sentence, classification is essentially an internal function...." etc. Mr. Cannat having asked Mr. Fenton during the morning if this would be really the sense which he wanted to give to the English version, the latter confirmed that such was the case: in certain instances the court itself might have to decide that a prisoner had to go to such and such an institution when it was a question of a very special institution.

Mr. *Fenton* thought that while his original English text would carry that meaning Mr. Cannat's amendment would improve it.

The following wording was finally adopted: "Apart from the imposition of the sentence *further* classification is essentially etc."

The *Chairman** continued by indicating some slight changes in the English text: In number 2 (a), delete "and not too rigid"; in number 3 (b) read: "the holding of case conferences by the staff".

Nobody made any further comments, and the amended text of both the French and the English version was put to a vote and unanimously adopted. [1])

Mr. Muller was designated as rapporteur in the General Assembly.

Mr. *van Bemmelen** thanked the Chairman for the perfect manner in which he had guided the discussions.

The *Chairman**, in turn, wanted to express his thanks to the members of the Section for their collaboration and especially to the secretaries who had had a lot to do.

The meeting was adjourned at 10 A.M.

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1) See the entire text of the resolution adopted by the Section in the Proceedings of the General Assembly, pp. 458–9 infra.

Section II in session

Section II in session

Section II

Chairman: Mr. LIONEL W. FOX (United Kingdom)

Secretaries: Mr. CHARLES GILLIERON (Switzerland)
Mr. HUGH J. KLARE (United Kingdom)
Mr. W. H. NAGEL (Netherlands)

Afternoon Meeting of Monday, August 14th, 1950

The *Chairman* opened the meeting and drew the attention of the Section to the most important provisions of the Rules of the Congress. It was explicitly decided that complete translation service would be provided for in both official languages. The Section then entered on the discussion of the first question of its programme:

To what extent can open institutions take the place of the traditional prison?

Mr. *Germain** [1]) (France), general rapporteur [2]):

The question I have to deal with has some points in common with other questions on the programme of the Congress, especially with that of classification (Section I, question 3) and that of habitual offenders (Section II, question 2). One rapporteur, Mr. Bouzat (France) has also examined it in relation to labour in the open in his report on prison labour (Section II, question 3). It is not without interest to note also that in 1905 the Congress of Budapest treated several aspects of the problem which will be examined here, in question 5 of its 2nd Section.

Thirteen reports from ten countries have been presented on this

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[1]) An asterisk after a title or name signifies that the remarks have been translated from the French.

[2]) General report, see Volume IV, pages 11 ff.

question[1]). Five of the rapporteurs are directors of prison administrations, four are directors of institutions, one is a prison architect and the three others are, respectively, a high official of a prison administration, a high judge and a high official of a ministry of justice.

I shall restrict myself to mentioning some of the general ideas that emerge from the reports presented. Some have especially stressed the necessity of having available an orientation and screening centre for the proper functioning of open institutions (Messrs. Bennett, Kellerhals and Scudder). The obligation to take into account the reactions of public opinion has also been high-lighted (Messrs. Bennett, Göransson and Løken). Along the same lines, several rapporteurs have underlined the utility of interesting the neighbours of the institution, public opinion and even the press in the work undertaken in the open institutions (Messrs. Cornil, Fox and Kellerhals). Three rapporteurs have stressed the importance of the institution's architecture (Messrs. Bennett, Musillami and Shelton) while still another among them, Mr. Fox, has pointed out that a school is a teacher surrounded by a building and not a building with a teacher inside. Miss Mahan has emphasized the advantage of open institutions for imprisoned women. Finally, the complementary nature of the open institution has been stressed (Messrs. Fox, Weinzetl and Tetens) and also the fact that it must be integrated in a progressive prison system (Messrs. Arnoldus, Løken and Musillami).

I suggest that after these few remarks, which give only a very weak idea of the work done by the rapporteurs and of my interest in reading their exposés, the Section enter immediately on the discussion of the statements of principle which form the eight points of the conclusions of the general report and which I move be adopted so that they may be transmitted to the General Assembly. It would indeed be fortunate if one could assume as a fact that you have read the general report, which you have received in printed form. My conclusions are as follows:

1. The open institution is characterized by a series of rules that induce the prisoner not to use the opportunities for escape which are available to him and that are substitutes for physical barriers against escape.
2. It contains the elements of a moralizing influence.

1) See list of rapporteurs, loc-cit., page 11, note.

3. Its inconveniences, aside from the ease of escape, are found in the possibility of contacts between the prisoners and the external world and occasionally in an injury to the effect of general prevention attributed to punishment.
4. The open institution cannot be called upon to replace the classical type of prison except to a certain degree.
5. The requisites for the proper functioning of such an institution are:
   (a) Its agricultural character;
   (b) The quality of the site chosen for it (isolation, good climate, fertile soil);
   (c) The excellency of the personnel, whose influence over the prisoners should be exerted through psychological means;
   (d) Inmate population of moderate size;
   (e) The collaboration of the surrounding community in the re-educational work;
   (f) Admission into the institution being regarded as a favour and unsuitable elements correspondingly expelled, with perhaps the aggravation of the punishment of those excluded for bad conduct;
   (g) Judicious selection of prisoners for placement in the institution.
6. The open institution shoult not receive unsentenced prisoners, nor should sentenced ones against their will be assigned to a régime based on trust.
7. The criterion for assignment to an institution is connected, not with membership in a given legal or prison category but with the real personality of the prisoner. Such assignment presupposes a prior observation period in specialized institutions.
8. Placement in an open institution can be direct or integrated in a progressive system. In the latter case the prisoner may previously have been placed in a prison of a closed type or in a closed section of the open institution.

Mr. *Barnett* (New Zealand) moved that the report be considered read.

This proposal was adopted after a brief exchange of views between Mr. *Junod* (South Africa), Mr. *Germain** (France), general rapporteur, and the *Chairman*, and the discussion was opened.

Mr. *Van Helmont** (Belgium):

The question of open institutions greatly preoccupies people concerned in Belgium, and that is why I shall outline briefly the manner in which the problem is envisaged in my country.

In an ideal system one would have to admit that the open institution can replace the traditional prison for nearly all prisoners.

In fact, people no more believe in the virtue of the cellular prison, for it has been found that it is utopian to expect those reputed revivals of conscience which should bring a person in solitary to regret his sins. Besides, one now knows well the negative virtues of the cellular prison: whatever might be the category of prisoners one has to do with, the individual will be terribly weakened, both physically and morally, after five or ten years in isolation. Theoretically, one should therefore keep everybody out of the cellular régime.

We are, however, checked by the realities of life and are thus led, as in the case of Belgium, to practise classification. First of all, juveniles were saved from the cell, then first offenders and those who for mental or physical reasons could not endure that régime. But classification goes further and further, and to-day one tends to place in open institutions all those who can be sent there without prejudice to security. This involves primarily first misdemeanants whom it is advantageous to place into living conditions that have the greatest possible resemblance to life in liberty and will especially facilitate the investigation of their claims to earlier release. There are, however, offenders to whom open treatment can only be granted within the framework of a progressive system. Such is the case of those who are sentenced to very long punishments for felonies. At Louvain, for instance, one selects among the latter the first or occasional offenders, and after five or six years in isolation they are placed in open institutions, the risk of escape being accepted. The selection is made by a committee composed of the director of the institution, a medical anthropologist and a specialist in psychology.

In an ideal system, the cellular régime will therefore be retained for two categories of prisoners only: the *accused,* toward whom it is necessary to show the greatest circumspection, but who need isolation in order to give thought to their defence, receive the visit of their lawyer and be at the disposal of the judge; and the offenders who are *dangerous,* whether they are so for the other prisoners during life in common or for society in case of escape. One cannot checkmate the judge's decision by giving them a chance to avoid punishment by flight.

The whole question of open institutions can therefore be summed up in a single sentence: the traditional cellular régime is doomed and we must try to find adequate régimes in open institutions for all prisoners, in the framework of the various categories to which they

belong, the only exceptions being those held for trial and the dangerous offenders.

Mr. *Arnoldus* (Netherlands):

I want to say something with regard to two particular points of the conclusions of the general rapporteur. Point 5 (a) of those conclusions mentions, among the conditions for the proper functioning of an open institution, its agricultural character. Now, I have some doubts on that point. I think that such a claim is valid for countries which are short of agricultural labour. In others, however, as in the Netherlands, for instance, the situation is more complicated and there it is also necessary to envisage the assignment of prisoners to industrial work. In the Netherlands seven hundred political offenders are working in mines under conditions equivalent to those of open institutions and I believe it is correct to say that the same system is utilized in Belgium too. Furthermore, in a general manner, the agricultural institution is suitable for people from rural areas, who find themselves in their proper environment, but there are other offenders who will be more at home in industry. One should therefore adopt a less restrictive formula in the conclusions and not require the agricultural feature as an indispensable condition for the proper functioning of the open institution.

Finally, the general rapporteur, toward the end of his 8th conclusion, declares that a prisoner entering an open institution after a certain period may have been earlier in a prison of the traditional type or in the closed section of an open institution. There is, however, a third possibility, namely the open section of a closed prison. Such a section offers great advantages: it permits one to observe the behaviour of the prisoner and to judge whether or not he can be transferred to an open institution after a certain time. Therefore, it might perhaps be useful to provide for this third possibility too.

Mr. *Barnett* (New Zealand):

I would just like to enforce briefly the argument of the previous speaker that it would be wrong to set as a fixed objective that the prison should be in a rural setting To the rest of the report I agree most warmly and I wish to congratulate Mr. Germain upon the excellency of his work. It is therefore less disagreeble to object to some of his fundamental points.

We are specialists in the open or semi-open prison in our country and, unfortunately, all of our institutions of that character are rural. All people incarcerated are employed in country conditions and we have come to find that that is a mistake. Ninety per cent of the persons who are imprisoned in open institutions come from the city and not more than ten per cent come from the country, but we send hundred per cent to an open institution. To many of them, it is quite a pleasant change, but to a few of them it is a useful one. Nearly all of them want to return to the city and will return to the city and, apart from the good influence of the country, we miss the opportunity to a large exent of fitting them for the life into which they are going.

One further point: the rapporteur speaks with approval of the idea of the isolation of the site. I would like to say that the best institution of this sort that we have is the one that is nearest to two rather important centres of habitation. The ones which are less successful are those who are buried in isolation in the country, where there is little or no communication with the local community. I think that it is not a good form of training for freedom to bury an open institution in distant parts of the country, and that it is desirable and more helpful to have your institutions placed where the man can be integrated, as far the community will allow, in the community's affairs, join in its recreation, get more advantages in education, and so on.

Mr. *Bouzat** (France):

I have listened with interest to the observations which have just been presented, but would like to say some words prompted in particular by the experience in France with adolescent delinquents. I am a partisan of the placement of offenders in agricultural institutions and to such an extent that I have at times been accused in France of advocating a bucolic penitentiary policy. Certainly, one cannot place everybody in such an institution but, in a general way, it would nevertheless be useful to have the convicts placed there, whatever their background might be. The fact that ninety per cent of them come from the city is not by itself a sufficient reason to refrain from doing so. Thus, one might perhaps salvage some of them for agriculture, and this would be very valuable. Some will object that one risks turning the others into maladjusted individuals, forced to engage in work which they do not like and that, therefore, one will

drive them into crime. But this is not accurate: even in the country, one can establish industrial workshops and exercise the same crafts as in town. But, it will be done in a natural and spacious setting, which is best of all, and in that way we shall avoid the moulding of standardized workers who are only human machines. Perhaps it would be a good idea to establish the institution near a city, so that one could from time to time grant the prisoners leaves and also send them on errands to town which they would feel as a sign of special confidence in them. This means of education should certainly not be neglected, but it would be wrong to establish the open institution directly in town.

Mr. *Kellerhals** (Switzerland):

I have read the conclusions of the general rapporteur with much interest, but would like to see the whole question approached in a still more positive manner. Section 4 of the conclusions declares that the open institution can only to a certain degree be expected to replace the prison of the traditional type. Now, I think that the exceptions where this cannot be done are rare. In Switzerland, particulary in the Canton of Berne, we try more and more to place nearly all prisoners in open institutions. It is only when this experiment fails that we commit the prisoner to one of the few closed prisons which will always be needed for certain individuals.

Another important question is to know what an open institution really is. This point does not depend upon the exterior aspect of the institution, but is determined by the degree of confidence placed in the men. The greater this is, the more open is the institution. In this connection it would be wrong to attach too much importance to escapes. If one suppresses all liberty, there will always be individuals who will try to escape, and even if one grants a very considerable freedom, there will also be individuals who will think that it is not enough and who will want more. But to-day we have better devices which permit us to find fugitives rapidly, and this problem should be regarded as secondary.

I am convinced that an open institution should be an agricultural one. Free air and nature have a great influence on a man who has everything to gain from living in such surroundings. My father used to say that every man ought to know where bread comes from, and there is no reason why each prisoner should not work in

the country for a certain period. He will be able to recover his health by familiarizing himself with farm labour. One cannot, however, conceive of a normally functioning agricultural institution, unless it has industrial workshops needed to keep a rural enterprise going. That is a reason why the institution should not be too small. I have noticed with interest, in the report presented by a representative of a northern country, that one should have institutions with at least two hundred prisoners. Of this number, at least one third will work in the shops to assure the proper functioning of the agricultural enterprise.

There is also the question of what kind of punishments might be served in the open institutions. I think that even the long ones might be served there. One often sees more escapes among the offenders committed for short periods than among the others. Everything depends in this respect on the character of the individual. That is why I am also a supporter of the screening centre. This should not be a centre where the prisoners would stay a long time and would be examined only by psychiatrists and psychologists. They should be examined by practitioners who know the institutions and who know where the prisoners should be sent.

Mr. *Bennett* (United States):

It is a great pleasure for me to follow Mr. Kellerhals of Switzerland whose institution I have visited and who has been very much in the avant-garde of this whole new trend. I think he has expressed himself very wisely when he suggests that this group should come down to a more definite description of the types and percentages of men who can be sent to these institutions. There is little or no dispute here, Mr. Chairman, about the fact that open institutions can be used profitably, economically and safely and promote the rehabilitation of the offender for a considerable group. Considerable emphasis has been laid upon age, which is of course an important criterion, but I am afraid too much emphasis has been laid upon that; we are hesitating about the older offenders, probably because we do not want to get out of step with public opinion. I think prison people, correctional people, are ahead of public opinion in this field. There are still many who believe that this is a softening of punishment and that when we adopt this type of institution we are not carrying out the function and purposes for which the prison was established.

Now, it seems that we have come a long way, but we can go even further. We need more experimentation. In our own country, we have been surprised, frankly, in our own system, at the type of man who can be put in these open institutions. By open institutions I mean not merely remote rural institutions and camps but institutions on the outskirts of large cities. I have described such an institution in my report. Mr. Shelton here likewise describes an institution of that type in his paper. The institution that I described is outside of the city of Dallas, Texas, which has a population of three quarters of a million people, and traffic on one of our main highways goes by in front of the institution as people go by here. I am sure we have found that men can be trusted in a setting of that kind where five years ago we never found it possible. And we are doing further experimentation.

As all of you know, in the United States sentences to penal servitude are much longer, in terms of years of time served, than in continental countries. We are finding that even the long term men are able to come to these institutions. We must not forget that the key to the system is in the personnel. If you have a personnel able to win the confidence of these men, able to inspire them and who believe in this treatment themselves, and who can find some answer to the particular problem the man may be facing, and able to keep a strict discipline, then the institution succeeds.

It seems to me, as a matter of fact, Mr. Chairman, as you pointed out indirectly in your very able paper, that the use of the open institution as you have adopted it in Great Britain, is the contribution of this generation, if you please, to modern penology. It is a new trend and it is one of the things which I hope will go forward because of the fundamental thing which it is accomplishing : building up within the man himself a sense of self-respect and confidence in himself. If he cannot feel that confidence within himself, all hope for his reformation must be abandoned.

Mr. *Beleza dos Santos** (Portugal):

I have read the general report with the greatest interest and share its conclusions for the most part. I only want to present an observation with relation to section 6, according to which the open institution should not receive sentenced prisoners, who against their will have been assigned to this régime based on trust. Now, the

prisoner often does not know how to exercise his will, and he has to be taught how to do it. In this connection I shall mention only one fact which, however, seems to me important enough to be considered. There is in Portugal a *prison-école* (reformatory or Borstal) which has a section with a régime based on trust and organized as an open institution. At the end of three months, a prisoner who had been committed there approached the director of the institution to ask him explicitly to send him back to a closed prison, saying that he did not want to be educated and that he saw no use in a régime too good for him. The director, after congratulating him on his frankness, nevertheless kept him some time longer in the open section. Since then the prisoner has changed his mind and has now been in that section two years. His behaviour gives complete satisfaction and his prognosis is now very favourable.

This example is typical. Therefore, it is suitable to place in open institutions not only those prisoners who want to go there, but also those whom competent authorities think should be sent there, even against their own will. Indeed, those concerned might change their mind later and then wish to enjoy the advantages of an open institution.

Mr. *Aude-Hansen* (Denmark):

There has been discussion about who can be sent to an open institution and to what extent this means can be utilized for the social readaptation of the offenders. But all this depends on what one can do in the open institution. In that connection mention has been made of labour in the institution, and I share the views of Mr. Arnoldus on that point. The institution should not necessarily be agricultural. But more than appropriate labour is needed and more than trustful relation between prisoners and guards. This point is touched in item 2 of the conclusions which says that the open institution contains the elements of a moralizing influence. What does that mean? Should one teach the prisoners what is good and what is evil? I have had rather long experience as director of an institution but have never followed that course. I have always carefully avoided being a "moralizer". It is the practical aspect of the question which has to be brought into the foreground by showing the prisoners what normal life is like, a life which is not anti-social, and to give them a desire to start such

a life. This requires an important educational effort, very different from moral lectures. In addition to formal teaching and vocational training, it also includes leisure and sports. Here is a most important aspect of the problem, for the leisure and the idleness of the discharged prisoners are determining factors in recidivism.

One of the specialties in Denmark consists generally in the organization of higher courses for adults in which one not only gives advanced instruction and vocational training but also teaches behaviour and what one might call the art of living. It is not just a question of training technicians but also of teaching them to be men. The penitentiary administration introduced this in the prisons too and we have an opportunity of giving the prisoners certain facts about the customs, traditions and way of life of the Danes which they have never heard about before and which will make it possible for them to live a more social life after their release.

Mr. *Junod* (South-Africa):

I wish to draw the attention of the Section to item 4 of the conclusions, the wording of which seems to me extremely dangerous and serious. Indeed, it states that the open institution cannot be called upon to replace the traditional prison "except to a certain degree". Now, the resolutions which will be adopted by the Congress will express the opinion of experts whose recommendations are expected by the governments. Several of the latter, seeing such a statement, will declare themselves satisfied with the present state of their penitentiary system and will deem it possible to be contented with the *status quo*, since the open institutions has to play only a limited rôle. This will be the more easily the case as the building of open institutions is a very expensive undertaking from a financial point of view. Their development, in any event, faces such obstacles that nothing should be done which might induce the governments to be satisfied with the huge closed prisons which everybody knows only too well and whose weight lies so heavily on all those who live in them. The progress which will be accomplished in this field will be gradual and modest at any rate, and one cannot advance except by small steps. Some States would to-day have the greatest difficulty in putting into effect some ideas which other States regard as already self-evident, and we must do nothing which favours a slowing up of the work which should be

done in this field. We must not forget that, on a world scale, the problem is extremely complicated; in some States, a special social situation singularly complicates the penitentiary organization, and this is an additional source of difficulties. I think, therefore, that the Congress should resolutely go ahead and set forth positive directives. I should adopt a resolution recommending with all possible vigour to the States the building of as many open institutions as they will be able to set up and the training of the personnel necessary for the proper functioning of these institutions.

Mr. *Bates* (United States):

I just want to observe that there seems to be a general agreement as to the manner in which the wisdom of the contributors on this subject has been gathered together and reported. It might be well, Mr. Chairman, to consider each of these eight recommendations one after the other to see if we agree with them or if there is any amendment to a particular resolution. I assume that before five o'clock you might like to have some resolution perfected by the Section. I want merely to suggest that for the benefit of those of us who do not seem to have the right pamphlet on hand at any particular time, you read these eight resolutions in order that we can begin to come to some agreement on them.

May I say just one more thing. This subject has been discussed as though it concerned only men, but it is equally important so far as women are concerned. We only have one institution for adult women offenders in New Jersey and everybody goes there. There is no question of selection because there is no other place to send them. We have the president of the civilian board of managers of that institution in the audience to-day. That is as wide open as any institution you ever saw. We have scores of women with life sentences and we have women who have been a part of that institution for 15, 18 or 20 years. I wish I could show you pictures of that institution. I would like to show you the little manual of instructions to incoming inmates that was made up, edited and issued by the women themselves in order to indicate to the new inmates the kind of place they are coming to and what they have to do to conform. I hope I can introduce Mrs. Mary Baird, who is the chairman of the board of that institution.

The *Chairman*:

Just one word about the point of procedure raised by Mr. Bates. I note that we have five Section meetings of equal length in order to deal with three questions, which makes rather more than one and a half meeting for each question. It was, therefore, the hope and intention of the chair that we should reach conclusion on question I towards the middle of our session of to-morrow. I see no hope of reaching a resolution this evening in view of the late hour and in view of the fact that there may be many more speakers who wish to take the floor before we attempt to draft a resolution. I think, therefore, that having heard perhaps two or three more speakers we might turn our minds to deciding the general lines on which we want to continue the discussion, before we break up this evening, so that to-morrow morning we can meet ready to discuss, point by point, the points which we have decided are the most important and which should form part of our ultimate resolution.

Mrs. *Baird* (United States):

It is very kind of you to give me the opportunity to speak for I speak only as a plain citizen to a group of professional members here. It is the system in the State of New Jersey, where I live, to select a group of seven representative citizens to advice and help the professional staff of the institution, and this is all under the leadership of a board that controls all institutions and agencies of the State, and of which Mr. Bates is the commissioner. I speak only for the reformatory for women in New Jersey and, as Mr. Bates has well said, there is no selection in the population; every adult woman sentenced in New Jersey comes to our reformatory. It contains prison cases, life sentences for murder, as well as reformatory cases. Miss Mahan, the superintendent of our reformatory, has covered the programme very thoroughly in the report which she has submitted and which you probably have read. The State, of course, approached that wholly open institution for such a variety of cases with some reluctance and a good deal of care. About three years ago, a few women with short sentences were allowed to go to the institution and since then the entire prison population of the State, as far as women are concerned, comes there. The statistics – if we can believe statistics – are very heartening. The recidivism rate is very low and the percentage of those who make good on parole is well over

eighty. It is a rural institution, fairly near a large city. We have very intensive work programmes and school programmes, for women are taught to function as needle operators and if they go back to an urban centre they are able to earn their living in that or in laundry work or some similar type of urban work. We also have a rural programme.

Mr. *Wijers** (Netherlands):

I have listened with great interest to the whole discussion and particularly to the considerations put forth about the necessary combination of industrial workshops with work in the open air. I am also of the opinion that contact with nature presents many advantages and that it has a favourable influence on the morale of the prisoner. In the institutions of Norg, in the north of our country, the Netherlands have something pretty similar to what Mr. Kellerhals has described. Four institutions, with a total surface of about 7,400 acres, receive different categories of prisoners, minors, political offenders, etc., and each one of those institutions has a different régime. The prisoners who deserve it enjoy considerable freedom and one can say that in general they do not take unfair advantage of it. Here the guards do not have to carry on the ordinary job of prison guards; they limit themselves to a general supervision of the labour and see that the rules are obeyed. Three or four months before their release, the prisoners get, once a month, permission to visit their family. In that way, they can take steps to look for work in preparation for their return to society.

In a very general manner, I consider it essential that the offender should be subjected to the discipline of labour. There seems to be no doubt that agricultural work allows the exaction of this discipline even better than any other occupation. Indeed, punishments are very often not sufficiently long so that one could undertake to teach prisoners an industrial trade.

Mr. *Kunter** (Turkey):

I wish to congratulate the general rapporteur on the excellent and accurate report he has furnished. I have some remarks on details to present but I shall reserve them for the point-by-point discussion which will take place to-morrow morning. In addition, I take the liberty to emphasize that most of the conclusions of the general

rapporteur correspond to the situation as it exists to-day in Turkey. Since I have dealt with the question of open institutions in that country in the report I have prepared for the Congress, I shall refrain from speaking on that matter now.

The *Chairman*:

Before we adjourn I would like to suggest that when we come to discuss point 1 we ought to go a little further than that point has been taken by the rapporteur and attempt to define exactly what degree of custody we understand by an open institution. I myself have seen prisons without walls within which the prisoners are confined in locked cells, and I have seen prisons without walls, in which the prisons might or might not be confined in locked cells but in which the walls are replaced by guards, and I have seen prisons which are perfectly open in the sense that there is no kind of physical restraint whatever, whether by walls, locks or extra guards. I think we ought to make up our minds which of those degrees of custody does, in our opinion, constitute an open prison for the purpose of this discussion.

I will try to agree with Mr. Germain, the rapporteur, on the terms of a draft resolution, which we could put before you as a basis for discussion to-morrow morning, on the basis of the conclusions which he has arrived at in his report and which we have discussed this afternoon.

This procedure received general approval, and the meeting was adjourned.

APPENDIX

Statement of Mr. José Agustín Martínez (Cuba) [1])

1. The success obtained by the so called open institution is such that quite a few believe that it is possible to abandon the traditional prison. We do not believe that this moment has arrived yet. A premature application of the system can ruin its future.

[1]) Mr. Martínez, President of the National Institute of Criminology of Cuba and delegated by the Republic of Cuba to be its representative at the Congress, was unexpectedly prevented from attending but sent the above communication.

2. Notwithstanding its many defects the present closed prison – not the traditional prison – has a rôle to play in the defence system of Society; the offender is removed from the offended party and is for some time rendered incapable of causing damage again.

3. The closed prison offers a certain guarantee that the offenders cannot break his seclusion: he is unable to escape. In the so called open institutions this guarantee is considerably diminished.

4. A penal measure can never constitute a benefit for the offender. It is important that by the limitation of his liberty and by his subordination to the rigid rules of the prison the offender may be made to understand that it is better for him to live in accordance with the rules of free Society. The open institutions do not discharge this purpose as well as does the modern closed prison.

5. There is a rôle in which the open institution is unsurpassable, that of preparing the offender for his reinstatement in a free social environment. Nothing is more dangerous than the sudden transfer of the offender from the régime of absolute seclusion to that of absolute freedom. This sudden change, for which he is not duly prepared, is very often fatal for his future life.

6. The open institution can prevent this shock and at the same time constitute a premium given to the offender who has during his term in prison attained the highest class under the progressive system.

7. The open institution is also recommended for the assignment of not dangerous first offenders committed for minor offences. These prisoners should be kept in sections separate from those of offenders in the pre-release period.

The following resolution is suggested:

The XIIth Penal and Penitentiary Congress recommends the establishment of so called open institutions for the purpose of receiving

(1) prisoners in the highest grade of the progressive system used in each country for the period immediately preceding the release of the offender;

(2) not dangerous first offenders serving short jail sentences when there is a well-founded belief that the prisoner will not break jail.

Morning Meeting of Tuesday, August 15th, 1950

The *Chairman* opened the meeting and informed the assembly that, in cooperation with the general rapporteur, Mr. Germain, he had prepared a draft resolution on the first question of the programme, the discussion of which started yesterday afternoon. The type-written text of this draft would be distributed in the course of the morning. In the meanwhile, the Chairman proposed that the Section start the discussion of the second question of its programme:

The treatment and release of habitual offenders.

Mr. *Beleza dos Santos** (Portugal), general rapporteur [1]:

The question of habitual offenders was the object of studies already before the war, for it figured on the programme of the Congress of 1940 which could not take place. A whole series of reports prepared for that occasion was published by the International Penal and Penitentiary Commission. After the war, this Commission appointed a committee charged with the study of the question, which decided to make an enquiry by means of a questionnaire. A great number of countries replied to this enquiry, and then the question was inscribed on the programme of the present Congress.

Many reports have been presented among the preparatory reports of the Congress [2]). I want to point out that I have not only utilized these reports, but also all the material previously put at the disposal of the Commission. Among the latter, I want to mention especially the reply of Argentina to the enquiry, presented by Dr. Pessagno, which has been of great assistance. That is easy to understand for it comes from a country which has made a great effort in this connection and which has obtained definite success in the field of the penitentiary and post-penitentiary treatment of habitual offenders.

This entire documentation which I have studied with the greatest profit contained an abundance of facts. A selection has obviously been necessary, first of all with regard to the delimitation of the

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1) General report, see Volume IV, pages 187 ff.

2) See list of rapporteurs, loc.cit., note.

subject. Indeed, one can be a habitual offender due to mental disease, for example, but then it is the mental disease which is in the foreground and which has to be cured; for that purpose one will resort to different procedures and different methods than with regard to habitual offenders in general. The mentally ill have therefore been deliberately excluded from the study. However, it is necessary to specify that the same is not true with respect to offenders with character abnormalities sometimes called psychopathic personalities. A great percentage of habitual offenders show such traits, and they have to be included in a general study of habitual criminality. But others among them present special characteristics, for example the vagrants, the loafers and those whose behaviour is dangerous because of a particular way of life. Those groups also are the object of special studies. It is certain that in real life all these categories are not distinct and that when we divide them for methodological reasons we divide what life itself does not separate. Such a procedure is necessary to the development of clear thinking, however, and the essential is always to keep in mind that these are abstract divisions, imposed upon the complex reality of life.

I have also had to adopt some other principles for the utilization of the material at hand. Habitual criminality raises national problems, depending on conditions specific to each country and, on the other hand, problems which, on the contrary, are common to all countries. For an international congress it has seemed to be advisable to deal only with questions of an international character and to put aside everything which is of a particular nature, i. e. closely connected with the special conditions of such and such a country.

Even with those delimitations it has been very difficult to select the essential and arrive at conclusions. Indeed, one is here in the presence of a problem of which one rapporteur, Mr. Hertel, has rightly said that it is one of the most difficult of the whole penitentiary policy to solve. This is true at all stages of the study. With respect to etiology, for instance, what share of influence should be assigned to environment and what to heredity? It is very difficult to determine the respective rôle of individual and social factors, though this question would have the greatest importance from a point of view of science and of prognosis. If one gives priority to endogeneous causes, the latter will certainly be less favourable than if the causes of environment seemed determinant.

Treatment poses equally complex problems, and it is especially here that one can repeat with Socrates: "All I know is that I do not know anything". Indeed we know very few things. The difficulties of prognosis are tremendous. Habitual offenders who have passed through many prisons adapt themselves rather easily to the penitentiary environment, and disciplinary statistics in Portugal reveal that occasional offenders are generally more often punished than are habitual offenders. Other countries must have had this experience too. One can obviously count on the fact that the habitual offender is afraid of the indeterminate security measure. The prisoner generally wants to know when he will leave prison, and here there is a means which may be useful to bring him back to the right path. But can one build a system of social readaptation on fear? That means building on sand instead of on rock. Anyway, the danger exists that the penitentiary administration draws a little too rapidly the conclusion that an exemplary conduct in the prison implies the probability of good conduct in free life.

Conditional release, after-care and post-penitentiary assistance are also problems particularly hard to solve in the case of habitual offenders and they have to be attentively studied. I remember an offender who told me that at his release he would need moral support and a strong hand to help him, without which he was perfectly aware that he would again become an offender. On all these problems, I have transmitted the prevailing opinion and in my report I have reproduced the general current of ideas, while adding also my personal opinion. Furthermore, I have high-lighted the differences of thought which have appeared, differences in the manner of envisaging experiences and differences in these experiences. All this shows that it is necessary to continue the study of these problems, in order to find out if one might reach results which are a little bit more certain. My conclusions [1]) are obviously very modest, but, as Mr. Bates said in his inaugural speech to the Congress: In these matters one must give evidence of long patience; and this, by the way, corresponds to my experience as juvenile court judge in Portugal. If the Section should think, in spite of the required slowness and prudence, that these conclusions are too modest and that here or there one more

[1]) Loc.cit., page 203.

step ahead should be taken, it is obviously its business to decide and to act accordingly. My conclusions are as follows:

1. The penal provisions regarding recidivism are not sufficient to fight efficaciously against habitual delinquency. It is necessary to employ security measures.
2. The introduction of certain conditions so that a person can be designated an habitual criminal (a certain number of sentences undergone or of crimes committed) is recommended, especially for the countries where such a system is in accord with the essential principles of the legal order. These conditions do not prevent the giving of relatively great discretionary power to judicial or administrative authorities called to make decisions on the subject of habitual offenders.
3. It is not desirable that the convicted persons, after having been declared habitual offenders, should endure first a punishment which involves the privation of liberty and afterwards a security measure, with different régimes and in different institutions. One should apply to them a *unified measure* of a relatively indeterminate duration.
4. Concerning the treatment of habitual offenders who should be interned it is recommended that young offenders be separated from the adults and the most dangerous and refractory offenders from those who are less so.
5. The treatment of habitual offenders ought to be dominated by the idea of their possible improvement. As a result, one of the goals ought to be their re-education and social re-habilitation.
6. The habitual offender should be submitted to an examination, paying particular attention to the psychological, psychiatric and social aspects, at the beginning of and during the internment, and when possible even before the sentence.
7. The final discharge of the habitual offender should, in general, be preceded by parole combined with well-directed after-care.
8. The habitual offender, especially if he has been subjected to internment, should have his case re-examined periodically.
9. The restoration of the civil rights of the habitual offenders – with the necessary precautions – should be considered, particularly if the law attributes to the designation of a person as a habitual criminal special effects beyond that of the application of a security measure.
10. It is desirable that the verdict of habitual offender, the choice and the modifications of the security measure applied and the cessation of these consequences, should be within the jurisdiction of a special court or of a commission composed of experts and a judge.
11. One should study the application of special measures to persons who have committed several infractions by habitually dangerous negligence.

The *Chairman* thanked the general rapporteur for his penetrating analysis and invited discussion.

Mr. *Jiménez de Asúa** (Spaniard):

I congratulate the general rapporteur on his report as well as on his introductory speech. It might be useful to remember that, historically, two currents merge to give full importance to the problem of the habitual offender: at the end of the 19th century, on the one hand, the Belgian professor, Adolphe Prins, in the International Association of Penal Law raised the problem of the state of dangerousness with respect to the recidivists; on the other hand, the indeterminate sentence became popular at the Washington Congress in 1910 which dealt with it thoroughly, and was examined extensively in London in 1925 in its relation to habitual criminality.

The first problem which arises is that connected with the very concept of habitual criminality. Mr. Beleza dos Santos has said in that respect that one must first of all take a certain number of convictions as a basis, for the offender must manifest a certain propensity to crime and the insufficiency of the punishment with respect to him. It is obvious that habit is demonstrated by several infractions (although, since von Liszt of Berlin talked about the *Zustandverbrecher* – the criminal by nature – it is possible to assume a propensity to crime already when the first punishable act is committed), but then one has to ask oneself if there is a difference between habit and recidivism. If the general rapporteur believes that this difference lies in the question of the state of dangerousness, we run against very serious and considerable difficulties. Why then does one increase the penalty for recidivism, if the offender does not present a greater danger? According to my views an opinion which is more and more widely held, recidivism – about which there has been so much discussion in order to decide whether it should be considered as aggravating, or even as extenuating, in case a habit takes away freedom of will and of action – is disappearing in penal law and tends to be replaced by the concept of habitual criminality. Why should one attach importance to the fact that an individual has committed one or two new infractions, if these infractions do not correspond to his personality and do not for that reason present a danger for others? I wish to stress this point: one should leave aside recidivism, which will disappear more and more from the penal codes, and concern oneself with habitual offend-

ers, i.e. persons who have committed several infractions and who, on account of the fact that those infractions correspond with their personality, show a propensity to crime. If one comes to this conclusion, the definition of the habitual offender includes two elements: the commission of several infractions, the number of which can vary, each country being at liberty to make its own legal provisions, *and* a propensity to crime or a state of dangerousness.

Then we arrive at a new question, that of declaring a person a habitual offender. It has been suggested that there can be a difference between the designation of criminal habit and of the state of dangerousness. But, the purpose of the designation of criminal habit is to avoid a punishment and to replace it by a security measure, precisely because the individual is dangerous. If one does not want to limit oneself to counting the number of infractions – and one must not do so, as we have just seen – one cannot separate the designation of criminal habit from the state of dangerousness. As regards the person who has to declare an individual a habitual offender, I think that the judge should always have the last word in this respect, but with the natural condition that before pronouncing it he should take the advice of authoritative experts. Such is the solution of the draft of the penal code of Venezuela, in the preparation of which I collaborated.

The report touches briefly on the very important and extremely interesting question of habit in offences by negligence. Here is a problem which deserves to be studied thoroughly. When speaking of habitual criminality I always keep in mind infractions committed with intent. That subject, however, is very complex and need not be touched upon here.

As regards treatment, I am fully in agreement with the general rapporteur. Already in 1913, in my first book, I stated as a principle that a duality of punishment and of security measures should not be accepted, but that, on the contrary, one should arrive at a unification of the sanction in the form of a measure, since punishment has proved its lack of effectiveness. But the problem of the indeterminate sentence also raises immediately that of conditional release, as the report very rightly has pointed out. This institution is even more necessary for habitual offenders than for other offenders. For it is particularly important to be able to observe, during that intermediate stage, whether or not they are capable of adapting themselves to social life.

In my opinion, the termination of the indeterminate sentence

should also be pronounced by the judge. I proposed this solution at the Congress of London, but with the understanding that the judge would be guided by the advice of two or three committees – legal, pedagogical, medical, etc. – before making a decision. At that time, the general rapporteur declared that he considered this idea excellent in itself, but that its realization would encounter great difficulties and especially would cost too much. To-day, a quarter of a century later, there is a general opinion that the judge ought to pronounce the termination of the indeterminate sentence. Such a system is adopted in Italy; in Brazil, there exists a judge of the execution of punishments, who has at his disposal the necessary information from authoritative experts.

It seems, therefore, that one could establish as a principle that it is the judge who will decide on the release when all experts whom he will have consulted have given him assurance that the offender is readapted to social life. I must stress this point, for only a magistrate can safeguard individual liberty and this liberty is sacred, even if it is a question of that of offenders.

Mr. *Kunter** (Turkey):

I shall confine myself for the moment to clause 1 of the conclusions only. I fully share the views of the general rapporteur, according to which the penal provisions on recidivism are not sufficient to fight against habitual criminality and that, therefore, something else has to be found. But, should the measures to which one is resorting be called "security measures"? I do not want to enter here on the discussion of the duality of punishments and security measures, since it would hinder the Section to come to a conclusion, but I propose that the second sentence of clause 1 of the conclusions be worded as follows: "It is necessary to employ other measures".

Mr. *Ancel** (France):

I am very much interested in the report and the statement of Mr. Beleza dos Santos. I think that everybody here has the impression that there would be much to say on the subject, and especially that there exists a general agreement with the views of the rapporteur on most of the points treated. The purpose of my statement is principally to underscore this agreement and if I were to give it a different shading with respect to this or that particular point, I could not do it better

than Mr. Jiménez de Asúa who has just spoken. Therefore I shall be brief.

Everybody agrees on the necessity that the habitual offender should not be subject to a punishment but to a security measure; this independently of the fact that it is so designated or simply called a "measure": the result will always be the same. But this solution raises a lot of questions. I shall deal only with two of them. From the legislative point of view, first of all, it is obvious that the law must take sides clearly and no longer cumulate the punishment and the security measure, but come to the system which is sometimes called alternative, one of *substituting* a measure for the punishment. It would be easy to show that this is the orientation of the most modern legislations. The "Criminal Justice Act" of 1948 in the United Kingdom, recent laws in Sweden and the legislation concerning juvenile delinquency in France are resolutely oriented in that direction. Here there are no very great difficulties, except that the legislator has to become conscious of the necessity of adopting this solution.

The organization of the security measure raises more delicate problems, both at the judiciary level and at that of execution, i.e. at the penitentiary level. I shall only say a few words on the first of these. It is the complex problem of the safeguards of individual liberty which is involved here, since the security measure is even more severe than the punishment. Like Mr. Jiménez de Asúa, I think that the judge ought to have the last word, not only in pronouncing the measure, but also in changing the manner of its execution. One needs, indeed, a sufficiently rigid system to assure the legal safeguard of the rights of the individual.

But, on the other hand, one must give the system enough flexibility so that the judge might have all the data necessary for evaluation, decide in consideration of the offender's personality, and therefore know the latter and have the means of understanding it. It is here that practical difficulties arise. The judge must have at his disposal the opinion of experts and the scientific means necessary to formulate his opinion. The setting up of such a system will, however, often make necessary procedural changes in the judicial system, the realization of which presents delicate problems. One has to keep well in mind that in passing from the concept of recidivism to that of the treatment of habitual offenders, one passes from the legal field to one which is much more criminological than purely legal, and this must be

taken into account in the law itself. It would be imprudent to think that a word is enough to change a law, a judicial practice or a state of mind. It is simply to these difficulties that I wanted to draw the attention of the Section.

Mr. *Bennett* (U.S.A.):

May I make a very brief comment particularly on the suggestion of the distinguished Spanish delegate, with respect to who should determine when a habitual offender should be released. We are dealing here, of course, with the most complicated subject in the whole field of penology. As the rapporteur has stated so well in the language of Socrates: about all we know is that we know very little as to the treatment of these men and how, when and under what circumstances they may be released. My feeling is that the judge, as we define a judge in the United States, should have very little if anything to say about when a habitual offender should be released. I realize that the definition of judges is different in different countries, but I feel that in any event the person who determines when these people are safe to be returned to the community should be the penologist, if you please; the decision should be in the hands of those who are skilled in determining when a man is safe to be released. A judge is a person skilled in the law and I speak with great respect of judges and lawyers, (I am, incidentally, a lawyer myself) but in all my courses in law not once did we touch upon the vastly complicated problems of what activates human behaviour. I learned what I know about that in other courses and in other schools. In a word, then, my feeling is that the judge should confine himself to the determination of the guilt or innocence of the offender; if I could have my-say, he would have to turn him, if found guilty, over for a determinate or for an indeterminate period to the custody of penologists for appropriate treatment, and that group would then determine when and under what circumstance the man should be released; they should have the additional power to supervise his conduct in the community and return him to the institution if it is necessary.

The *Chairman*:

May I ask the permission of the Section to intervene for a moment and speak on this point in my capacity as a United Kingdom delegate.

I intervene to associate myself entirely with the remarks which

Mr. Bennett has just made, with one reservation. The practice in the United Kingdom, following the Criminal Justice Act of 1948 to which Mr. Ancel has referred, provides that the judge will fix the maximum sentence and thus, I venture to think, sufficiently guarantee that liberty of the individual to which Mr. Ancel rightly attached importance. But within that maximum the practice is that the date of release is decided by a board at the special prison for people undergoing this form of detention, of which the chairman is a judge or magistrate, but not necessarily the judge who passed the sentence. The board is composed of penological experts and members of the prison staff. With that system I venture to think that we, on the one hand, secure a sufficient guarantee of the liberty of the individual by the fixing of the maximum sentence by the judge while, on the other hand, the actual date of release, in accordance with such prognostication of the future of the individual, is made by a board of experts who has studied his whole record, his behaviour in prison and his possibilities for the future.

Mr. *Van Helmont** (Belgium):

Mr. Beleza dos Santos emphasized in the beginning of his statement the fact that the problem of recidivism has both international and national aspects. I share this point of view fully and even wish to stress here its importance with relation to the régime to be applied to the recidivist. Each region has its special kind of recidivism and it would be useless to fix too precise norms in that respect. One definitely knows that sexual passions, for instance, lead more often to the commission of offences in the southern than in the northern countries. Criminality due to alcoholism, on the other hand, follows an inverse curve. The importance of offences committed against persons or against property also varies with the latitudes. Great wealth or pauperism, in a general way, the economic disequilibrium and great differences among social classes, also play an important rôle with relation to the particular kind of recidivism. It is therefore necessary to leave great autonomy to each country regarding the choice of the régime to be applied to recidivists, in view of their variable type.

Pursuing this question of the régime applied to the recidivists or to the habitual offenders, I recall that in 1933 Professor Roeling published at The Hague the results of an international enquiry which he made about recidivists. Among them he distinguished two extreme

and very different types: the a-social and the anti-social. The question is not to know whether offenders can be reformed or not, or to consider the gravity of the offences committed, but to classify them in accord with their personality. The a-social is a weak being, without will power, generally abnormal in character who, once freed, returns to crime because he does not have the will power and the moral qualities required to control his passions. The anti-social, however, is the true enemy of society: deliberate, energetic, he has planned to make a regular living from crime and has firmly decided not to return to a good way of life.

When one examines the inefficiency of the penitentiary régimes, one must admit that the drama lies very often at the start. When one classifies offenders, one distinguishes the first offenders, the old, the ill and the recidivists, and people are satisfied with these categories. Now, it is necessary to refine our classification still more and not only separate the young from the old, the first offenders from the recidivists, but, in addition and above all, not to mix among the latter, the a-social and the anti-social. I feel especially free to make this remark as I must confess publicly that here lies one of the causes for the failure of the law of social defence which has been in force in Belgium since 1930. Starting from the assumption that the punishment had already been served by the individuals subjected to it, a rather liberal régime was provided, but this régime failed because we did not take care in separating the a-social from the anti-social. The former constitute eighty per cent of the recidivists, but the rest represent the energetic minority, even in prison. They have regularly had a pernicious influence on the mass of prisoners. Considering the complexity of the régimes which have to be established, the first step should therefore, on the basis of what I have learned from Belgian experience, consist in separating the a-social from the anti-social, in order to subject these two categories of habitual offenders to totally different régimes.

Mr. *Alexander** (Belgium):

I want to congratulate Mr. Beleza dos Santos on the clarity and also on the circumspection and prudence of his conclusions. I would, however, like to defend and specify the rôle which psychiatry must play in the treatment of habitual offenders (excluding from them, as the general rapporteur did, the mentally ill which do not fall under the penal law). Psychiatry to-day does not offer the solution of the

problem of the recidivists but it can, and it has, the means to collaborate in that solution. Such a claim is all the more justified as the number of unbalanced people is very great among habitual offenders. It would be even greater if one would take the trouble of examining the cases of those calm recidivists, whom one considers as model prisoners since they do not commit any attempts at suicide and have no moments of rebellion, and of paying attention to their often very intense internal drama. In any event, it is with respect to all unbalanced habitual offenders that psychiatry must intervene. The psychiatrist should take part in determining the fate of these recidivists, and the solution would seem to be to entrust them to a team composed of a judge, a representative of the law, a representative of a social agency and a psychiatrist who has also a rôle to play. It is because one has resorted, in Belgium, to such a team that, in spite of what Mr. Van Helmont has just said in a slightly pessimistic vein, the social defence law of 1930 has not completely failed. The modest successes one can point to have been due to this collaboration. In a certain number of cases rather long periods without recidivism have been secured, and even definite social re-adjustments, with individuals whose cases seemed desperate.

At any rate, what is essential is not to worry too much about the question whether the measure should be applied immediately after the sentence or the punishment be followed by an internment for a fixed or indeterminate period, whatever the solution may be. The principal thing is to devote one's attention to the offender from the moment he enters the prison and begins to serve the term imposed upon him. Social re-adaptation should not be prepared only from the moment when one can foresee a release. It should be done not only at the professional, but also at the family and social level, and here is a job which stretches for months and even for years. It is a rather special and difficult technique, but if one does not concentrate on it one will always fail. In that respect, that study of the offender which we in Belgium call "anthropological", can render the greatest service, and it is to be hoped that its functioning in that country, which was interrupted by the war, will soon return to normal. When we find ourselves in the presence of habitual offenders whose history we know and whose psychological, biological, social and legal biography we possess, we will able to adopt, from the beginning of the execution of the sanction, an adequate treatment

and we will be able to get much better results than by waiting for the moment of a possible release before setting to work. Considering the rôle played in the genesis of recidivism by neurotic and small psychotic troubles, it is superfluous to underline the importance which such examinations can have for the prevention of recidivism. But I would then have to touch on problems of prophylaxis, which do not figure on the agenda.

Mr. *Cannat** (France):

The conclusions of the general rapporteur have my full support. I want to add just one word regarding the question of the treatment of habitual offenders. I have indeed been much impressed by the arguments presented by Mr. Van Helmont concerning the separation of the a-social and the anti-social. Without any doubt, in the mixing of those two categories lies the ferment which can render sterile everything one might try to do with recidivists. Here certainly are found the real causes of the failure of Merxplas and Camp Hill and the total failure of the French experiment started in 1946 at Saint-Martin de Ré.

Besides, still another reason should be added: the experimentation with a progressive régime for frequent recidivists. Every progressive régime is based on the idea that the prisoner must make an effort. Now, one cannot make people make an effort if they refuse to accept the label of dangerousness put on them. A man accepts his punishment but he does not accept the idea of dangerousness. That is the reason why we must give up any notion of progressiveness in treament, in the ordinary sense given to that word in penitentiary practice. There is, however, a possible progressiveness especially with regard to the a-social, but it is of a different nature. We must first separate the a-social from the anti-social, as is being tried for that matter in France at the screening centre of Lille. Afterwards, we can resort to progressiveness, but an external rather than an internal one. Conditional release can no longer be thought of as the sole intermediate step between punishment and freedom; the transition is too brutal. The steps have to be multiplied. First of all, the prisoner should be given a permit for a few hours to go outside; later, one may submit him to a régime of semi-liberty, in which he will work outside during the day and sleep in the prison. After all this, and only if those first experiments are favourable, can conditional release be resorted to. This experiment has shown in France a rather

encouraging proportion of successes, and it will no doubt be continued.

Furthermore, I would like to say two words regarding Mr. Bennett's observations about the person who should make the decision on release. There are numerous people who feel some uneasiness about entrusting this power to a committee of experts placed completely outside the ordinary judicial organization. But it seems possible to give this problem a simple solution: the judge must be informed of what the sociologists and penologists in the prisons know. He must be brought into the penal institution and get an adequate training. The solution, therefore, does not consist in excluding the judge but in training him, and this is true not only with relation to recidivists but for all offenders; I would even go farther and affirm that the low quality of the penitentiary régime depends to a large part on the poor quality of the training of the judge.

Mrs. *Long* (U.S.A.):

I hold the enviable position of being both inside and outside of this organization. May I speak for the more or less uninformed and very unsympathetic public who pays the bills more or less unwillingly. We on the outside both of the institutions and of their control consider every recidivist as the reflection of a failure somewhere along the line either in the theory or in the practice which has been employed in handling the inmate, and we want more sincerity than is often found in reports. We believe that your own problems, except the one problem of financing your labours, are seldom presented with sincerity to the public, which might lessen their ignorance and your difficulties and make the latter more understandable and them more sympathetic with your desires, even to the extent of financing further development. In visiting many sorts of correctional institutions we have found great reticence on the director's part to formulate his problems but great pride in his performance. We believe that progress could be far more speedy if from this meeting a new open-mindedness would develop toward educating the public with the purpose of stimulating their dynamic concern for your problems and evaluating and putting to use any suggestions that you may make. Since 1928 we have visited every kind of correctional institution. We have seen nothing this year which improves upon Witzwil which Dr. Kellerhals of Switzerland had already established very

well in 1930 when we went from Prague. Every gentleman here knows practically everything that has been said before you. What I beg of you to do now is to give in words of one syllable those things which you think desirable for the public to help you establish and then perform.

Mr. *Azevedo** (Brazil):

I want to say a few words since Mr. Jiménez de Asúa was so kind as to mention his country as one with a system which might serve as a model. I am actually a member of the penitentiary council of Saô Paolo, and have some experience in the matter.

Mr. Bennett has declared that the judge is an expert in legal matters only and that for this reason he is not qualified to indicate when the measure which was inflicted on the habitual offender should be terminated. But in a book that has recently been published in the United States. "Juvenile Delinquency", there is cited the opinion of persons who figure among the greatest jurists of that country and according to which the judge must have a sociological, psychological and psychiatric training and should even know all human knowledge to fulfil in a satisfactory manner his function of judge in criminal cases.

As has already been said, in Brazil we give the judge the last word as to the precise moment for release. Here is an application of Montesquieu's principle of the separation of powers, which is certainly the best of the methods which one has found till now in order to assure the respect of the liberty of the human person, this priceless boon whose value is being proclaimed to day. But, the judge utilizes the opinion of the penitentiary council for that purpose. This body is composed of seven persons who are not officials but serve in a honorific capacity. Three of them are professors of psychiatry, two are professors of law and the two others are a professor of legal medicine and a representative of the prosecutor's office. This council gives its opinion on the basis of a study undertaken by the institute of bio-typology which is functioning in the penitentiary and which is composed of psychiatrists, sociologists and psychologists. This institute examines all persons who apply for conditional release. Such is the Brazilian system in brief.

I have for fourteen years been a member of such a council and must say that the physical treatment is what has been done best for

the re-adaptation of habitual offenders. These generally commit offences against property, for they are weak individuals who have neither the courage nor the will to work: a job seems too difficult for them. Now, these persons often suffer from physical defects, for example dental or throat troubles, and come from the least privileged social class. When they enter the penitentiary, they are given a complete physical examination by the medical force and their glands, their tonsils and their hernias are treated. It has often been noted that this treatment gives excellent results: conditional release will succeed and those persons will not commit offences anymore, for they have recovered their physical health.

The problem is much more complicated with respect to moral health and mental abnormality. In the upset world in which we live it is indeed not possible to teach morality. Most offences committed are against property and the very idea of private property is devaluated and, if one may say so, corrupted. The concept of a struggle of life by all means often prevails over that of social cooperation, and many thiefs, pick-pockets, etc. have deliberately chosen their path. Therefore, what is needed here is to re-establish the respect for property and to try to restore the prestige of this institution.

Mr. *Nicod** (Switzerland):

I have followed this whole discussion with the greatest interest and take the liberty to formulate some objections on a particular point raised. There has been abundant talk about the question of conditional release, and I note in that respect that while it is a judicial body which pronounces the measure regarding habitual offenders, its execution is the job of an administrative authority and I think that the release should also fall within the latter's competence exclusive of all judiciary organs. May I especially mention what is happening in my small country, the Canton of Vaud. As prison director I am obliged to prepare preliminary suggestions and reports which are officially examined in all cases of conditional release. Those reports are circulated within the conditional release board composed of seven persons: the head of the government department concerned, a supreme court judge, a general prosecutor, and four other members who are supposed to represent public opinion. One generally chooses a lawyer, a physician, a farmer and an artisan or a representative of the liberal professions.

These seven persons are therefore obliged to take a decision on the basis of the report prepared by the administration of the institution. Now, in the course of the discussion, while the four members last mentioned generally agree to the granting of release, the general prosecutor (who is not necessarily the one who officiated) will usually ask why one is so eager to release this individual who is not uncomfortable in prison. He will even say to the prison director: "You say that this fellow behaves himself well; in that case, keep him." This is of course not the opinion of the director who wants to be able to tell the prisoner that if he behaves and if his reformation can be assumed it will be possible to release him conditionally. To make the judge participate in the decision cannot be of any profit. He will not want to reverse himself or his colleagues, and if he has imposed a punishment, he feels that it should be served and will not favour an earlier release. It is therefore preferable to exclude him from this decision.

On the other hand, I am entirely in agreement with Mr. Van Helmont, and wish to stress the necessity of leaving to each country the job of regulating the procedure of conditonal release. It has been quite properly said that the mentality and the type of habitual offender vary from one country to another, and it would be wrong to prescribe one general solution.

The *Chairman* announced that the Section would resume, at the beginning of its next meeting, the discussion of the first question of the programme and adjourned the meeting.

Afternoon Meeting of Tuesday, August 15th, 1950

The *Chairman* opened the meeting and declared that the Section must examine the draft resolution on the first question of the programme which had been prepared by himself and the general rapporteur: *To what extent can open institutions take the place of the traditional prison?*

The French text of the draft resolution, unfortunately, could not be distributed yet, but the Section would begin the study of the draft on the basis of the English text. Each clause would be translated when reached during the discussion.

The English text of the draft resolution read as follows:

1. (a) For the purposes of this discussion we have considered the term "open prison" to mean a prison in which security against escape is not provided by any physical means, such as walls, locks, bars, or additional guards.
(b) We consider that cellular prisons without a security wall, or prisons providing open accommodation within a security wall or fence, or prisons that substitute special guards for a wall, would be better described as prisons of medium security.

2. It follows that the primary characteristic of an open prison must be that the prisoners are trusted to comply with the discipline of the prison without close and constant supervision, and that training in self-responsibility should be the foundation of the régime.

3. An open prison ought so far as possible to possess the following features:
(a) It should be situated in the country, but not in an isolated or unfavourable location. It should be sufficiently close to an urban centre to provide necessary amenities for the staff and contacts with educational and social organizations desirable for the training of the prisoners.
(b) While the provision of agricultural work is an advantage, it is desirable also to provide for industrial and vocational training in workshops.
(c) Since the training of the prisoners on a basis of trust must depend on the personal influence of members of the staff, these should be of the highest quality.
(d) For the same reason the number of prisoners should not be high, since personal knowledge by the staff of the special character and needs of each individual is essential.
(e) It is important that the surrounding community should understand the purposes and methods of the prison and should be invited to share in the work of re-habilitation.
(f) The prisoners sent to an open prison should be carefully selected, and it should be possible to remove to another type of prison any who are found to be unable or unwilling to cooperate in a régime based on trust and self-responsibility, or whose conduct in any way affects adversely the proper control of the prison or the behaviour of other prisoners.

4. The principal advantages of a system of this type appear to be the following:
(a) The physical and mental health of the prisoners are equally improved.
(b) The conditions of imprisonment can approximate more closely to the pattern of normal life than those of a closed prison.
(c) The tensions of normal prison life are relaxed, discipline is more easy to maintain, and punishment is rarely required.
(d) The absence of the physical apparatus of repression and confinement, and the relations of greater confidence between prisoners and staff, are likely to affect the anti-social outlook of the prisoners, and to furnish conditions propitious to a genuine desire for reform.
(e) Open prisons are economical both with regard to construction and staff.

5. The principal disadvantages appear to be:
(a) The risk of a number of escapes sufficient to disturb proper control or to shake public confidence in the system. But practical experience appears to demonstrate that in well thought-out and carefully controlled systems this danger need not arise.
(b) The possibility of undesirable contacts with the surrounding community, or of criminal offences against members of the community. This risk must exist, but again it appears from experience that it can be minimized so as to be negligible.
(c) It may be argued that if imprisonment in these conditions were widely extended, the effect on general prevention would be unfavourable. We suggest that if it can be shown conclusively that the effect on " individual prevention" is favourable, it would be necessary to demonstrate the proposition relating to "general prevention" equally conclusively before its validity could be admitted.

6. The question before us asks what categories of prisoners should be sent to open prisons.
(a) We consider that unsentenced prisoners should not be sent to open prisons, but otherwise we consider that the criterion should not be whether the prisoner belongs to any legal or administrative category, but whether treatment in an open institution is more likely to effect his re-habilitation than treatment in other forms of custody, which must of course include the consideration whether he is personally suitable for treatment under open conditions.
(b) It follows that assignment to an open prison should be preceded by observation in a closed prison, preferably a specialized observation institution.

7. It appears that open prisons may be either:
(a) separate institutions to which prisoners are directly assigned after due observation, or after serving some part of their sentence in a closed prison, or
(b) attached to a closed prison so that prisoners may pass to them as part of a progressive system.

8. We conclude that the system of open prisons has been established in a number of countries, long enough and with sufficient success, to demonstrate that its advantages outweigh its disadvantages, and that while it can never completely replace the prisons of maximum and medium security, its extension for the largest number of prisoners on the lines we suggest may make a valuable contribution to the prevention of crime. In particular, we consider that for women the advantages of open prisons are greater, and the disadvantages less, than for men.

The *Chairman* proceeded to the discussion of clause 1 of the draft resolution.

Mr. *Kellerhals** (Switzerland):

It is very difficult for French-speaking persons to discuss on the basis of the English text. I want to draw the Section's attention to the fact that even in the most open prisons one will certainly still need cells. Perhaps they will not be called so, but „rooms". It is nevertheless true that even bars might be needed sometimes. One should not depart from reality. In Switzerland, even in institutions which are considered as very open we resort to cells, especially to take contact with the men during the first period they spend in the institution. That is why I have already stressed that one should not define the open institution in terms of walls, bars and cells, but rather in terms of the trust placed in the men. There is a criterion which more than any other will help us form departing from reality.

Mr. *Nicod** (Switzerland) moved that the discussion and the voting on the draft resolution relative to the first question be adjourned until the French text of the draft had been distributed.

The *Chairman*:

What is the wish of the Section on the point raised by Mr. Nicod? You have all heard the French translation of the text and it seems to the chair that the point raised by Mr. Kellerhals, at any rate, is quite clear to all of us, and we could discuss that without waiting for the French text.

Mr. *Barnett* (New Zealand):

Perhaps the drafters would be ready to explain what they mean with the text they are proposing.

The *Chairman*:

In reply to Mr. Barnett's question the intention of Mr. Germain and myself in drafting the resolution in this form is quite clear to ourselves even if we have not succeeded in making it clear in the draft. It was that a prison such as that described by Mr. Kellerhals which, although it may have no walls, still has locked cells and barred windows should not be described as an open prison for the purposes of this question, but should be described as a prison of medium security. We are putting before the Section the suggestion that for the purposes of this question the term open prison should mean only

a prison which does not rely on physical restraint in any form.

Mr. *Barnett* (New Zealand):

I move the adoption.

Clause 1 was put to the vote and adopted by 33 to 7.

The *Chairman* proceeded to the discussion of clause 2 of the draft resolution.

Nobody asked for the floor, and Mr. *Hancock* (Scotland) moved that the clause be adopted.

Clause 2 was adopted by 43 votes without opposition.

The *Chairman* proceeded to the discussion of clause 3, paragraph (a), of the draft resolution.

Mr. *Kunter** (Turkey):

I want to add a few more words with relation to the question of knowing if an open institution must necessarily be agricultural. Several different points of view have been presented to the Section in this connection. I think that each of them contains a part of truth. Indeed, if one thinks of an exclusively industrial open institution, one most often imagines a prison situated in town and watched by guards. If that were the case, the industrial nature would obviously be incompatible with that of an open institution, for a liberal internal régime is not sufficient to give the right structure to such an establishment. The open institution must not be watched like a traditional prison, and the general rapporteur was right in saying that a prison which has neither bars nor walls, but the exits of which are closely watched by guards, is not an open institution. But, the question arises whether one might not relax that supervision, even in prisons situated in town. If such is the case, one is moving towards the industrial open institution, and to that extent it is possible to talk of such an institution.

I do not favour an exclusively industrial open institution, since on the one hand the very disadvantages of the open institution are greater in town than in the country, and on the other hand it is more profitable to combine both the agricultural and the industrial

qualities in one institution. The countries with a predominantly industrial population have the possibility to establish industrial shops in mixed prisons situated in the country and enjoying its advantages.

By way of summary, I think that the open institution must not necessarily have an agricultural character but that such an open institution is preferable, since it has more chances to succeed.

Mr. *Nagel* (Netherlands):

I think that clause 3, paragraph (a), must be considered in relation to clause 5, paragraph (b), of the draft resolution. The clause now being discussed refers to the contacts with organizations of an educational and social character which are desirable for the good re-education of the prisoners. Clause 5 (b), on the other hand, deals with the possibility of undesirable contacts of prisoners with the surrounding community. It seems that this entire problem has been examined much too much from the sole point of view of the contact of the institution with the surrounding society and not of the contact of the community with the institution and its inmates. To take an image from the field of biology, it is as if one were in the presence of semi-permeable cells which permit the circulation of the liquid in one direction only and not in both. This concept of a one-way movement from the inside to the outside is a too rigid concept of what happens. The open institution should also watch that the society recognize the interests of the institution and help the offenders to rehabilitate themselves and the institution to accomplish its task. From the very beginning one should arrange that the social worker and the after-care people come into the institution and take care that the offender is at no time completely isolated from society. Mr. Bennett spoke yesterday of the necessity of shaping a new personality of the prisoner, and this is only possible with outside help. When we speak of the open institution, we must therefore not forget that the outside has an interest in coming inside the institution, and must keep in mind the necessity that the prison authorities direct and utilize this influence of the outside on the inside in the best possible manner. I therefore hope that clause 5, paragraph (b), will be studied in relationship to clause 3, paragraph (a), and that it will be possible to add to the draft resolution some words which stress more clearly than here the need for a two-way traffic.

The *Chairman* drew Mr. Nagel's attention to clause 3, paragraph (e), of the draft resolution.

Mr. *Nagel* (Netherlands) said that that clause had not escaped his attention, but that the two-way traffic of which he had spoken was one of the most characteristic traits of the open institution and that it would perhaps be useful to strengthen this idea.

The *Chairman* suspended the meeting for a few minutes to give the Section the opportunity to take cognizance of the French text of the draft resolution, which had just been distributed.

When the meeting was resumed, the *Chairman* announced that the discussion of clause 3, paragraph (a), of the draft resolution would continue.

Mr. *Van Helmont** (Belgium):

The exchange of opinion which has just occurred deals with peculiarities which have nothing to do with the definition of the open institution. Now, paragraphs (a) and (b) of clause 3 give a perfect definition of the open institution and I therefore move their adoption in their present form. If any point of detail has to be clarified, it would be better to add it in a subsequent clause, in order not to detract from the clarity of the presentation.

Clause 3, paragraph (a), of the draft resolution is put to the vote and is adopted by 29 votes without opposition.

The *Chairman* proceeded to the discussion of clause 3, paragraph (b), of the draft resolution.

Nobody asked for the floor and Mr. *Van Helmont** (Belgium) moved that the clause be adopted.

In the voting, clause 3, paragraph (b), was adopted by 41 votes without opposition.

The *Chairman* proceeded to the discussion of clause 3, paragraph (c), of the draft resolution.

Nobody asked for the floor, and Mr. *Klare* (United Kingdom) moved that the clause be adopted.

Clause 3, paragraph (c), was adopted by 43 votes without opposition.

The *Chairman* proceeded to the discussion of clause 3, paragraph (d), of the draft resolution.

Mr. *Junod* (South Africa):
May we ask the drafters what they mean by "should not be high"?

The *Chairman*:
Mr. Germain and I deliberately refrained from specifying any particular number. It would be perfectly open to the Section to discuss whether some number ought to be inserted so as to give a more specific guide to the views of the Congress. The chair would entertain any proposal to that effect.

Mr. *Junod* (South Africa):
I think that it is very important that one should find either in the resolution or in the minutes of the discussion, some directives with respect to what we have in mind here. Numerous young states desire to adopt a progressive policy from a penitentiary point of view, and it is necessary that the old states which have a great experience in the matter should give them directives which might help them in their efforts. The present Congress is an ideal place and a more efficient means than any other to state somewhat more precisely the idea which one should have of the optimum size of an open institution. It is certain that one cannot fix an exact number in this connection, but the countries where open institutions are being created will be happy to have an approximate measure of size in order to accomplish their projects.

The *Chairman*:
If I may reply to Mr. Junod in my capacity as United Kingdom delegate where we have already a good deal of experience with open prisons, we should say "as small as possible but in any case not more than about three hundred".

Mr. *Petersen* (Denmark):
I want to say a few words about the size and capacity of the open institutions, for that is, in my opinion, one of the most important

aspects of the whole problem. I have the definite conviction that the influence of the open institution on the prisoners diminishes in proportion to the increase of the size and capacity of the institution. A too large institution cannot escape the danger of mechanical and automatic treatment, and I think that an open institution which comprises more than 150 prisoners risks failure and will very probably have negative effects on them. Indeed, all the officials of the institution should have a rather detailed knowledge of each individual prisoner. I attach a much greater educational value to the contacts between a well trained and prepared personnel and the prisoners than to all favours which one can grant to the prisoners, such as the possibility to obtain a furlough from the institution, etc. — although I do not question the importance which such devices might have. The individual contacts are the keystone of treatment, especially in the open institutions, and these contacts can develop normally only in the favourable atmosphere of a personalized treatment, and never in the framework of a mechanical treatment which is necessarily applied in the big institutions.

Mr. *Azevedo** (Brazil):
I have thought much about the question of the number of the prisoners one can commit to an open institution; but experiments in this connection are more interesting than theoretical data. I recall the case of a county prison of the State of Delaware, in the United States, which is characteristic. It was a relatively small prison — it contained only 300 prisoners — in which the director, Mordecai S. Plummer, had introduced a completely new spirit. This director was a mystical man with an extraordinary faith in human virtues, and he completely transformed the mentality of the institution. At the end of two years, there reigned an absolute order in this prison without the necessity to resort to walls and guards, and even life-time convicts walked around in complete freedom. The institution functioned in this remarkable way for about ten years. But the judges, impressed by the good results which were obtained there, sent more and more offenders there so that the number of prisoners increased up to 700. For this reason, the domination and moral influence which the director had on the population of the institution disappeared little by little and after a certain time, one had to change the entire system of administering the prison.

However, one must not lose sight of the fact that one cannot provide all the indispensable technical services – psychological, pedagogical, psychiatric, bio-typological, medical examination – in an excessively small prison. It seems impossible to mobilize real specialists for only 150 persons. One must therefore adopt a slightly higher number. Even 300 seems too small to me and I would be more satisfied with a figure of 500, especially so that the state might be able to furnish the institution all scientific services necessary for the proper functioning of a modern prison.

On the other hand, one must keep well in mind that everything in a prison is often the achievement of one man: Kellerhals shaped Witzwil, Brockway shaped Elmira, and one might multiply these examples. One has to have a real call in order to be a good prison director and such a man is not met with every day. If one happens to discover one, the greatest possible number of prisoners should be allowed to profit from it, and one should not limit the experience to too small a number of them.

The *Chairman*:

I think the discussion on this point already sufficiently suggests the difficulty of attempting to fix any number in the terms of this resolution. We already have suggestions of 150, 300 and 500, and if we continue the discussion we may get a number of other suggestions. Unless somebody wishes formally to propose an amendment to the terms of the paragraph, the chair would suggest that it might be simpler to leave it as it is.

Mr. *Junod* (South Africa) declared that his intention had been fully satisfied by the exchange of views which had just taken place, and he moved that the clause in question be adopted in its original form.

Clause 3, paragraph (d), of the draft resolution was adopted by 48 votes without opposition.

The *Chairman* proceeded to the discussion of clause 3, paragraph (e).

Mr. *Coopman* (Netherlands):

The subject under discussion has brought out many interesting

facts, mentioned by persons living in constant contact with these problems. Being a lawyer, I am a little outside them, and will say some things as representing people in general. The clause now under discussion is related to clause 3, paragraph (b), and clause 5, paragraph (b), since these two clauses more particularly concern the public. Furthermore Mrs. Long of the United States, spoke in the same vein this morning.

I have been very interested by what is said in the reports on the development of open institutions in numerous countries and especially in the United States. We are here faced with remarkable facts. Thus, the report of Miss Edna Mahan on an open institution for women points out that the institution in question possesses a chapel, leisure rooms for reading, various games and smoking; that all sorts of sports are practised there, skating, dancing; and that festivals are given there and even circus performances. It seems that similar conditions are found in certain institutions for men. I am full of admiration for these accomplishments which are without doubt very advanced, and I am obliged to state that public opinion, particularly in the Netherlands, is certainly not ready to envisage things in such a progressive manner. The specialists are ahead of the laymen and that is their function. But, one cannot be too far ahead of public opinion. Actually, the prison administrators have a certain freedom, but as parts of the executive power, they are bound by the laws; the legislators in turn are bound by the electorate and responsible to it. It is not without interest that I read in an American report, the one of Mr. Oppenheimer of Baltimore, that one should not think of the treatment of the prisoners only but also of the treatment of the electorate. In the Netherlands, one observes by the way that the public which has not at all been interested in penitentiary questions, is more and more interested since the last war. This is easy to explain, for many citizens who lived in the underground got to know the prison from the inside, having been confined there by the enemy. After the war, therefore, much has been done to try to develop the education of the prisoners. But the Dutch are conservative in prison matters; they are not so in everything, but they are in everything that touches the penal law. One exhibits in this country rather old-fashioned ideas which at least are not in accord with the most advanced accomplishments of other countries. For instance, a rapporteur to the Congress, a director of an institution in the Netherlands, wrote with respect to the idea of the open institution

that it seemed to him that the very essential idea of general prevention would be poorly furthered by so mild an execution of the punishment.

But one cannot be satisfied with this difference in thinking. It is very fine that the penologists are ahead of the public, for they experiment as much as they can and the results which they have gained so far are very encouraging, with respect both to the individual and to the community. But, in my opinion, the task of an international penal and penitentiary congress consists precisely in taking very specific steps to educate the public and to spread widely the ideas of the penologists. The principles which will be adopted here would deserve the widest diffusion. One should in that respect have recourse to the press, lectures, the radio, movies, and organize, for instance, special days or weeks entirely devoted to penitentiary questions. One resorts to this method in certain other fields of activity with great success, and this would be a means of attracting the public's attention to these questions. In the Netherlands, the private after-care associations organize a Social Work Day once a year in order to collect money for their activity. Now, the public who gives the money generally does not know at all what this after-care activity consists of, since it never hears it discussed. We should therefore think of means and methods by which we could organize the diffusion to the public of the resolutions which we shall adopt. This diffusion should take place on an international scale, and it is, if possible, throughout the whole world, on the same days and the same weeks, that the resolutions of the Congress should be spread widely. It is only in that manner that the public, which is always too removed from the purposes and ideals of the penologists, might have a better understanding of their task.

In that way, one should also have around the institution an understanding community which is ready to give its support to the work of re-education undertaken. The undesirable contacts to which clause 5, paragraph (b), makes allusion are especially due to the fact that the public is not informed and not interested in the purposes of the open institution. Dostoievsky described in one of his works a prison in Siberia where he was imprisoned during many years, and he tells of all the hardship which can come from a community which does not understand the purpose of the institution and which is not willing to help it in its work. In this more restricted sphere also, we must have a more informed and more understanding public, in order to give

each offender a full chance of rehabilitation, a chance to which he is entitled as a human being and as a living part of our society.

The *Chairman:*

Time is getting on and we must conclude this resolution this afternoon. It has to be ready for the plenary session to-morrow. I shall therefore permit Mr. Klare to move an amendment which he has prepared to deal with the points raised this morning by Mrs. Long of the United States and just now by Mr. Coopman and after that I propose to put this paragraph to the vote.

Mr. *Klare* (United Kingdom):

I would like to propose that the following sentence be added to paragraph 3 (e): "This may require a certain amount of propaganda and the enlistment of the interest of the press".

Mr. *Bates* (U.S.A.):

I am very much in favour of this addition to the first part of paragraph (e), but my feeling is that it is a little bit dangerous to invite the community to share in the work of rehabilitation in prison. I therefore move that the last line of 3 (e) be stricken out; this is something that could lead to considerable misunderstandings.

The *Chairman:*

On behalf of the drafters of the resolution, in reply to the point raised by Mr. Bates, I would explain that the line which he wishes to suppress refers back to paragraph (a) of clause 3, which refers to "contacts with educational and social organizations desirable for the training of the prisoners". We have already, in accepting clause (a), accepted the idea that the resources, the educational and other resources of the community, might be brought to bear to help the efforts of the permanent staff in the rehabilitation of prisoners, and the last line of paragraph (e) is in a sense no more than a reference back to that idea. I do not know whether that sufficiently satisfies Mr. Bates.

Mr. *Bates* (U.S.A.):

I very well see the relationship which exists between the two clauses, but I did think that it would be preferable to eliminate the

end of paragraph (e). Paragraph (a) actually has in view only the organizations of an educational and social character whereas here we invite the whole surrounding community to take part in the work of re-education and this extends considerably the scope of the idea which figured under paragraph (a). If everything that one wants is actually found in this last mentioned paragraph, the simplest would obviously be to delete the end of paragraph (e).

The *Chairman*:
Unless there is any objection the chair will accept Mr. Bates' motion that the last words "and should be invited to share in the work of rehabilitation" should be deleted.

No objection was made.

The *Chairman*:
The paragraph as amended by Mr. Klare and Mr. Bates would then read: "It is important that the surrounding country should understand the purpose and methods of the prison. This may require a certain amount of propaganda and the enlistment of the interest of the press." I propose now to put the motion that the paragraph as amended be adopted.

This clause was adopted by 36 votes without opposition.

The *Chairman* proceeded to the discussion of clause 3, paragraph (f), of the draft resolution.

Mr. *Bates* (U.S.A.):
Could somebody tell me why you always use the words "open prison" instead of open institution which appears in the report? Maybe that was discussed, but this seems to me to be a very fundamental point of terminology.

The *Chairman*:
I would reply to Mr. Bates in the words of Mr. Johnson: "Carelessness, Sir, pure carelessness". We will make the change throughout.

In the voting, clause 3, paragraph (f), was adopted by 45 votes without opposition.

The *Chairman* proceeded to the discussion of clause 4, paragraph (a), of the draft resolution.

Mr. *Barnett* (New Zealand) moved that clause 4 be examined as a whole.

The *Chairman* concurred in this suggestion which received the consent of the Assembly and called for discussion of clause 4 as a whole.

Nobody asked for the floor and Mr. *Barnett* (New Zealand) moved that clause 4 be adopted.

Clause 4 of the draft resolution was adopted by 41 votes without opposition.

The *Chairman* declared that, with the consent of the Assembly, the same procedure would be followed for clause 5 of the draft resolution which would therefore be discussed as a whole.

Mr. *Jiménez de Asúa** (Spaniard):
I move to delete paragraph (c) of clause 5, or at least its second sentence. It seems to me very serious to wish to decide by the present resolution a question as important as the one of general and of special prevention. The Congress heard this very morning a very interesting speech by Mr. Cornil, in the course of which this point was touched but, as one has seen, it is a very complex matter which at any rate is out of place here. It would therefore be advisable either to delete paragraph (c) completely or to keep only the first sentence of that paragraph and to add afterwards that the danger which one might fear with respect to general prevention is lessened or even removed by what is said in paragraph (f) of clause 3 and in paragraphs (a) and (b) of clause 6.

The *Chairman*:
The paragraph which it is now proposed by the last speaker to delete refers to paragraph (3) of the conclusions of the general rapporteur. I think it would be more convenient to take first the motion that the whole paragraph be deleted.

Mr. *Beleza dos Santos** (Portugal):
I fully agree with Mr. Jiménez de Asúa in the complete deletion of

paragraph (c). The resolution mentions the reasons why open institutions are desired. Why now get entangled in the extremely complex and debatable question of general and of special prevention?

Mr. *Bates* (U.S.A.):

If we are thinking of deleting paragraph (c) of clause 5, we might just as well delete paragraphs (a) and (b) of the same clause. In this clause 5, we only raise arguments which permit attacks on open institutions. Since we are in favour of such institutions, why should we ourselves formulate the arguments for those who fight them? I therefore, move to delete clause 5 as a whole.

Mr. *Jiménez de Asúa** (Spaniard) said that he fully concurred in this suggestion.

The *Chairman*:

As the proposal of Mr. Bates is more comprehensive I shall put that motion to the meeting first.

The deletion of clause 5 was decided by 33 votes to 1.

The *Chairman* proceeded to the discussion of clause 6, paragraph (a), of the draft resolution.

Mr. *Barnett* (New Zealand):

The introductory words which precede paragraph (a) are hardly of any use.

It was decided to delete the words: "The question before us asks what categories of prisoners should be sent to open prisons".

Mr. *Barnett* (New Zealand) moved that clause 6, paragraph (a) be adopted.

Clause 6, paragraph (a), was adopted by 37 votes without opposition.

The *Chairman* proceeded to the discussion of clause 6, paragraph (b), of the draft resolution.

Mr. *Aude-Hansen* (Denmark):

The wording of this clause is too absolute. There are cases where it is very important that a convicted offender may come directly from his home to the open institution, for example after having been observed in liberty by a social worker. It could be very fatal indeed for certain offenders to be committed to a closed prison even for a very short period. That is why I propose to make the clause in discussion more flexible by indicating that one should resort to observation in a closed prison only "as a rule".

The *Chairman* declared that he was personally disposed to accept the proposed amendment.

Mr. *Kellerhals** (Switzerland):

We should be even less rigid and simply say that the commitment to an open institution may be preceded by an observation in a closed prison. Indeed, we want to commit prisoners to open institutions as much as possible, and the simple posibility of a previous observation should be considered sufficient.

Mr. *Aude-Hansen* (Denmark) agreed to the proposal of Mr. Kellerhals.

Mr. *Bates* (U.S.A.):

I have a serious objection to present with respect to the proposal of Mr. Kellerhals. He is thinking especially of the risk of contagious diseases and of the necessity of a quarantine for new prisoners. These precautions cannot be taken in an open institution, and there is a risk here which can be eliminated only by a period in a closed prison. If this idea is kept in mind, the term "should be" seems better than the simple possibility of observation. Besides, in any event, it seems very desirable to observe the offenders before subjecting them to life in the open.

The *Chairman:*

Speaking as United Kingdom delegate, I would associate myself with the observation of Mr. Bates. In our experience previous observation is essential before men are sent to open prisons and indeed it seems to be implied in the very terms of paragraph (a). How are

we to know whether he is personally suitable for treatment in open conditions unless we have observed him long enough to find out?

Mr. *Aude-Hansen* (Denmark):

I insist, nevertheless, that one should not introduce rigidity into the resolution. An open institution is not necessarily a prison camp, and it is possible to make the observation of a prisoner in the institution itself. Such is, at any rate, the situation in Denmark. On the other hand, is is also possible, as I have already said, that a social worker may observe the convict in liberty. One must by all means prevent certain offenders from having a fatal contact with the closed prison, even if it should be the case of only a short period of observation.

Mr. *Coopman* (Netherlands):

Could we not find a solution by not specifying that the observation must always take place in a closed institution, and simply say that the commitment to the open institution should be preceded by an observation in a specialized centre? The question would then remain open to decide if the observation should be made in an open institution or in a closed prison.

The *Chairman*:

I suggest that the following wording would meet the wishes of those who have spoken: "It follows that the assignment to an open prison should be preceded by observation, preferably in a specialized observation institution".

Mr. *Kellerhals** (Switzerland):

I feel obliged to maintain my proposal. Indeed, it is not always possible for small countries to have all specialized sections which would be necessary for observation and one must often commit offenders directly to open institutions. On the other hand, experience has revealed that the transfer of the prisoners from one section to the other, even within a single institution, is not always favourable from the point of view of the re-education of the offender.

The *Chairman*:

I would draw Mr. Kellerhals' attention to the fact that the

resolution says "preferably" a specialized observation institution. It does not make it an absolute condition.

The text of paragraph (b), as presented by the Chairman, was adopted by 34 votes without opposition.

Mr. *Kellerhals** (Switzerland) observed that he had proposed an amendment which had not been submitted to the vote by the Section.

The *Chairman* accepted the point of order of Mr. Kellerhals and asked him to formulate his proposed amendment in clear terms.

Mr. *Kellerhals** (Switzerland) proposed to word clause 6, paragraph b), in the following manner: "It follows that assignment to an open institution *can* be preceded by observation in a closed prison, preferably a specialized observation institution".

Mr. *Jiménez de Asúa** (Spaniard):

The adoption of such a proposal would be in contradiction with clause 6, paragraph (a), and with clause 7, paragraph (a), of the draft resolution; observation is in reality necessary to be able to decide on the commitment of the offender to an open institution.

Mr. *Barnett* (New Zealand):

I think that this new amendment weakens the whole clause too much. There is one thing on which we agree, namely that the observation should take place, whether in prison or outside of prison, whether in an open or in a closed prison. I think the amendment to the original clause we already adopted is sufficient for the exceptions Mr. Kellerhals has in mind.

Nobody else asked for the floor and the *Chairman* put Mr. Kellerhals' amendment to the vote.

The amendment was rejected by 28 votes to 18.

The *Chairman*:

I suppose, as a matter of formal procedure, the Section should now vote on clause 6, paragraph (b), in order to decide if it is to retain the wording previously agreed.

By 33 votes to 1, the Section confirmed the adoption of clause 6, paragraph (b), of the draft resolution in the wording proposed previously by the Chairman.

The *Chairman* proceeded to the discussion of clause 7, paragraphs (a) and (b), of the draft resolution.

Mr. *Bates* (U.S.A.) thought that the words "attached to" at the beginning of paragraph (b) were unsatisfactory and moved to replace them by the words "connected with".

The *Chairman* accepted this amendment which did not affect the French text.

Clause 7 of the draft resolution was then adopted by 43 votes without opposition.

The *Chairman* proceeded to the discussion of clause 8 of the draft resolution.

Mr. *Van Helmont** (Belgium):

I move that we delete the last sentence of clause 8: "In particular, we consider that for women the advantages of open prisons are greater and the disadvantages less than for men". The entire report has dealt with convicts and offenders generally, and the considerations put forward are valid both for men and for women. If we set forth the idea that the advantages of the system are greater and its disadvantages less for the one than for the other, it would be necessary, it seems, to prove that assertion.

Mr. *Junod* (South Africa):

One point has been completely omitted from the draft resolution. One does not find there any indication concerning the internal regulations of the open institutions. I think that the editors have considered it wise not to mention that question in their draft. But I am more daring in that respect. I am well aware of the fact that it is very difficult to propose precise rules for the functioning of these institutions, for one cannot have recourse to uniform schemes here. But, one must not forget either that one can have wonderful laws

adopted by the parliaments without really transforming the practice. What is important in the daily activity of the penal administration are the internal rules of the institution, much more than the general principles. Many countries certainly have had that experience. That is why I propose to add simply at the end of clause 8 a sentence as follows: "The rules and regulations obtainable in open institutions should be framed in accordance with the spirit of point 4 above". Thus at least the spirit would have been mentioned in which the very important question of the internal regulations of the open institution must be studied.

The *Chairman* first put to the vote the amendment proposed by Mr. Van Helmont.

The deletion of the last sentence of clause 8 was decided by 41 votes without opposition.

The addition suggested by Mr. Junod was adopted by 21 votes to 16.

Mr. *Bates* proposed to replace the word "never" in the fifth line of clause 8 by a simple negative. The text would then read: ". . and that while it cannot completely replace the prisons of maximum and medium security. .".

Mr. *Hancock* (Scotland):

The Section decided a moment ago to delete clause 5 of the draft resolution which spoke of the disadvantages of open institutions. Therefore, I propose that we delete also any reference to these disadvantages in clause 8, and that we simply say that the advantages of the system of open institutions has been demonstrated with sufficient success.

The *Chairman*:

If there is no objection the chair will accept that amendment. I think perhaps, as there have been so many amendments, I should, to keep the procedure in order, read the whole clause as amended: "We conclude that the open prison system has been established in a number of countries for long enough, and with sufficient success, to demonstrate its advantages, and that while it cannot completely replace

the prison of maximum and medium security, its extension for the largest number of prisoners on the lines we suggest may make a valuable contribution to the prevention of crime. The rules and regulations obtaining in open institutions should be framed in accordance with the spirit of 4."

This text was adopted unanimously by the Section.

The *Chairman* thanked and congratulated both the general rapporteur and the assembly on the result reached in this matter [1].

Mr. *Germain** (France):

The general rapporteur designated by the International Penal and Penitentiary Commission has fulfilled his mission. The discussions which have taken place in the Section have permitted the adoption of a text of a resolution which will be proposed to the General Assembly. Now, in accord with article 10, paragraph 4, of the Congress Regulations the conclusions of the Section must be presented to the General Assembly by a special rapporteur selected by the Section. It follows clearly from this provision that this special rapporteur is not the general rapporteur designated by the IPPC to elaborate a synthesis of the preparatory reports. The Section, therefore, must now select its rapporteur to the Assembly. I suggest in this connection that we designate someone who is not a member of the IPPC and who belongs to a country which has great experience in the matter of open institutions. I propose a name which, in itself, is already associated with the idea of the open institution, the name of a person who has the greatest experience in the matter and who is certainly the best qualified of all to present such a subject: Mr. Kellerhals.

This proposal was approved by acclamation.

The *Chairman*:

It is indeed necessary that we should select a rapporteur before the plenary session. In the ordinary way, I think it would have gone without saying that one who has already prepared such an excellent report and given us so much help in our consideration of the subject

1) See the complete text of the resolution adopted by the Section in the Proceedings of the General Assembly, pp. 422–3 infra.

should himself have been selected by the Section as rapporteur in the plenary session. But, since Mr. Germain has the goodness to propose the name of Mr. Kellerhals and since you have accepted it with acclamation, I take it that you will wish not only that the Chairman should put forward the name of Mr. Kellerhals but that we should couple with that a vote of thanks to Mr. Germain for the excellent work he has given to this Section in connection with this question.

The meeting was adjourned.

Afternoon Meeting of Wednesday, August 16th, 1950

The Chairman opened the meeting and announced that the Section had to resume the discussion of the second question of its programme: *The treatment and release of habitual offenders.*

Mr. *Junod* (South Africa):

Would it be possible that one or two delegates of the United Kingdom tell the Section of the first results obtained in that country with the provisions of the "Criminal Justice Act", even if these results are not at all complete, as everybody is aware? The Chairman of the Section, Mr. Fox, has already discretely presented some conclusions in this connection in his report, but here we are an assembly of experts in penitentiary matters, and I therefore think that it is permissible to ask for additional information on the experiments which have been undertaken. As most congressists know, preventive detention has been introduced for the first time in the United Kingdom on a grand scale. The entire world awaits with the greatest interest the results of that extraordinary experience, and I would be happy to acquire even now some information on this point.

The *Chairman*:

If in the course of the dicussion I feel that, in my capacity as delegate of the United Kingdom, I can give any information arising out of our experience which would be helpful to the Section, I shall certainly not hesitate to give it. Equally, I shall of course be glad to answer any question.

Mr. *Marnell* (Sweden):

In my country two kinds of psychiatric enquiries for recidivists are known: one before and the other after sentence,. The first aims to give all essential data on the previous life of the offender, his character, his habits, his degree of mental deficiency, etc. The Swedish experience in that respect is such that it seems that nearly all recidivists are in one way or another affected by mental deficiency. The other enquiry which takes place after the sentence, aims at giving the first directives for the treatment of the individual. Personally, I think that the first of the enquiries is just as important as the second.

I also want to say a few words concerning what I consider a great danger in the field dealt with here: to attach the label of habitual offender to a person definitively. This has evil effects in two respects : for the offender himself who, knowing that he was convicted as such, will have a feeling of despair and resignation and who will say to himself that there is no sense in his trying to improve himself; for the personnel, on the other hand, who will think that nothing can be done with the offender, that he is and will remain a habitual offender and that there is no use in trying to obtain his reformation. Point 5 of the conclusions of the general rapporteur affirms that the treatment of habitual offenders should be dominated by the idea of their possible reformation. This is a very important statement but also one which it is very difficult to get the personnel of a prison to accept.

Thus, when, for the security of society, a special treatment of recidivists and their commitment to a special institution must be ordered, one should nevertheless have the possibility to modify the form of the treatment during the time the prisoner is in the institution; and this even if a very thorough psychiatric study was made at the beginning of the treatment and before the sentence. Actually, errors may have been committed; one may discover in the course of the execution of the measure that another kind of treatment will give better results than preventive detention, for example treatment in a psychiatric clinic. One must, therefore, reserve in one way or another the possibility of modifying the treatment. I think that such is the meaning of clause 8 of the conclusions of the general rapporteur which he thinks has very particular importance. In fact, all those who have to do with habitual offenders should try to remember, as I have,

a whole series of cases in which the social readaptation of the offender was really obtained, and those cases demonstrate that reality can change and requires a change in the label which had previously been adopted.

Mr. *Barnett* (New Zealand):

I do not want to appear to be labouring this business of the part that the judge plays, but I do want to take up with the drafters clause 10, which really purposes to be a summary of the process. I venture to suggest that it should be re-drafted. Here, three entirely different functions are discussed in one clause and it apparently was in the mind of the draftsmen that they should be united in one body. But, I might suggest to you that they are three different functions, in this way.

The first is a judicial function. It deals with the verdict or the declaration that the person is a habitual offender. And that is, I suggest, a judicial function which belongs to the court; having discharged that function the court disappears. The second, in the words of the draftsmen, deals with the security measure, and I suggest that that is an administrative function which belongs to the penal organization and the court has no part in that at all. It is for the penal organization to carry out the measures of treatment that are necessary.

And now we come to the third function, which I suggest to you, is, as we say in English law, a quasi-judicial function, where a decision is taken involving both the individual and society and many things besides. This is very much more difficult than anything that was done by the judge in the first function and involves a very much wider field of knowledge. I perfectly agree to what has been said before by Mr. Bennett and others that it is certainly not a matter for the judge alone, whether he is advised by a body of experts or whether he is not. It is not one man's decision at all.

I suggest, as a working compromise, the pattern that has been followed in New Zealand for twenty-five years; it might appeal to you as something to base a recommendation upon. There, the board which deals with the habitual offenders and decides whether he is to be released in society or not – and on what terms – is composed of the judge and five others. The judge has only one voice and one vote. I think perhaps the judiciary, much as Mr. Bennett is inclined to sneeze upon it, are entitled to their point of view and entitled perhaps to express it; and certainly it gives the

public some confidence in the tribunal. The other five, of course, sort themselves out very simply. The law does not give any precise indication, and they may represent any particularly interested group as may happen: we have a psychiatrist, an educationist, a sociologist, a prison administrator and an advisory medical man.

All that I want to emphasize is that the clause as it reads suggest that all these functions which are entirely separate should be grouped under one body which would, of course, make it impossible of administration and would produce, I think, in the end a very clumsy decision as to whether the man was fit or not.

The *Chairman*:

May I ask you a point of clarification. Is the judge who is president of this board necessarily the judge who passed sentence on that offender, or any judge?

Mr. *Barnett* (New Zealand):

He is the judge appointed by the bench of judges. It may happen that he is the judge who passed the sentence, but it is twenty chances to one that he did not pass the sentence.

Mr. *Beleza dos Santos** (Portugal):

I should like to enlighten the Section on the scope of conclusion 10 which may not, perhaps, have been clearly grasped due to a lack of clarity for which I present my excuses. In that respect, we find ourselves faced with different questions and solutions depending upon the country. It is evident that the penitentiary services must exercise an activity of an administrative nature with respect to the execution of the security measure. But, very important decisions must be taken throughout the procedure. When an offender shows a particular persistence in committing crimes, i.e. when he reveals the danger and the probability that he will continue to commit them, the question of a verdict of habitual criminality arises. Then, one will have to choose a measure for this offender. Now, there can be different measures; the one chosen may lead to unfortunate results, and has to be modified. At a given moment, one might be able to admit that it is probable that the habitual offender is no longer a dangerous element, and the idea will then occur to grant him provisional and conditional release under

supervision. The question that arises is to know who shall be entrusted with all those very important decisions. Two systems exist: a tribunal or an administrative authority can be entrusted with them. If it is a tribunal, it can be the one that pronounced the sentence or a different one.

My study of the different reports and the experience of my country suggest that if one entrusts a tribunal with the verdict of habitual criminality, it must be a specialized tribunal and not the one which pronounced the sentence. In Portugal, it is the sentencing court which decides this question but the practice shows clearly that it does not possess sufficient data to distinguish the habitual offender from an offender who has committed several offences but who is nevertheless an occasional offender, or a multi-occasional one, if you please. I have occasion to be in close contact with a judge of the court of execution of punishments — Portugal has this institution. This judge is specialized in criminology, has very good training and visits the prisons regularly, so that his competence is beyond doubt. Now, his epxerience is that the sentencing courts often issue verdicts of habitual criminality which are not sufficiently founded. This judge frequently grants conditional release under supervision and has observed that the results are often good, especially in the case of offenders who are not really habituals. This simply means that the sentencing court passed a verdict which was not just, because it did not take reality into account; this happened because it did not have enough data. That is why I think that we should entrust the decision to a specialized tribunal, perhaps even the court of execution of punishments. If this tribunal has a well-trained judge and social workers who provide him with case histories containing sufficient information, whole series of decisions can be entrusted to it, including release on conditions.

But certain countries do not have such a tribunal or an analogous device in their judicial organization. One can then entrust these decisions to a board, or even combine the two systems by entrusting some of them to the tribunal and the rest to one or more boards. There are national peculiarities here which one has to take into account and one can hardly, it seems, propose a specific system. In certain countries, similar boards are functioning very well. But although I do not wish to be unkind, so far as my own country is concerned, I would very much look askance at the institution of any such system in

Portugal. Experiments with boards of this kind have been made for minors, but they have not given satisfactory results; the judge of execution of punishments, on the contrary, is an institution which gives full satisfaction. This is not a universal remedy, for the solution must be in close relation with conditions peculiar to each country and with the view it has of the law. Thus, certain states think that the necessity of safeguarding individual rights requires that a tribunal be entrusted with the decisions in question. Others, however, seek to obtain those safeguards by other means and can certainly come to the same results or even to better solutions. In certain regions of the world, one is used to a somewhat plastic law, to a system based on wide confidence with a result that one is not tempted to seek guarantees from that point of view. The Latin countries, however, are heirs of the Roman law with its precise, rigid, and sometimes even rough concepts, and therefore they have a certain attitude from this point of view. That is why I pointed out that while on the one hand there are international solutions to be upheld, there exist on the other hand national conditions which must be respected.

Conclusion 10 may seem a little vague, precisely because it tries to give satisfaction to different tendencies without imposing one system rather than another. But there is one common view which should be considered as fixed, namely that a specialized entity, tribunal or board, should make the decisions in this matter. These explanations will perhaps throw light on the meaning of the proposed text. It is out of question to impose a solution, for this could not be done in view of the present differences in the national systems. However, specialization is a need which it seems possible to formulate in a general manner, whatever may be the judicial or administrative organization. I repeat that this specialization should consist especially in varied and sufficient facilities of investigation and action, in order to learn to know as far as possible the personality of the habitual offender. This is a considerable task, for one must not lose sight of the fact that the class of habitual offenders is a world that offers nearly as many varieties as that of free life. Indeed, habitual offenders are often very different from each other. Thus, one thief may have been led to crime by idleness, another because he is rebelling against his family environment and wants to escape from it at any price, another may even steal from pure boastfulness. This sole example sufficiently shows how necessary it is to proceed to a careful study of the offender

before being able to take the very important measures which are necessary with regard to him.

The *Chairman:*

The first duty of the chair is to secure that the business of the Section is concluded within the scheduled time, and time is marching on. We still have to deal with a third question and we shall certainly have to devote the whole of Friday's session to that question. It is also my hope that we shall, at least before the close of this afternoon's session, be able to hear the report of the general rapporteur on question 3 and begin the discussion on that question. Therefore, I suggest that it might be for the convenience of the Section if we now, as quickly as possible, discuss the conclusions [1]) of the general rapporteur point by point, and that we should then agree that a small drafting committee should be set up to draft a resolution, in the light of the observations that may be made on these conclusions, for presentation to us to-morrow morning in the hope that we may then be able to pass that resolution without further discussion.

The Section agreed to this procedure.

The *Chairman:*

The chair, hearing no objection, will proceed on those lines. We will now consider conclusion 1 of the general report. I think that only one point of substance has been raised on that in the course of the discussion and that is the question of the use of the term "security measure". The suggestion was made that some other term such as "special measure" should be substituted for that. I think it likely that Mr. Beleza, who with me is a member of a sub-committee of the IPPC considering this question of security measures, will agree that it might be better, in view of the conclusions to which this sub-committee is arriving, that we should substitute "special measure" for the term "security measure".

Mr. *Beleza dos Santos** (Portugal) confirmed that he agreed with the Chairman on this point.

The *Chairman* declared that clause 1 of the conclusions would

[1]) See page 142 supra.

consequently be amended in that sense by the drafting committee.

Mr. *Bennett* (U.S.A.) asked that, since the intention seemed to be to speak of special measures, he be informed of the significance and the meaning of this term.

The *Chairman*:

Mr. Bennett, the intention as I understand it is to mark the difference which exists in many penal systems between what is called "peine" or punishment and "mesure de sécurité" or measure of security which are not regarded as punishments but as measures of protection. The, shall I say, internment of a habitual criminal for a long period is regarded as a measure of security or special measure and not as a punitive measure. That is the intention, as I understand it.

Mr. *Nagel* (Netherlands) proposed to insert in the beginning of the sentence the word "traditional" and to say: "The traditional penal provisions regarding recidivism are not sufficient....". The idea would thus no doubt be clarified.

Mr. *Bennett* (U.S.A.):

I think that we should indicate very clearly that in speaking of special measures we do not have in mind special punitive measures, i.e. exceptionally severe measures. I think that it would be useful that the Congress emphasize, here or elsewhere, that it condemns all methods which are incompatible with human dignity, in particular the use of drugs, the "third degree" and all cruelties and atrocities of that kind. At any rate, there should remain no ambiguity on what is meant by special measures in the sense of the present resolution.

The *Chairman*:

While I appreciate Mr. Bennett's intention I must rule that it would not be relevant to the subject matter of this conclusion to deal with that topic here, but I think that the drafting committee has taken note of the objection raised that "special measure" is not sufficiently clear. It is meant to be special in the sense of less punitive and Mr. Bennett suggests that it may be taken to mean "more punitive". Of that point the drafting committee must take notice.

Mr. *Jiménez de Asúa** (Spaniard):

I suggest, by way of compromise, that we might simply delete the second sentence of clause 1 of the conclusions. Actually, the idea which it contains is expressed in clause 3, where the measures which should be applied to habitual offenders are specified.

The *Chairman*:

One purpose of my suggestion that we should set up a drafting committee was that we should not spend the time of this Section, which is limited and precious, in attempting to draft in detail. Let us discuss questions of substance and leave questions of drafting to the drafting committee, otherwise we shall never finish.

Mr. *Jiménez de Asúa* (Spaniard):

I understand the point of view of the Chairman but would nevertheless like to know if the words "security measures" have been replaced by the words "special measures", or if that question will still have to be decided by the drafting committee.

The *Chairman* said that it would be for the drafting committee to take a final decision on that point, while taking into account the points raised in the course of the discussion.

The Chairman proceeded to the discussion of clause 2 of the conclusions of the general report.

There were no remarks, and the *Chairman* stated that it could be assumed that the Section agreed to the principles which were the subject of this provision.

The Chairman then proceeded to the discussion of clause 3 of the conclusions of the general report.

Mr. *Barnett* (New Zealand) wanted some explanations on the meaning and the scope of that provision.

The *Chairman*:

I will endeavour, as best I can, to explain the meaning of this. It is a difference between two systems. In certain legislations dealing with habitual criminals it has been the practice to say that the habitual

criminal must first have a punitive sentence for the offence he has committed and afterwards a special measure of internment because he is a habitual criminal. That question of what has been called cumulative punishments has been very much discussed and the tendency to-day is to think that there should be one punishment only, and not two separate punishments of which the first has a punitive character and the second a different one. The proposal of the rapporteur is that we should advice that there should be only one form of treatment for the habitual offender who is found guilty.

Mr. *Barnett* (New Zealand):

Does this mean for instance that if a sentence would provide for six months in prison and a subsequent measure of two months duration, the treatment of the habitual offender would be the same from the very first day of his imprisonment?

The *Chairman*:

No. It means that it should not be possible for the court to say six months plus a special measure. It can only say this special measure.

Mr. *Barnett* (New Zealand):

I understand this point of view, but in the example which I gave one would also arrive at a single régime from the very first day of imprisonment.

The *Chairman*:

Is the Section agreed that we should record our agreement with the views expressed by the rapporteur that there should be only one unified measure and not a sentence of punishment followed by a special measure?

The Section gave its general approval to this solution.

The *Chairman* proceeded to the discussion of clause 4 of the conclusions of the general report.

Nobody asked for the floor, and the drafting committee could therefore assume that the Section agreed to accept the principles set forth by that clause.

The *Chairman* proceeded to the discussion of clause 5 of the conclusions of the general report.

Mr. *Junod* (South Africa):

What attitude does the Congress plan to take in consideration of the very pertinent remark which was presented a moment ago by Mr. Marnell with respect to the verdicts of habitual criminality? It has been pointed out that this is a very important question and the necessity seems to have been admitted that a designation which might have evil consequences should not be used. That being the case, is there not a certain contradiction in speaking in the resolution of "habitual offenders"? This point might perhaps merit examination.

The *Chairman* asked Mr. Marnell if he had a precise proposal to make for replacing the term of "habitual offenders" by another.

Mr. *Marnell* (Sweden) declared that he did not have any suggestion to make in that respect at the moment.

Mr. *Junod* (South Africa):

We speak sometimes of "hardened offenders". This word might perhaps be satisfactory. In this manner, we might be able to eliminate the idea of the incurable offender which is implied in the term habitual offender.

The *Chairman*:

It occurs to me, since this question is raised, that at an early stage of our conclusions we ought to define what we understand by a habitual offender. The conclusions do not anywhere define the term and perhaps in the course of such definition we might be able to cover Mr. Marnell's point.

Mr. *Beleza dos Santos** (Portugal):

While preparing my general report, I faced the difficulty of having to say what is meant by "habitual offender" in the sense of the various special reports which have been presented. Now, there exists a great diversity in that respect. Some put the accent on the habit, i.e. on the psychological phenomenon of habit — although one might ask oneself if it is not rather a legal notion, since there are several kinds of habits and the psychological qualification is

certainly not always identical with the legal qualification. At any rate, in this solution, it is essentially the criminal habit one has in mind. Others stress the special danger which the offender presents by his persistence in committing offences, independently of whether or not he has acquired a habit. Others, finally, put the accent especially on the inefficiency of the punishment with respect to the offender.

We are therefore in the presence of at least three concepts. They do not coincide entirely. To cite only one example, somebody may very well have a criminal habit but no longer be dangerous. Such will be the case of an offender who cannot act any more on account of age or sickness but who nevertheless has kept his criminal habit. On the other hand, one meets individuals who have committed offences and for whom the punishment is inefficient, without their being dangerous habitual offenders properly speaking. Hence, these three concepts are not entirely identical. But from a practical point of view, we would have to admit that the margin separating them is very narrow. That is why, instead of giving a definition of the habitual offender and considering that any definition is a little dangerous, I preferred to rely on the meaning which this concept has in the various systems, without defining it more closely but pointing out nevertheless the different concepts used in the reports to designate this category of offenders. Every definition would risk being insufficiently precise and being inconvenient because it might be too narrow or too wide. The Section should, of course, decide for itself if it wants to define the habitual offender but I think that it is such a common and widely utilized concept that there is no great need to define it more precisely.

The *Chairman*:

Perhaps the Section will agree, in the light of the explanations given by Mr. Beleza dos Santos, that it would be unwise to attempt to define the concept of a habitual criminal. As regards finding another name for them I dare say that it would be better to leave the name as it is, for as Mr. Beleza dos Santos has said, it is well-known and in general use.

Mr. *Jiménez de Asúa** (Spaniard):

I want to record my full agreement with the Chairman on

this latter point; the habitual offender would stay habitual, even if he were called something else.

Mr. *Bennett* (U.S.A.):

I do not agree entirely. What penologists call a habitual offender is very different from what the public in general calls by that term. Yet, to-day, the choice of a formula can have a great importance. By choosing a different terminology one can transform the idea which the public has of the habitual offender, and this is a device which must tot be neglected. I admit that for the moment no more appropriate term than "habitual offender" has been found. But I do not believe that this is necessarily the best and I would like this question to be considered by the drafting committee. We ourselves do not know exactly what we mean by a habitual offender. Is it an individual who has been in prison several times or is it an individual who has committed several offences? Here there can already be considerable differences. There are other terms, such as hardened, persistent, repeated, dangerous offender, or incapable of reformation. This question would therefore deserve further consideration.

Mr.*Arnoldus* (Netherlands):

I fear that the claim that the treatment of habitual offenders should be dominated by the idea of their possible reformation is unrealistic. The fact is that most of these individuals have hardly any chance of reformation. Of course, the treatment given to them should be so organized that one has always in mind that one is dealing with human beings and that they should be given the possibility of improving, but the improvement cannot, in my opinion, be given primary consideration.

The *Chairman*:

The drafting committee will take note of the suggestions of Mr. Arnoldus and Mr. Bennett in considering the drafting of paragraph 5. We now pass to paragraph 6.

Mr. *Tetens* (Denmark):

We all know that most offenders are mentally deficient. It would be advisable to state explicitly in the resolution that special

attention has to be given to this point; it is probably in clause 6 that it would be proper to say so.

The *Chairman*:

Well, I think the assertion of Mr. Tetens that we all know that the majority of habitual offenders are mentally defective is one that might give rise to considerable controversy. I do not know it, speaking personally.

Mr. *Tetens* (Denmark) specified that they were at least generally of abnormal character.

Mr. *Hertel* (Denmark):

I think that the pre-sentence observation is verry important and that it should have an absolutely mandatory character. I therefore move that the expression "when possible" which figures at the end of the clause be deleted.

Mr. *Alexander** (Belgium):

It is not useful to speak of a psychological and psychiatric observation. I would like to see one of these two terms eliminated, preferably the former. Actually one seems to say here that these are two different things, yet they cannot be separated in practice, and there is in fact only one single examination.

On the other hand, I would also like that we specify that the observation must continue during the period of conditional release.

The *Chairman*:

I should like first to get the views of the Section on the proposal made by Mr. Hertel. Is there anyone who wishes to speak against that?

Nobody asked for the floor and the Section signified its consent to the elimination of the words "when possible".

The *Chairman*:

Now we have the proposal by Mr. Alexander that the word "psychological" be deleted.

Mr. *Jiménez de Asúa** (Spaniard) thought that the text had to be kept in the version presented by the general rapporteur.

Mr. *Bennett* (U.S.A.) suggested that the word "psychological" might be replaced by the words "on the mental aspects".

The *Chairman* put to the vote the motion that the text remain in its original version.

This motion was adopted by the Section by majority vote.

The *Chairman* proceeded to the discussion of clause 7 of the conclusion of the general report.

Nobody asked for the floor and the *Chairman* stated that the Section agreed to the principle of that clause.

The same was the case with respect to clauses 8 and 9 of the conclusions of the general report.

The *Chairman* proceeded to the discussion of clause 10 of the conclusions of the general report.

Mr. *Kunter** (Turkey) moved to replace the words "security measures" in that clause by another term as already suggested with regard to clause 1 of the conclusions.

The *Chairman*:

That is a drafting amendment to be considered by the drafting committee. I call your attention to the fact that it is on this question that the principal point of difficulty arises on which the main discussion in this Section has turned. That is the question whether the date of final release of the offender should be decided by the judge who passed the sentence, by that judge with the assistance of a board of experts, or by a board of experts simply. That, it appears to me, is the main question involved in this paragraph. We must make up our minds on this question of principle.

Mr. *Barnett* (New Zealand):

In addition there arises the question of the separation of the three functions to which I made allusion a moment ago.

The *Chairman* asked if somebody had a definite proposal to present on this subject.

Mr. *Gilliéron** (Switzerland) moved that the version of the text presented by the general rapporteur be retained.

Mr. *Herzog** (France):

I think that one might retain the text in its general lines, but indicate a preference for the judicial formula. The end of the clause might then read as follows: . . should *preferably* be within the jurisdiction of a special court or, *failing this*, of a commission composed of experts and a juge". In that manner, one might mark an order of preference in the position adopted by the Congress.

Mr. *Kunter** (Turkey) asked if the proposal of retaining the text implied that the words "security measures" would remain.

The *Chairman* specified that the examination of that point was at any rate reserved for the drafting committee and he then put to the vote the motion to retain the original version of the text.

The Section decided by a majority vote to retain the text of the clause as proposed by the general rapporteur.

Mr. *Bennett*:

I am afraid that in the vote we just now took, the alternatives were not fully appreciated. I would like to suggest that the word "court" be changed, and that we substitute for it the word "tribunal". To me the word "court" is bound up with the word "judge". If the word tribunal is used, at least to me it means a special party, not necessarily the judge or the court which originally pronounces the sentence; that is why I suggest it. "Tribunal" is closer to the word "board".

The *Chairman*:

Mr. Beleza dos Santos, would you explain exactly what you mean by the term "tribunal" as you used it in the French text?

Mr. *Beleza dos Santos** (Portugal):

I used the word here in the sense which is common in the Latin countries. It can be applied to all variants of judicial organization, whether it be the system of the single judge or of a collective body. This point depends on the national solution and does not seem to me

important in this connection. What is necessary, and this is essential, is that the tribunal be specialized. I would agree to replace the word "tribunal" by the word "jurisdiction", if the Section finds this formula preferable. Actually, I think that we do not have to take a stand on the character of the tribunal. Only two things must be required. The first is the existence of jurisdictional safeguards. The second is the special training of this organ and the putting at its disposal of adequate facilities so that it might take its decisions with full knowledge of the case; in other words its specialization is necessary. All the problems of judicial organization properly speaking must be left to the various countries which will find different solutions depending on their legal traditions.

No further remark was presented concerning clause 10 and the *Chairman* proceeded to the discussion of clause 11 of the conclusions of the general report.

Mr. *Barnett* (New Zealand) asked the general rapporteur what the significance of this clause was.

Mr. *Beleza dos Santos** (Portugal):

This conclusion does not contain any other suggestion than the one that one ought to study the problem of habitual delinquency by negligence. This question attracted my attention, for we have to acknowledge that the offences by negligence have increased considerably to-day and represent an alarming phenomenon. It is enough to keep traffic violations in mind. It is not enough to deprive offenders of this type of their driver's licence, either permanently or for a specific period. By doing that, one would sometimes, as a matter of fact, cut off the livelihood of the offender. One must therefore go farther and ask oneself why habitual negligence occurs here, and fight against its causes. Furthermore, one might cite many examples from other fields where offences are committed, without intent to do harm to the person or to the property of others but simply due to the lack of necessary prudence. In the present world, where communications are so intensified, where industry constitutes considerable risks for the life and the health of others, offences by negligence have begun to attract general attention. Now, the habitual offender by negligence cannot be treated like other habitual offenders. Their activity cannot actually be compared with deliberate intent to do injury to others. It is for that

reason that having in mind the replies to the enquiry I have made, I propose to draw the attention of scholars to this problem on which we do not posses sufficient data to offer solutions to-day but which deserves to be carefully studied.

After a brief consultation between the Chairman and the general rapporteur, the *Chairman* said:

Mr. Beleza dos Santos agrees with the view of the chair that it would be better if we did not include any reference to paragraph 11 in our resolution. Is it the opinion of the Section that we should take that view and that we should not refer to the subject of paragraph 11 in our resolution?

The Section adopted this point of view.

The *Chairman*:

It now remains to appoint the special committee to prepare a resolution and to appoint the rapporteur on this question for the plenary session. On the second question, I think you will all agree with me that in view of the very great comprehension of the whole subject which our general rapporteur, Mr. Beleza dos Santos, has displayed, none could better represent our views than himself.

This proposal was adopted by acclamation.

The *Chairman*:

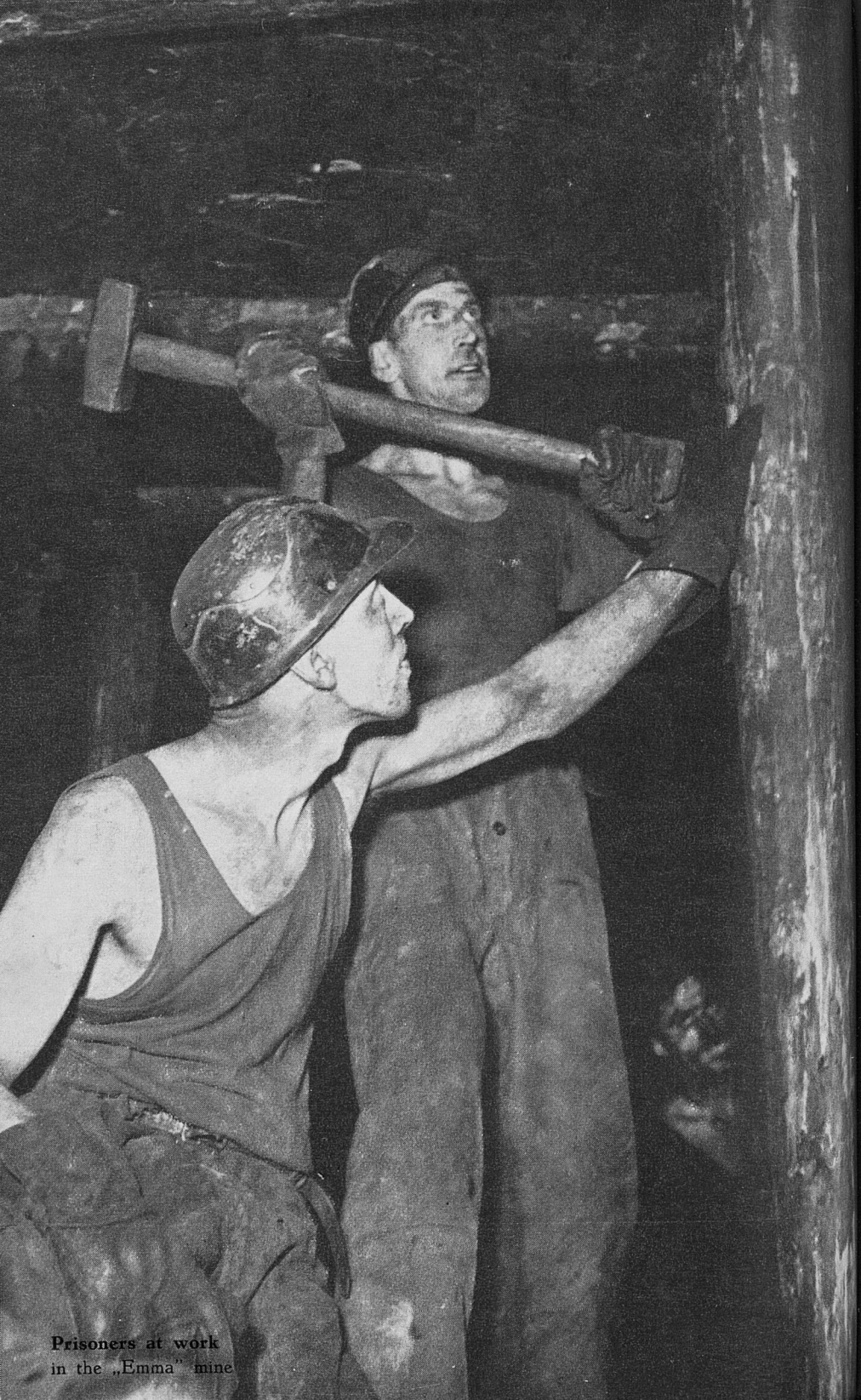
On the question of the drafting committee I should propose to you that it comprise the Bureau of the Section, that is myself and the secretaries, and Mr. Beleza dos Santos as general rapporteur, Mr. Grünhut, if he will agree, an eminent criminologist with wide knowledge of all systems of law, and Professor Jiménez de Asúa, if he whill consent to it.

This proposal was approved by the Section.

The *Chairman*:

After discussion with Mr. Pompe, the general rapporteur on question 3, I have come to the conclusion that it would be better if we now adjourn and took the whole of question 3, including the introduction of the report, on Friday, although you will understand that this could extend our session rather longer than the scheduled hour on Friday.

The meeting was adjourned.



Prisoners at work
in the „Emma" mine

Morning Meeting of Friday, August 18th, 1950

The *Chairman*:

I regret to find that although the drafting committee on question 2 has completed the text of a draft resolution and we expected to have copies of that text distributed in time for this meeting this morning, it has not yet arrived, though we are promised that it may arrive at any moment. As we are already late, I do propose therefore not to waste time but to ask Mr. Pompe to introduce at once his report on question 3:

How is prison labour to be organized so as to yield both moral benefit and a useful social and economic return?

Mr. *Pompe* (Netherlands), general rapporteur [1]):

I have had at my disposal for the study of this question fourteen excellent reports[2]), presented by specialists in penitentiary practice, by judges and even by theorists, namely professors of law. This documentation, as well as the general report itself, has been distributed to the congressists. Therefore, I shall limit myself to setting forth here certain general principles and presenting very briefly the conclusions which I have the honour to submit to the Section.

Two national rapporteurs, Messrs. Burke and Aude-Hansen, complained particularly of the conservative and traditionalist spirit which dominates the whole question of prison labour, complicates it and hinders its development. I, too, am of the opinion that the great obstacle to a healthful conception of the problem is the survival of an old principle which holds that punishment should be more than the mere privation of liberty: life in prison should be made particularly unpleasant and one should always be afraid that the prisoner might be too well off. It is hardly necessary to refute this principle here for every congressist knows it to be false, but the idea is hard to get rid of everywhere in the world, leads to unfortunate consequences and creates considerable difficulties.

It is, therefore, necessary to accept as a fundamental principle

[1]) General report, see Volume IV, pages 366 ff.
[2]) See list of rapporteurs, loc. cit., note.

that the only punitive element of imprisonment is privation of liberty. Under those circumstances, the question of what the state ought to do with the imprisoned man and what its responsibility towards him is arises immediately. Generally, the reply is that the duty of the penitentiary administration is to give first place to the education of the prisoners. The prisoner must work and he must engage in a truly humane labour because he has to be trained. This is a rule which has its exceptions, but the idea of education is very generally emphasized. I am certain that education is a good thing. But I agree with Mr. Horrow who says in his report that the majority of the prisoners do not need improvement. Such a claim can naturally give rise to misunderstandings, for in some sense everybody needs improvement, not only prisoners. One must understand this assertion in the sense that all prisoners do not need improvement by a special treatment in prison. If this is what is meant, it must be acknowledged that it is perhaps not the majority of the prisoners who need education. At any rate, one must use this notion of education with prudence regarding adults. One must not lose sight of the fact that one is no longer dealing with children and it is rather the concept of self-education which should be given first rank in this connection.

This being the case, why must prisoners be given worthy, useful and humane work? I think that is on account of the reponsibility which the State assumes by putting the individual into prison. The latter is deprived of his liberty for a fixed or indeterminate time, and the penitentiary administration thereby assumes a social responsibility for that period, and particularly to the effect that the individual shall not leave the prison worse than when he entered; in other words, that the prison should not lead either to his physical or to his moral deterioration. This principle is essential and decisive for the question of prison labour with which we are dealing here. The prisoner should not work in order to make his stay in prison unpleasant but he is obliged to do so because otherwise he would deteriorate. Nature requires each man to work, on the one hand in a manner which is adapted to his individuality, and on the other in a manner useful for his fellowman and in co-operation with his fellowman, for he is not only an individual, but also a member of society. This must be the guiding principle when one examines the question of prison labour.

After these few general remarks, I think that a very brief presentation on my conclusions will be sufficient. The first among them is clear and does not call for particular observations. The same is true of the second, though one might add that prison labour should also be as varied as possible, in order to provide the greatest possibilities of being adapted to the individual capacities of the prisoners. Besides, with respect to this clause, several reports very strongly emphasized the importance of open-air work. This institution certainly gives excellent results, but its utilization nevertheless varies with the countries. I think that even Mr. Bouzat who has constituted himself an ardent protagonist of open-air work would agree with me in thinking that this is not a panacea. Work should always be adapted to the individuality of the prisoners, and not all are suited for assignment to this type of work. Clause 3 which deals with the adjustment of prison labour to that of free industry calls for two remarks, however. First of all, one must never lose sight of the fact that prison labour is accomplished under privation of liberty, which will certainly always result in differences from free labour. On the other hand, one must avoid idealizing free industry where the working conditions are sometimes not at all satisfactory; this is true for certain industries at least. But, it is nevertheless possible, and that is what clause 3 wants to say, to draw important lessons from free labour with respect to the organization of prison labour. Regarding the latter, one must keep very particularly in mind that human relations must come first in all work. Relations between the management of the institution and its personnel and the prisoners must be dominated by a feeling of mutual respect. I warmly support Mr. Herzog when he states in this connection that self-respect is a very great means of developing respect for others. Finally, I wish to point out that the English text of clause 3 might give rise to a misunderstanding. I would prefer the word "human" instead of "humanitarian".

Clause 4 treats the problem of the competition with free industry. We have to admit that this competition is a fact. But, every man has the right and the obligation to work, and the only thing which one must keep in mind is that this competition must be fair. This problem leads naturally to that of the remuneration of the prisoners. One can put forward utilitarian reasons for calculating this remuneration according to the same norms that are applicable to

free industry. This is, in particular, one of the means of obtaining fair competition; moreover, it is an encouragement for the prisoners. Each man is stimulated by the wage he gets and this point is very important, for the worker feels himself respected only when he is remunerated for what his labour is worth. In addition to these utilitarian reasons, it is my conviction that the prisoner, for reasons of justice, has a right to be paid what his labour is worth. This point need not be discussed here, but it must be admitted that if the offender is sentenced to a loss of liberty, this should not involve the loss of other rights, and payment for work is an important human right. From this payment one should deduct only the cost of the maintenance of the prisoner. However, one should not deduct the costs of custody, for in that case the prisoner would have the feeling that he is himself paying for his punishment, and this might lead him to the idea that the guards are at his service. Moreover, and this is a very important factor, one can ask the prisoner to provide for the support of his family and thus safeguard its unity. Everybody knows that one of the great disadvantages of imprisonment is the threat of disintegration of the prisoner's family; this threat can often be averted through the sending of subsidies derived from the work of the imprisoned head of the family. Finally, one will also be able to deduct from the pay the sum of the indemnity for the victim of the offence. This is a means of improving the offender's sense of responsibility toward his fellowmen.

I would like to add after clause 5 a new clause dealing with a question raised in many reports, namely the right to social insurance. It is not necessary to discuss here the principle of workmen's compensation which was already accepted in 1949 by a resolution adopted by the International Penal and Penitentiary Commission. I think that all legal guarantees given to free workers in matters of insurance and social security should also be granted to persons who work in prison. Indeed, the punishment should not result in depriving them of these advantages. Therefore, a clause should be introduced which might read as follows: "Prisoners should benefit in principle from legal provisions relative to social security and social insurance as provided for free workers".

Clause 6 refers more particularly to juvenile delinquents and emphasizes education for them, which should here also be understood to mean "self-education". Clause 6 has both a positive and a negative

significance, for it implies that vocational training should not be given first consideration for all prisoners, but only for juvenile delinquents.

Clause 7, which deals with leisure-time, only expresses ideas which were stated in a great number of the reports, and there seems to be no disagreement on this point.

This is briefly the outline of the conclusions of the general report. I hope that it is clear to everybody that my conviction, which I would like this whole assembly to share, is that the whole question of prison labour is not an economic, but a moral one. It is not a question of comfort or of pleasant life for the prisoner, but a question of dignity. Mr. Aude-Hansen said in his report that labour has dignity. If that is true, this dignity can only be a human one, the dignity of the man who works. Howard declared, nearly two centuries ago: "Make them diligent and they will be honest". I think that this claim can be completed by adding to it that of an American prison warden who said: "Make man feel honourable also in his labour and he will be honest".

The *Chairman*:

I am very much obliged to Mr. Pompe for his comprehensive and illuminating analysis of this difficult and important question. I venture to suggest to you that since the points he has set out in his conclusions are so comprehensive it would be possible to base our resolution on those conclusions with perhaps one or two additional paragraphs. In view of the extreme pressure of time this morning I propose, with the consent of the Section, to have no general discussion but to proceed at once to discuss the conclusions at the end of the general report one by one, and I would ask each person who takes the floor to limit himself only to the particular conclusion under discussion. Each person will be allowed to speak more than once this morning so he may speak on different conclusions if he wishes to do so.

Now, I suggest to the Section that there should be two additional paragraphs in these conclusions. One of these Mr. Pompe has already proposed himself, namely that there should be a paragraph dealing with social insurance and compensation for industrial accidents. The second, with the permission of the Section, I would like to suggest myself in my capacity of United Kingdom delegate and that is that there should be a paragraph about the importance of governments'

taking steps to insure that sufficient work is found for prisoners. It is the experience of a great many prison administrations that the greatest evil is the lack of suitable work for prisoners and the frequent indifference of governments to the necessity of taking steps to insure that sufficient work is found. I would therefore suggest that we should add a paragraph on those lines. At least we should discuss whether a paragraph on those lines should be added.

With those observations I will proceed to call for speakers on conclusion No. 1. The conclusion reads:

1. The prisoner has both a right and obligation to work.

Before I call for speakers I would suggest that we ought to consider this. Should we not add after the word prisoner the words "under sentence" since I think it would not be generally agreed that unsentenced prisoners should be obliged to work?

Mr. *Kunter** (Turkey):

I am glad that I agree with the general rapporteur on most of his conclusions. I think, however, that there are a certain number of points which it would be wise to consider for a moment, and this is especially true of clause 1. I would indeed be desirable to specify the importance of prison labour and the rôle it plays in the penitentiary system. Consequently, I take the liberty of proposing that the conclusions begin with a clause worded as follows: "Prison labour should be considered not as an additional punishment but as a method of treatment of offenders". Furthermore, I share the views of the Chairman with respect to clause 1 of the conclusions: we should not adopt the principle that prisoners pending trial have the obligation to work. Indeed, how can we submit them to a treatment when we do not know yet if they have really committed an offence? If an individual is jailed, it is for strictly procedural reasons which do not in any case involve the need of penitentiary treatment. For this category of prisoners, work must be optional and must be provided only if they ask for it. Therefore, we should say "prisoners under sentence". In this clause we also speak of both the right and the obligation to work. That prisoners under sentence are forced to undergo treatment and consequently are obliged to work, is beyond all doubt. But should those under sentence also have the right to work? I take the liberty of disagreeing with the general rapporteur on this point. Indeed, if

we take "right" in the legal sense of the word, it implies an obligation of the State to let the prisoners work. Each State tries to find work for all prisoners under sentence, but if it does not succeed, will prisoners be able to oblige the State to give them jobs and, if such is the case, by what means? I therefore move that we simply say that "prisoners under sentence have the obligation to work".

Mr. *Beleza dos Santos** (Portugal):

I sincerely regret that in spite of the steps I have taken, my country did not send penitentiary labour officials to the present Congress. This is a timidity and a lack of confidence which one may deplore, for Portugal has made great efforts in this field. Lately, a Frenchman who has been occupied a great deal with the re-education of prisoners and whose name is well-known, Father Courtois, has focussed attention on the interesting aspects of my country's efforts to give work to prisoners and to organize that work.

I completely agree with the words that the Chairman has directed to the general rapporteur who has presented a very complete and clear statement of the problem. I want to underline that I am in complete agreement with the principle which figures in clause 1 of the conclusions. That principle is not only accepted in my country but is expressed in the law itself, and one tries to put it into effect to the greatest possible extent. Its scope is very general, and I do not agree entirely with the Chairman and Mr. Kunter with respect to the distinction between prisoners pending trial and those under sentence. Portugese law prescribes the obligation to work for everybody and does not admit anybody's right to idleness. The distinction lies in the fact that prisoners pending trial can choose their work; but one is not allowed to be idle, for work is not only a method of penitentiary treatment, but also a means of maintaining the morale of the prisoner and good discipline in the prison. That is why the good solution must consist in providing the obligation to work for everybody, with the sole restriction that prisoners pending trial may choose their occupation and do intellectual work, if they desire. I am therefore of the opinion that the principle of the obligation to work should be retained, but that we envisage the possibility of a choice of work so far as prisoners awaiting sentence are concerned.

The *Chairman*:

I fear that if there is to be any hope of concluding our discussion

this morning the chair must be a little arbitrary. If you will excuse the chair, we have a number of points to discuss and we must limit the time of discussion on each point. Therefore, I hope that I may ask Mr. Kunter not to press his point about the right to work being eliminated from this resolution. I fear that would cause prolonged discussion. I think we should all agree that the greatest punishment of any man is to be left in idleness and that is what we want to prevent by putting in these words: "They should have the right to work". It may be that to meet legal difficulties they could be differently drafted. But I feel that the whole Section would wish that that point must be made. On Mr. Beleza's point, I entirely accept what he said and I think the Section will accept it, and I have already prepared a draft which I think covers the points that have been raised. It would read as follows: "All prisoners have the right and prisoners under sentence have the obligation to work".

I would add that the chair thinks that the Section would be prepared to accept Mr. Kunter's proposal that at the beginning of the clause there should be the words "prison labour must be considered not as an additional punishment but as a method of treatment of offenders".

Mr. *Herzog** (France):

I suggest that there be added to clause 1 of the conclusions a phrase containing the idea just mentioned by Mr. Beleza dos Santos and which is found in several reports, for instance that of Italy. It is the idea of the importance of the prisoner's choice of the prison labour in which he is engaged. This choice is obviously limited. It is first of all limited by the findings of vocational guidance and orientation, for the prisoner is not necessarily a good judge of the choice he wants to make. Afterwards, it is limited by practical necessities and by the requirements of discipline, which goes without saying. I propose therefore that we add to clause 1 a sentence which would read as follows: "The prisoner should have freedom of choice with regard to the work he performs, within limits compatible with the findings of vocational guidance and selection as well as with the needs of prison administration and discipline".

The *Chairman*:

The chair will accept the amendment of Mr. Herzog as paragraph (c) of clause 1.

Mr. *Grondijs* (Netherlands):

Like the Chairman, I think that if we speak of the obligation of prisoners to work, it is necessary that governments give them sufficient work. I also thinks that each department of the government should make its contribution and lend its assistance to the penitentiary administration in this respect. The various services should be obliged to order from the penitentiary institutions the usual commodities which can be manufactured there. Even if prison labour should supply only a small part of the needs of the railways, the post-office, the army and the navy, one could already have a more than sufficient choice to organize the work of prisoners in a satisfactory manner. Yet, in the Netherlands, the penitentiary administration supplies less than one per cent of the needs of the public services, and the situation is probably the same in most of the countries of the world. This is, indeed, an unfortunate state of things which should be remedied.

The *Chairman*:

The chair will accept Mr. Grondijs' proposal, which also accords with my own, that a paragraph (d) should be added to this clause, which the Bureau can draft later, about the desirability of the Government's taking effective steps to see that sufficient work is provided.

This first clause with the additions which have been proposed would then read as follows:

(a) Prison labour must be considered not as an additional punishment but as a method of treatment of offenders.
(b) All prisoners have the right and prisoners under sentence have the obligation to work.
(c) Would be the amendment proposed by Mr. Herzog.
(d) Would be a clause to be drafted by the Bureau along the lines proposed by Mr. Grondijs and myself.

The Chairman asked the Section to decide on the principle of such a provision as clause 1 of the draft resolution, with the understanding that the final wording would be drafted by the Bureau of the Section.

The Section approved clause I of the draft resolution by 46 votes without opposition.

The *Chairman* proceeded to the discussion of clause 2 of the conclusions of the general report which read as follows:

2. Just as in work in free society, prison labour should be meaningful and based on economic principles; it should be performed under conditions and in an environment conducive to the stimulation of a taste for and an enjoyment of work.

Mr. *Junod* (South Africa):

It is not without emotion that I take the floor on this point. My adopted country has in fact been accused, by international organizations, of being a slave state in penitentiary matters. That is why I feel obliged to give some explanations to refute such allegations.

When one speaks of economic principles, as clause 2 does, one must always remember that there exist very great and profound differences in the economic conditions of the various regions of the world and that the Congress has to deal not only with the countries of Europe and America, but also with Asia and Africa. Now, in these continents there exist sometimes extraordinarily difficult conditions. I do not have the time to enter into the details of the problem of prison labour in South Africa, though this would be rather useful in order to show that this country does not at all practise the inhuman policy which it is often accused of following. Here, it will be enough to say that that country is facing the question of resolving an extremely serious economic problem. When the law has as a consequence the commitment to prison of a considerable number of prisoners to undergo short term imprisonment, the penitentiary administration finds itself facing a nearly insoluble situation. It is very wise to demand, as has just been done, that governments furnish work to the prisoners, but experience has so far proved that this resource is speedily exhausted. As a result, we find ourselves with a considerable number of prisoners who are condemned to idleness. In these conditions and impelled by an absolute economic necessity, the department in charge of the prisons often tries to find work for prisoners and is thus sometimes led to have recourse to means which our conscience does not willingly accept. The administration accepts offers which it receives from private persons for the employment of prison labour. But, it is necessary to stress the fact that this work is not at all done under conditions of private labour, but under the supervision of guards and under the authority of the department in charge of the penitentiary

administration. It is, therefore, a solution which is only a last resort on account of the tremendous economic difficulties which are encountered, and while I am aware of all that is imperfect in that system, I want to state that it is with a pure conscience that South Africa can present itself before the Congress. We must never forget that certain facts complicate the situation, such as for instance the peculiar conditions which predominate in certain racial groups. In concluding, I subscribe entirely to the wording of clause 2 of the conclusions according to which prison labour should be based on economic principles. I simply wanted to draw the assembly's attention to the fact that there exist in certain countries extremely difficult conditions which singularly complicate the solution of the problem of prison labour.

Mr. *Alexander** (Belgium):

I move that clause 2 of the conclusions be completed by the addition, at the end of the first part of the sentence after the words "based on economic principles", of the following amendment: "One should organize it according to current scientific methods of labour management". This will make it possible to take advantage of all the most modern ideas which exist in that field. Now, we know that in matters of vocational guidance the present tendency is to utilize labour with an essentially educational purpose and to choose the occupation not only from the point of view of the industry, but above all from the point of view of the individual. I think that in prisons the organization of work should be particularly guided by those methods, and that it would, therefore, be useful to say so in the resolution.

Mr. *Tsitsouras** (Greece):

I suggested in my report that we should give a very general meaning to work as it is understood here. It is not only a question of physical labour, but also of mental labour, intellectual labour. No doubt it is the right of the penitentiary administration to choose the appropriate work for the various prisoners, but the administration should always endeavour to allocate to prisoners the work which corresponds best to their aptitudes.

Mr. *Grünhut* (United Kingdom):

I wonder whether it would meet Mr. Junod's point if we would just add the word "sound" before "economic principles"; the text would then read: ". . . . based on sound economic principles".

Mr. *Beleza dos Santos** (Portugal):

It would be wise to complete the last part of clause 2 by saying that prison labour "should be performed *under the direction of a personnel* and under conditions and in an environment conducive to the stimulation of a taste for and an enjoyment of work". This is an idea on which probably everybody agrees, but it deserves to be stated explicitly. For certain prisoners, conditions and an environment conducive to the stimulation of a taste for and an enjoyment of work are actually not enough. A competent personnel can bring them to work by still other means. I recall the case of a vagrant who refused entirely to work and who remained an idler in spite of what had been done to give him a taste for work. Now, it was noticed that this idler, in spite of his vice, had much affection for his children. It was possible to get him to work by showing him that he could be given in prison an occupation which would allow him to send more money to his family. The result was good, the man began to work and he now gives complete satisfaction. I am convinced that everybody has this in mind, but it would be good to draw attention to the fact that it is not necessary only to create an environment conducive to the stimulation of a taste for work; one must also have a personnel which stimulates such taste even by means which have nothing to do with the conditions and the environment of prison labour.

Mr. *Klare* (United Kingdom):

I would just like to make a point about the economic principles, as I am or was an economist. I think that the phrase as it stands here, that "prison labour should be meaningful and based on economic principles", at any rate in certain countries, just does not make sense. I think it is quite possible to do that in agricultural countries but where you have highly industrialized countries and where the prison labour does mean heavy expenditure for perhaps capital equipment, and so on, it is quite impossible to introduce sound economic principles. I think the most you can say there is something like this: "prison labour should be meaningful and based as far as possible on efficient principles" or "efficiently organized".

And then, Mr. Chairman, with your permission I would like to make another point, which is not directly bearing on point 2, but is a small point which I should like to see removed. It has a bearing on nearly all points. The conclusions refer to "free industry" in a lot of

paragraphs, 3 and 5 for instance; they refer to "private industry" in paragraph 4, and so forth. I should like to submit that the word be suppressed and some other word be substituted for it because in England and in France and in Scandinavian countries we do have industries which are not as you call it "free", but which are nationalized.

The *Chairman*:

May we dispose first, and I hope quickly, of the second point raised by Mr. Klare, since it affects the whole of the conclusion and not this in particular. I take it that we should all agree to Mr. Klare's proposal that the words "free industry" or "private industry" are not appropriate and that we should find some other adjective. I would suggest, for example, in English the word "outside industry", meaning industry outside the prison.

Mr. *Alexander** (Belgium) suggested that one might speak of "industry as a whole".

Mr. *Germain** (France) stated that in his opinion the word "free" was simply opposite to the notion of prison labour. The text at the beginning of clause 2 was particularly clear in that respect, by opposing prison labour to work in free society.

Mr. *Klare* (United Kingdom) stated that his remark was also aimed at the word "private" which has a different meaning and should at any rate disappear.

Mr. *Germain** (France) moved to subsitute "free" for "private" in clause 4.

At the request of the *Chairman*, the Section agreed to this proposal.

Mr. *Azevedo** (Brazil):

I would simply like to make a clarification. In clause 1, the principle of the choice of work by the prisoners has been stated, and now we speak in clause 2 of the organization of the work by the prison administration. It would seem advisable to specify clearly that even if the work is organized by the administration, the prisoners have the

right to choose freely a productive occupation which suits their individuality. If an intellectual, for instance a writer, is committed to prison, he must have the possibility to write novels and books there, and he would then be able to earn much more than by working as a labourer in the industrial services organized by the prison. Even in other than intellectual work, one might imagine that a prisoner could occupy himself in prison more productively than in work organized within the programme of the administration. In Peru, I have seen artisans making panama hats who were veritable artists. The hats which they made had a very great value. A prisoner who possesses a special capacity of that kind should not be obliged to work in the industry organized by the prison. That is why it would perhaps be useful to specify that labour has to be organized so as to respect the right of choice of work by every prisoner. To-day, all citizens have a right to work. The Bill of Human Rights, adopted by the conference of the International Bar Association recognized the right to work and the right to the choice of work and, correlatively, the obligation of the State to assure work to the citizen. It should not be different in the organization of prison labour: even in prison, the right of the individual worker to choose his occupation must be respected. One must give up the all too common practice which consists in making intellectuals work in farming or in heavy industry, where they cannot adapt themselves because they do not have the necessary physical constitution for it or because they are too old to be able to adapt themselves to certain types of work. I would simply like to have this clarification introduced in clause 2 in conformity with the decision reached in clause 1 concerning the prisoner's right to choose his work.

The *Chairman* thought that a decision should be made about the two main points of principle which had been raised so far in the discussion. The first was the suggestion that the words "based on economic principles" be replaced by some other phrase. Mr. Klare proposed "should be based on efficient organization".

The Chairman put this to the vote. The Section agreed by 45 unopposed votes.

The next point to decide would be the one raised by Mr. Azevedo. Speaking in his capacity as the delegate of the United Kingdom, the

Chairman declared that he had to oppose it so strongly that if it were carried he would call for a roll call by nations under the terms of the rules of the Congress.

Mr. *Azevedo** (Brazil) wanted to know what the reasons for this opposition were, for his proposition seemed to him to be in harmony with the principles adopted in clause 1.

Mr. *Pompe* (Netherlands), general rapporteur:

I think that the situation described by Mr. Azevedo must be considered as referring to special cases. Such a case was described in the Italian report where it is said that if one commits an artist who is a pianist to prison and if one assigns him to some other occupation for years, he would have lost his skill to play the piano when he leaves the institution. This person would then have been deprived of a very precious possession and this is certainly not the aim of the punishment. What is true for the musician is equally so for the writer. On this point, I am in full agreement with Mr. Azevedo, for it is a simple matter of justice not to deprive a prisoner of skills which he has acquired before entering prison. But here there can be no question of a rule, but only of exceptions.

The *Chairman*:

In fairness to Mr. Azevedo I should explain my view. If I understood him correctly he would wish that a man of letters, for instance, should be able to spend his whole day in prison writing novels or whatever he is capable of writing. That is what I would object to. I would have no objection to the idea which I think we should all accept that a man of letters or a painter, or any man with a particular skill, should be given facilities after his ordinary day's work is over to do whatever may be possible in a prison to keep or improve his skill.

Mr. *Nicod** (Switzerland):

I, too, would be just as categorically opposed to any proposal which would aim at inserting the free choice of work by the prisoner in the draft resolution. We should rather come back to earth and recall that a prison director cannot do justice to all requests which are presented to him by people sent to prison. In the report which I was

asked to present to the Congress, I pointed out the factors that must be considered by directors when they assign a man to work. These factors are four in number. First of all, it is the length of the sentence which requires placing the prisoner in such a situation that the chances of escape are reduced as far as possible; then there is the physical and mental condition of the prisoner which must also be taken into consideration; there is, furthermore, vocational training, and finally, there is the idea which is mentioned in the Swiss Penal Code itself, namely the needs of the institution. I mentioned in my report the case of a jazz pianist who asked the management of the institution to be allowed to play the piano every day so as to conserve his skill. It was obviously necessary to refuse to comply with this demand and to tell the prisoner: When you will have served a part of your punishment we shall see if there is any possibility of giving you satisfaction on this point. On the other hand I mention as another example from my experience that I have in my institution one or two prisoners who, without being professional violinists, like to play the violin and who are authorized to devote themselves to this activity during certain hours of their leisure-time. We must, therefore, get back to a more balanced conception of things and not try to grant all the requests which might be advanced by prisoners in this connection.

The *Chairman* asked Mr. Azevedo if he wished to formulate an amendment along the lines of his statement.

Mr. *Azevedo** (Brazil):

I do not intend to do so. As I have already pointed out, the choice of work has been admitted in clause 1 of the conclusions. It is sufficient for me to have reminded the Section clearly of this fact when it enters on the examination of clause 2 which deals with the organization of prison labour.

The *Chairman*, still reserving the final wording, proceeded to the vote on clause 2 of the conclusions in its amended form subsequent to the adoption of Mr. Klare's proposition.

Clause 2 of the conclusions of the general report was adopted by 50 votes without dissent.

The *Chairman* proceeded to the discussion of clause 3 of the conclusions of the general report which read as follows:

3. The methods, the preparation and the training in prison labour should be as much as possible like those in free industry and in harmony with truly humanitarian ideas as developed to-day. Only then can prison labour yield useful social and economic results; these factors will at the same time increase the moral benefits of prison labour.

Mr. *Kunter** (Turkey) pointed out that prison labour was not always and necessarily industrial. Therefore, he moved that the words "free industry" be replaced by "free labour".

The *Chairman* asked if the Section agreed to substitute another and more adequate word for "industry" so that agricultural labour would also be included in this clause.

The Section gave its consent to this proposal.

The *Chairman* stated that here also the final editing would be done by the Bureau and with this reservation he called for a vote on clause 3 of the conclusions.

The latter was adopted by 51 votes without dissent.

The *Chairman* proceeded to the discussion of clause 4 of the conclusions of the general report which read as follows:

4. The objections of private industry fearing competition from prison labour should be rejected. It is only necessary to avoid unfair competition.

Mr. *Herzog** (France):

Several members of the Section, though sharing the fundamental idea expressed in clause 4 are little bothered by one of its expressions, namely: "The objections of private industry.... should be rejected". This way of expression seems to us a little brutal indeed and may provoke an unfavourable reaction from private industry. Besides, it seems to me that in his oral report the general rapporteur very rightly put the finger on the problem by indicating that the essential thing is to avoid unfair competition between prison labour and free labour. That is why I take the liberty of proposing that the wording of clause 4

be changed as follows: "Prison labour should be organized in such a manner as to avoid any unfair competition with free labour, so that no serious objection might be opposed by the latter to the existence and development of prison labour".

The *Chairman* declared that if he might venture an opinion, it would be that the amendment proposed by Mr. Herzog went rather too far in the other direction.

Mr. *Klare* (United Kingdom) moved that clause 4 of the conclusions be worded as follows: "Industry should be persuaded not to fear competition from prison labour, but unfair competition should be avoided".

Mr. *Arnoldus* (Netherlands):

I think that the clause should be enlarged. Actually, it is not only free industry which raises objections against prison labour, but also free workers, i.e. the trade unions. This point deserves to be clarified, for in the Netherlands we have had complaints in this respect and I believe, if my information is correct, that the same is true of England. One should therefore speak of free industry and free workers.

Mr. *Herzog** (France) withdrew his amendment in favour of that proposed by Mr. Klare.

The *Chairman* noted that if the addition proposed by Mr. Arnoldus were added to Mr. Klare's amendment, clause 4 would read: "Free industry and labour should be persuaded not to fear competition from prison labour but unfair competition should be avoided".

Put to the vote in its new wording, clause 4 of the conclusions of the general report was adopted by 46 votes without opposition.

The *Chairman* thought that it was at this point of the text that one could insert a clause on the lines proposed by the general rapporteur about the question of social insurance and compensation for accidents. He asked if the Section agreed that the Bureau should draft a text on the lines suggested, to follow the present clause.

The Section agreed.

The *Chairman* proceeded to the discussion of clause 5 of the conclusions of the general report which read as follows:

5. Prisoners should receive a wage for their labour, calculated according to the same norms that govern free industry. Against this wage income one might debit a reasonable sum for maintenance of the prisoner, the costs of maintaining his family and, if possible, an indemnity payable to the victims of his offence.

Mr. *Ericsson* (Sweden):

I am not convinced that the system of a wage calculated according to the same norms that govern free industry could be achieved for all categories of prisoners. In Sweden, for instance, to the general difficulties in that respect there is added the one which results from the fact that wages are relatively high. In the national report which I prepared for the Congress, I outlined the objections which might be made against such a system. In the Swedish law we have simply provided for the possibility of trying to give certain groups of prisoners a wage which is based on different principles from those applicable to prisoners in general. On this basis, the system of a full wage has been applied for the last three years to prisoners who work in freedom, i.e. to individuals who have received permission to work outside the institution. The results of this experiment have been good on the whole but that does not mean that one could adopt it generally. Consequently, I would like to propose that clause 5 be elaborated by saying, for instance: "It ought to be possible for certain groups of prisoners to receive a wage...."

Mr. *Angulo Ariza** (Venezuela):

It would be of the greatest utility to add to clause 5 a sentence worded: "The remuneration which the prisoner should receive for his work shall not imply the existence of a work contract between the prisoner and the State". This addition is very important. Actually, the legal consequences of the work contract are very different in each country, according to the social legislations in force. In particular, the work contract will create the obligation for the State, as employer, to cover the risks of labour accidents and the obligation, in some cases, to pay an indemnity to the prisoner's family, if the prisoner is given the same status as a worker in free industry. Other consequences would moreover result from such an analogy which cannot be permitted in the organization of prison labour relations.

The *Chairman*:

It is growing late and the Section has not only to conclude this resolution regarding prison labour but also to consider the draft resolution with respect to habitual offenders which has been prepared by the drafting committee. I would much prefer not to call any more speakers on this question. However, I would like at the same time to say why, as the delegate of the United Kingdom, I would be compelled to vote against the resolution in this form.

While it is important and indeed essential that prisoners should receive wages, I think that the proposal that they should be calculated according to the norms that govern free industry, as well as the rest of this resolution, though maybe desirable in principle, may be quite impossible in practice. I would, therefore, suggest that we should confine the mandatory part of our resolution to a simple statement that prisoners should receive wages and that the rest of this resolution should be put in a more provisional form so that those governments who may wish to adopt that method of wage payment may be free to do so. It would produce so much controversy if we were now to consider the whole of this resolution as mandatory that it would be better to give a more general form to the views of the Congress on this point.

Replying to a question, the Chairman specified that he proposed, in brief, that the clause should begin: "In order to stimulate the industry of prisoners and the interest in their work they should receive a wage for their work". To this should be added: "It may be desirable for certain groups of prisoners that this wage should be calculated according to the same norms that govern free industry". The rest of the text would remain unchanged.

A brief discussion developed with respect to the words "for certain groups of prisoners" which were considered to be too vague by some members of the Section and the deletion of which was suggested.

Mr. *Aude-Hansen* (Denmark) tried to present a text which took into account the various points of view expressed in the discussion. He suggested saying: "The Congress is aware of the practical difficulties attached to a system according to which prisoners should receive a wage for their labour calculated on the norms of free industry but recommends nevertheless that the system be tried to the greatest possible extent".

The *Chairman* declared that he would be prepared, as delegate of the United Kingdom, not to vote against that amendment which would replace the proposition he had made.

Mr. *Kunter** (Turkey) thought that the simplest solution would be just to delete the words "calculated on the norms of free industry". Indeed, the problem of the calculation of the wage was in direct relation to that of competition. Since the problem of competition had been resolved in clause 4, it was sufficient to say here that prisoners should receive a wage for their work.

Mr. *Tsitsouras** (Greece):

We should distinguish between labour in general, on the one hand, and prison labour on the other. Certainly, all labour creates a right to a wage and prisoners are not slaves of their punishment, but nevertheless, labour as an element of re-education and of social re-adaptation is something else than the dogma of the right to work and to the wage of the free man.

Besides, it should be possible to divide the wage given to prisoners; whatever may be its amount, the State has a right to debit against it the cost of the maintenance of the prisoner and also a part which will be given to his family. The remaining sum will be deposited to the prisoner's account which he can use after his release. In that respect, I am fully in agreement with the general rapporteur.

The *Chairman* said that he would like to terminate the discussion on this clause. But before the Section should pronounce itself on the important amendment of the delegate from Venezuela a phrase should be added to the clause to the effect that the payment of wages should not be regarded as constituting a contract of employment between the prisoner and the prison administration.

Mr. *Pompe* (Netherlands), general rapporteur, declared that he could not agree to this proposition.

Mr. *Azevedo** (Brazil):

I regret that I, too, cannot agree with Mr. Angulo Ariza on the question he has raised. If the prisoner has an obligation to work for the State and the State an obligation to pay the prisoner for this

work, we are in the presence of a contract. Lately, as all lawyers know, the question of the relations between the State and public employees has been much discussed. Several theories have been advanced in this connection: the institutional theory, the contractual theory and several others. But, we know very well that evolution occurs in the direction of the contractual theory. This is true even for the fascist authors. For instance, the new Italian digest has pointed out this evolution in the direction of the revival of the contractual theory in all the relationship between the State and those who work for the State. Any other solution has a totalitarian character and must be rejected. The true legal doctrine and the democratic doctrine leave no doubt in that respect. If the State has to pay and if the prisoner has to work, we have a contract. I am consequently categorically opposed to any proposition according to which we would not recognize the existence of such a contract and whereby we would not admit that there is on the part of the State an obligation to assure compensation for work accidents. If the State makes a profit on prison labour, it must also assume the risks of that labour. For a long time we had an appalling situation in Brazil, due to the fact that the existence of contractual relations between the prisoner and the prison administration was denied. This had as a consequence that a man who had lost an arm in working at the making of shoes was not indemnified by the State. Those shoes had been ordered by a private dealer and this dealer, the buyer of the shoes, was sentenced to pay the costs of the accident, which was an absurd solution. It is the State, which manages the labour, that should pay indemnity for the accidents involved.

The *Chairman* declared that he could not prolong the discussion and proceeded to a vote on the proposal of Mr. Angulo Ariza who asked, however, for permission to reply before the vote was taken, which was granted.

Mr. *Angulo Ariza** (Venezuela):

The proposal I made stresses the seriousness of the problem under discussion. There is nothing in clause 5 from which one might deduce the existence of a work contract between the prisoner and the prison administration. I think that, on the contrary, the obligation to work does not arise from a labour contract, but from the punishment itself. That is why elsewhere in the conclusions it has been said that unsentenced

prisoners and those sentenced have the right and sentenced prisoners have the obligation to work. This obligation can only be based on the punishment, i.e. in a definite sentence which is actually executed. This is, by the way, why one always talks of remuneration and not of wage. Remuneration is a principle of justice and equity, and not a legal notion, as is the wage. If one should keep the notion of labour contract and identify the prisoner with the free worker very serious consequences would result for legislations which, like the Venezuelan legislation, are very advanced in the matter of the labour contract and have a whole series of institutions which are connected with this idea.

The *Chairman* proceeded to the vote on the amendment proposed by Mr. Angulo Ariza.

This amendment was rejected by 27 votes to 11.

The *Chairman* stated that the Section had to take a stand on clause 5 in its present wording after the amendments which had been presented and adopted previously. The text of that clause would read as follows: "In order to stimulate the industry of prisoners and the interest in their work, they should receive a wage for their work. The Congress is aware of the practical difficulties attached to a system of paying wages calculated according to the same norms that govern free industry but recommends that this should be tried in the greatest possible extent. Against this wage income one might debit....", the end of the sentence reading like the original text of clause 5.

Clause 5 of the conclusions, as amended, was adopted by 35 votes to 2.

The *Chairman* proceeded to the discussion of clause 6 of the conclusions of the general report which read as follows:

6. As for juvenile delinquents, prison labour should primarily aim to teach them trade, as suitable as possible to their aptitudes and inclinations.

Mr. *Beleza dos Santos** (Porugal) moved that this clause be modified by adding the words "in particular", so that it would read:

"As for juvenile delinquents in particular....". Actually, the principle embodied in the clause should have general application to prison labour, but it should be especially emphasized for juvenile delinquents.

The Section agreed to this proposition.

Mr. *Alexander** (Belgium) asked, for reasons which he gave a moment ago, that the following words be added at the end of the clause: "....and on educational indices depending on their intelligence and their character".

The *Chairman* ventured to suggest to Mr. Alexander that what he wished to add was already sufficiently implied by the words "aptitudes and inclinations".

Mr. *Klare* (United Kingdom) stated that the French word "goût" was translated in the English text by the word "inclinations" which evoked a slightly different idea.

Mr. *Alexander** (Belgium) insisted on his proposal, for the text seemed to him to deserve to be elaborated. Really, it was not a question of taking merely the aptitudes and the inclinations of the juvenile delinquents into consideration. Consideration must also be given to what could be done to improve their character and their intelligence. This was a pedagogical problem, and not one of choice.

The *Chairman* asked the Section if it was prepared to leave to the Bureau the task of finding a formulation which would meet the point raised by Mr. Alexander.

The Section agreed to this procedure.

The *Chairman* put clause 6 of the conclusions of the general report to the vote, with the understanding that its wording would be revised as had just been said.

This clause was adopted by 21 votes without dissent.

The *Chairman* proceeded to the discussion of clause 7 of the conclusions of the general report which read as follows:

7. Outside working hours the prisoner should be able to devote himself not only to spiritual and physical exercises but also to hobby-work. The income from the products of such work should go to the prisoner or to his family or to both.

Mr. *Nicod** (Switzerland) proposed two amendments to this clause. First of all, the first sentence should read: "....the prisoner may be permitted to devote himself...." instead of ".... the prisoner should be able to devote himself....". Furthermore, the speaker thought that the second sentence should read: "The income of the products of such work belongs to the prisoner", the end of that sentence to be deleted.

Mr. *Pompe* (Netherlands), general rapporteur:

If one would accept the first amendment proposed by Mr. Nicod, the question of knowing whether or not the prisoner should be authorized to occupy himself in this way in his leisure time would be left entirely to the discretion of the prison administration, and therefore I am opposed to that amendment.

The *Chairman:*

In my capacity as United Kingdom delegate, I would also find it difficult to support the second part of the text saying that the income of the products of such work should go to the prisoner or to his family, or to both. That must depend very much on the circumstances in which these products are made. It may be that the material is supplied by some outside authority, as indeed happens in England when the education authorities hold classes for manual work and provide all the necessary material. Certainly they would not agree that if they have provided all the material the whole income from the work should belong to the prisoner. I think that this particular suggestion might arouse considerable controversy, and we should think carefully before we adopt it.

Mr. *Pompe* (Netherlands), general rapporteur, moved to delete the second part of clause 7.

This proposal was adopted by the Section.

The *Chairman* stated that the Section must act on the first amendment of Mr. Nicod.

Mr. *Klare* (United Kingdom) proposed to retain the text proposed by the general rapporteur.

The Section decided to keep the first sentence of clause 7 in its original version by 24 votes to 6.

The *Chairman* stated that it would be necessary for the Bureau, with the assistance of the general rapporteur, to prepare a final text of the resolution, taking into account the decisions taken by the Section. The text would be submitted the following morning to the General Assembly.

The Chairman proceeded to an examination of the draft resolution, prepared by the drafting committee, on the second question of the programme of the Section: *The treatment and release of habitual offenders.*

The draft resolution, distributed in French and in English, reads as follows:

1. Traditional punishments are not sufficient to fight effectively against habitual criminality. It is, therefore, necessary to employ other and more appropriate measures.
2. The introduction of certain legal conditions so that a person can be designated an habitual criminal (a certain number of sentences undergone or of crimes committed) is recommended. These conditions do not prevent the giving of a certain discretionary power to authorities competent to make decesions on the subject of habitual offenders.
3. The 'double-track' system with different régimes and in different institutions is undesirable. The special measure should not be added to a sentence of a punitive character. There should be one unified measure of a relatively indeterminate duration.
4. It is desirable, as regards the treatment of habitual offenders who are to be subject to internment, to separate the young from the old, and the more dangerous and refractory offenders from those less so.
5. In the treatment of habitual offenders one should never lose sight of the possibility of their improvement. It follows that the aims of the treatment should include their re-education and social rehabilitation.
6. Before the sentence, and thereafter as may be necessary, these offenders should be submitted to an observation which should pay particular attention to their social background and history, and to the psychological and psychiatric aspects of the case.
7. The final discharge of the habitual offender should, in general, be preceded by parole combined with well-directed after-care.
8. The habitual offender, especially if he has been subjected to internment, should have his case re-examined periodically.
9. The restoration of the civil rights of the habitual offenders – with the necessary precautions – should be considered, particularly if the law attributes to the designation of a person as an habitual criminal special effects beyond that of the application of an appropriate measure.
10. It is desirable
    a) that the declaration of habitual criminality, the choice, and any change in the nature of the measure to be applied, should be in the hands of a judicial authority with the advice of experts;
    b) that the termination of the measure should be in the hands of a judicial authority with the advice of expents, or of a legally constituted commission composed of experts and a judge.

Nobody asked for the floor and Mr. *Tetens* (Denmark) moved that the draft resolution be adopted.

The Section adopted the draft resolution unanimously.

The meeting was adjourned.

Section III

Chairman: Mr. ERNEST LAMERS (Netherlands)

Secretaries: Mr. A. D. BELINFANTE (Netherlands)
Mr. HENRI MATHIEU (Belgium)
Mr. WALTER RECKLESS (U.S.A.)

Afternoon Meeting of Monday, August 14th, 1950

The *Chairman** [1]) opened the meeting and welcomed the persons intending to participate in the work of Section III. Its programme included penal questions having both a theoretical and a practical orientation, and therefore long discussions could be expected. But the various reports and the general reports represented a remarkable preparatory work permitting a shortening of the discussion. The Chairman also drew the attention of the assembly to the most important provisions of the Regulations of the Congress, and gave the floor to the general rapporteur on the first question of the programme of the Section:

Short term imprisonment and its alternatives (probation, fines, compulsory home labour, etc.).

Mr. *Göransson* (Sweden), general rapporteur [2]):

To study the eleven reports [3]) received on this question means plunging into an ocean of knowledge, experiences and proposals. Therefore, it has been necessary to limit the task, and it was impossible to give in my general report an account of all ideas set forth. I limited

1) An asterisk indicates that the speech was translated into English.
2) General report, see volume V, p. 1.
3) See list of rapporteurs, loc. cit., note.

Section III in session

Section III in session

myself, and shall also do so in this introduction to the discussion, to presenting certain points of view which have been stated in nearly all the reports.

It is known that the question of short term punishments is not a new one in the discussions of penologists. Franz von Liszt already said: "Short term imprisonment is often more harmful to legality and order than complete impunity might be". Many other severe judgments have been pronounced regarding it. The International Penal and Penitentiary Commission has dealt with this question at various times. For that purpose it created a committee in 1938, the activity of which was paralyzed by the war. After the end of the war, it adopted a resolution in 1946 on short term imprisonment in which it stated:

"Experience has shown that, in most countries, short term sentences nearly always do a certain amount of harm, and this for the following reasons:

1. the time limit makes it impossible to start upon any educational activities;
2. the establishments where such sentences are served are often badly equipped and do not dispose of a trained personnel;
3. a large number of delinquents sentenced for a short term thus come into contact for the first time with penal law. This imprisonment is liable to make them lose their fear of prison and to lessen their self-respect;
4. the family of such petty offenders is affected materially and morally;
5. when discharged, these petty offenders may experience difficulties in achieving social re-adjustment and may thus be pushed into committing a second offence.

It is the considered opinion of the Commission that the maintenance of certain short term sentences can only be admitted if they are served under the following conditions:

1. in a safe and hygienic establishment;
2. that there should exist prophylactic measures against contagious diseases;
3. that there should be an identification and brief social investigation;
4. that a diagnosis be made of physical diseases;
5. that the delinquents be examined by a psychiatrist;
6. that there be a selected and experienced personnel;
7. that measures be taken with a view to social rehabilitation."

Two years later, in 1948, the Commission adopted a new resolution confirming the one of 1946 on all points. In this new resolution, it was

of the opinion that "short term imprisonment ought as far as possible to be replaced by other appropriate measures. In this respect, the decision not to prosecute or not to proceed to conviction, furthermore, suspension of sentence, probation and imposition of fines can be considered as the most appropriate measures. As regards the imposition of fines, steps ought to be taken facilitating the payment of fines by instalments, or granting delays and providing for other measures to avoid as much as possible the conversion of unpaid fines into imprisonment.

As regards the cases where short term sentences have nevertheless to be used, reference may be made to the conditions enumerated in the resolution mentioned above. Attention is further drawn to the fact that it might be possible in many cases to carry out short term sentences in open establishments, where the inmates, by employment in productive work for which they are paid, may continue to support their families".

I want to draw your attention to the last part of this resolution. It is known that in the evolution of the penitentiary system there is now a tendency to use or enlarge more and more the field in which open institutions are used, and it is interesting to note that this tendency is not unrelated to the problem of short term punishments.

What is short term imprisonment? The International Penal and Penitentiary Commission has declared that it is a punishment of not more than three months in prison, and I think that this definition might be adopted.

Throughout the discussion of the problem of short term punishments, many unfavourable things have been said about them. They have unfortunate consequences, for the individuals who are sentenced to them lose all initiative, lose their self-respect and encounter great difficulties in their relations with their families. Some of these criticisms are a little exaggerated, and I want to say here that a long-termer also runs the risk of losing initiative, self-respect and contact with his relatives; generally, his family has much more difficulties than the family of the short-termer. I want to stress that this objection is meant only as a warning against the misconception that short-term imprisonment should be avoided at all cost. In Sweden, statistics have been collected with respect to those short-termers who have been committed to prison for the first time. Their conduct during

a period of five years after release has been examined, and it has been found that 90 per cent of the cases did not recidivate. Therefore, it seems, one should not completely reject short punishments in order to extend the use of long punishments, for the latter have their risks, too.

It seems important that in the countries where the minimum term of a prison sentence is very short — just a few days — this minimum might be raised. Another fact which might be stressed is that the number of short term prisoners can be reduced to some degree by abstention from prosecution and by suspension of judgment.

The conditional sentence has for a long time been rightfully regarded as the first and most important alternative to short term imprisonment. In certain countries the rules of the conditional sentence (with or without supervision) are very generous while in other countries the law is restrictive, the favour being granted, for instance, only to first offenders or to recidivists if sufficient time has elapsed between the last penalty served and the new offence. As to first offenders it seems that numerous countries now employ the conditional sentence extensively. Since the last war, however, attitudes against offenders seem to have hardened and, therefore, the conditional sentence, especially with supervision, has lost territory in several countries. I think that it is an important task for penologists in this post-war world to work for regaining, where it has been lost, confidence in the conditional sentence as an effective weapon in the fight against criminality. Somewhere there may still be reason for increasing the frequency of conditional sentences as regards first offenders, but there is undoubtedly more to do to widen the possibility of granting probation to recidivists instead of short terms for petty offences.

But, a necessary condition for such a development is that the conditional sentence be used individually on the basis of empirical methods and a psychological understanding of human nature. The successful outcome of such treatment depends in a large measure upon the care and the serious attention given to pre-sentence examinations. When the court is hesitating between an unconditional sentence and a suspended sentence, the scope of the supervision often may be the decisive factor. If supervision is properly organized there may be reason to assume that the judge may in many cases prefer probation. I agree with those rapporteurs who have stressed the importance of an effective supervision system. But experience shows

that in many countries it may be much easier to get money for erecting a new prison than for engaging probation officers, for instance. People – including members of parliament – are still "institution-minded". I think it is an important task for us to provide information on this point, beginning, let us say, with the cost factors. We know, indeed, that institutional care is much more expensive than probation.

The effect of probation may in certain cases be increased if the suspended sentence is combined with fines or/and the offender is required to do his best to make whatever payment for damages the court may decree.

Fines are regarded as a good, sometimes as the best weapon against short term imprisonment. In order to reduce the number of offenders committed to prison in default of fines, it seems necessary (a) that the fine be adjusted to the financial status of the defendant; (b) that the offender be permitted, if need be, to pay the fine in instalments and be granted a suspension of payments for periods when his income is inadequate; (c) that unpaid fines may be converted into imprisonment, not automatically but by a court decision in each individual case.

While the rapporteurs have exhaustively dealt with measures of a non-institutional type, which have just been mentioned, other alternatives as a rule were treated more summarily. Some of them suggest widening of bench pardon and judicial reprimand, the bond to keep the peace or bail for orderly conduct. Other measures suggested have more serious consequences for the offender's manner of living. I think some of them can be expediently applied to the offender in combination with conditional sentence with supervision (probation). Such conditions, attached to probation, should be adjusted to the offender's need of rehabilitation and not be chosen solely because of their deterrent effect. If the offender can see no justification for the conditions imposed he often abstains from co-operation, perhaps violating the conditions in order to receive a short imprisonment instead. In any case, the conditions should not be formulated in such a manner that the offender may be hampered in gaining his livelihood properly. This concerns especially such conditions as banishment and barring him from exercising certain occupations or engaging in certain types of business. Deprivation of rights, as a substitute for short term imprisonment, might be necessary in one case, namely the cancellation of drivers' licences,

but it is not desirable in other cases. Deprivation of office would seem to be a measure most harmful to the offender.

Even if we have many alternatives to short term imprisonment – alternatives involving non-institutional care – there remains a need for imprisonment for those who are not corrigible by other means. We also need short term imprisonment in those cases where more lenient methods are out of question for general preventive reasons. I am thinking especially of offenders convicted of drunken driving; in many countries they are excluded from the possibility of receiving a conditional sentence, such being the case in Sweden, for instance.

If short term imprisonment cannot be dispensed with in certain cases, the important question would seem to be to determine whether it is possible to remove some of the objections to it. I would like to draw your attention to the fact that these objections have their origin in the circumstance that prison officers have neither time nor resources for an effective treatment of the great number of short-termers who often constitute a nearly anonymous mass in the prison. Efforts have been made here and there to deal with them in a more constructive manner. "Idleness" is a word often attached to short term imprisonment. But it is not necessary to keep these prisoners out of work or at work in a monotonous job. Many, perhaps the majority, of those sentenced to imprisonment not exceeding three months do not require confinement in ordinary prisons. They could be sent to open camps or colonies.

According to the new Swedish law concerning the execution of punishments privative of liberty, the individual with a short term sentence can as a rule be committed to an open colony, if no particular reason is found against it. About two thirds of this kind of punishment are executed in such colonies where the prisoners are assigned to productive work for which they are paid in a rather generous manner. They work at road-building, gardening and other outdoor jobs, for which they are paid by the job. In the best of the colonies, the prisoners receive at present a daily wage of 5 to 6 Swedish crowns, which represents about one dollar a day. This makes it possible to avoid many difficulties with the prisoners' families to which the prisoners can send money during their absence. When the prison administration pays the prisoner, for instance, a remuneration of 5 crowns, it receives from the State or the community for which

he works a sum of 15 to 20 crowns per day. At any rate, it seems that the utilization of open colonies must be considered as a means to treat short-termers.

I now submit to you all knowledge, experience and proposals contained in the preparatory reports, as well as my conclusions which reflect the essence of those ideas and which read as follows:

1. As a rule short term imprisonment means a punishment which does not exceed three months.
2. The criticism of the short prison terms seems to overlook somewhat the fact that even the longer terms have unfavourable consequences. The prison for long-termers are often poorly equipped with staff, suitable accommodations and needed workshops. The value of the trade training and character education which the long term can afford seems to be exaggerated at times. The long-termer's difficulties in finding work and self-support on release are well known. His family is often placed in a very difficult situation economically while he is in prison.
3. It seems important that in those countries where the minimum term of a prison sentence is very low — just a few days — this minimum be raised.
4. The number of short term prisoners can be reduced to some degree by abstention from prosecution and abstention from punishment.
5. Conditional sentence (with or without supervision) is doubtless the most effective alternative to short prison terms. Its wider use presupposes, however, that before judgment the courts should have means of making authoritative investigations of the personality of the defendant. For these investigations, as well as for supervision after judgment, there is need of a staff of well-trained officers co-operating with psychologists and psychiatrists.
   An increased effectivity could perhaps be gained by combining conditional sentences with fines and/or a duty on the part of the defendant to try during the probation period to pay damages caused by his crime.
6. Fines are quite properly suggested as a suitable substitute for short prison terms. In order to reduce the number of those imprisoned in default of fines it seems necessary that
   (a) the fine be adjusted to the financial status of the defendant;
   (b) he be permitted, if need be, to pay the fine in instalments and be granted a suspension of payments for periods when his income is inadequate;
   (c) unpaid fines be converted into imprisonment not automatically but by a court decision in each individual case.
7. Our efforts should also be directed toward making the short term punishment constructive. It is first of all a question of eliminating the idleness which now frequently puts its stamp on the prisoner's existence.

Since most of the short term prisoners are people who are no threat to the safety of society it is suggested that they be placed in open institutions (colonies) where they can be occupied in productive labour (handicrafts of different types, lumbering, road-building, etc.). The wage should be fairly high and based on a system that stimulates good work.

The *Chairman** thanked the general rapporteur for his excellent presentation which would undoubtedly furnish a very good basis for the discussion.

Mrs. *de Bray** (Belgium)

Everybody agrees in thinking that one of the prerequisites for the success of probation, especially as a substitute for short term punishments, is that supervision should be very well organized and carried out under good conditions. But I would like to see made a little more specific what is meant by good conditions, and especially this : Is probation looked upon as a measure suggested to the offender and which he has the right to refuse because he prefers imprisonment to the conditions imposed on him? Personally, I think that it would be at any rate advisable to count, as the general rapporteur has done, on the consent of the offender who is to be placed on probation. Otherwise, one could not be sure of his co-operation and the one supervising the probation would lose much of his chance of success.

Mr. *Cannat** (France):

Everybody is agreed — the general rapporteur has at least expressed a consensus — on the injuriousness of the short term punishments. This being the case, I take the liberty here to present briefly a revolutionary point of view. It is not a bad idea to have revolutionary ideas dropped like bombs at the beginning of a discussion, for this makes it possible to forget them by the time one reaches the end. And after all, one might as well get rid of the extremists right away! This revolutionary idea consists in proposing a motion purely and simply aiming at the elimination in the international field — a recommendation which, therefore, would be made to all countries — of all punishments privative of liberty under one year from the date of the irrevocable sentence.

Indeed, imprisonment is considered a little as the cure-all in current penal legislations. Everything is expected of the prison, and in all cases and no matter what it is about public opinion shouts:

"Prison! Prison!" as it formerly shouted: "Death! Death!" If nowadays the most solid and respectable foundations of imprisonment are discussed and if we can read books like that, for instance, of Messrs. Barnes and Teeters who profoundly challenge the very idea of imprisonment, this is precisely for the reason that imprisonment is still left to carry the burden of these short penalties that overload the ship. Prison is not made for everything nor for all cases. That is the error in the present conception. Two centuries ago, prison was not a punishment; it was only a means to keep people in custody before judgment or execution. Then, when the long term punishments came, prison became a punishment, but nevertheless we continued to impose these short commitments to prison, either served during the detention period or after it. And it is precisely this kind of tail or appendix to the old-time imprisonment which we should perhaps resolutely cut off.

You will certainly be able to make several objections, and first of all that it is going too far to speak of a one-year limit. Indeed, one might admit, as the general rapporteur just said, that imprisonment is short only if it is less than three months. I apologize to the general rapporteur for not agreeing with him on this point. One cannot re-educate a man in three months, one cannot even teach him a trade. The time needed to learn a trade might be the criterion in fixing the minimum length of imprisonment. Now, this time needed is at least one year.

Secondly, one might object that prison, besides the effect of re-education which it does not attain by a short term punishment, has also the effect of an example. I hasten to declare that I do not believe that imprisonment has a general preventive effect. If there is any effect of general prevention connected with the sentence imposed for a petty offence, it lies in the fact of the court appearance, the prosecution and the contact with the police and the courts which degrade the individual and dishonour him and his family. This is what constitutes the effect of general prevention, much more than stagnation in a penal institution for some weeks or months.

One might also object that short term imprisonment is sometimes re-educational and I think that Sweden possesses in that respect some institutions which I do not know, but which might perhaps prove me wrong. However, although I hope that these institutions are as re-educational as I would like to believe, I fear that the statistics

cited are conditioned by the kind of offenders to whom they refer, namely purely occasional offenders. If these people, after three or six months of contact with other offenders, leave prison and do not recidivate in a proportion of ninety per cent, one ought to decorate them!

Finally, one might object that I want to eliminate from penal law everything that has to do with short term punishments, and that I do not show what would have to replace them. But, the general rapporteur has undertaken to do that. He has not, however, spoken of week-end sentences which are perhaps applied in Germany – so far as I know, and if I am wrong I hope you will excuse me – and which, it seems to me, were at least used in Alsace before 1914.

The *Chairman** asked Mr. Cannat if his speech had the character of an informal motion or if he intended to present a formal motion to the Section on the question of the length of short term imprisonment.

Mr. *Cannat** (France) thought that he could translate what the had said into a formal motion with reference to the necessity of not limiting the duration of short penalties to three months. Regarding his proposal to suppress all punishments of less than one year, he thought it preferable to wait until the end of the discussion before making a specific proposal.

Mr. *Molinario** (Argentina):

I agree completely with Mr. Cannat. I believe with him that short prison terms are devoid of content. They represent only a certain period of time which passes without leaving any trace in the soul, the personality and the mind of the accused or the prisoner. In fact, the time is too short for his learning a trade and even for influencing the moral personality of those who need it. Thus, short terms are nothing but the somewhat lamentable remnant of what was for centuries called retributive punishment, a remnant of pure retribution, of that penal dosing which imposed a punishment proportioned to the objective gravity of the offence, taking no account of the personality of the offender. I am, therefore, of the opinion that the motion advanced by Mr. Cannat as revolutionary be adopted as a conservative one.

Furthermore, there is a question which arises in connection with certain problems of interpretation in several legislations. Generally, the laws concerning the conditional sentence speak of the first imprisonment in the case of a sentence to a punishment of not more than two years in prison, etc. – these are the traces left by the famous Bérenger Act of 1881 in the Latin legislations in general – and one does not make the very necessary distinction between intentional and non-intentional offences. Consequently, it sometimes happens that the punishment of a person for a non-intentional offence is suspended and that when he later commits an intentional offence, he cannot be given the benefit of a suspended punishment. The same thing happens in the inverse situation; that is, when an individual has committed an intentional offence and has received a suspended punishment, he cannot later benefit from such suspension if he commits an offence due to negligence. That is a pity! It would be wise to introduce into the laws a specification providing that one who has obtained a suspended punishment for an offence due to negligence or for an intentional one can obtain it for an intentional offence or a negligent one respectively. This would be a very wise measure, especially with respect to the perpetrators of offences by negligence.

Mr. *van Drooghenbroeck** (Belgium):

I want first to support the idea expressed by Mrs. de Bray when she spoke of the manner in which probation must be conceived. She said that this system must begin with the consent of the convicted person and she is quite right. I, too, believe that this point should be stressed. It is a system which has a chance of succeeding only if it begins without coercion, and with the full and entire consent of the offender.

I would like very much to hear an exchange of views on another point, namely the general manner in which probation should be organized. Should one, as in the Anglo-Saxon countries (United States, United Kingdom) conceive of it as a suspended imposition of sentence, or should it be conceived of as a suspension of its execution? I know that there is an immense advantage in the suspended imposition, and this is that the individual is not stigmatized by a sentence and that his rehabilitation is considerably facilitated thereby. But, one should not lose sight of another aspect of the question, namely that institutions such as probation can be efficiently developed only if,

when it is integrated into the existing system of another country, it respects the traditions and the national legislation of that country. Especially with regard to Belgium, I have the impression that it would be by far preferable to have a suspension of the execution and not of the imposition of the sentence. I shall summarize in a few words the various arguments which seem to militate in favour of this point of view, by saying first that in spite of everything, the fear of the punishment, which is fixed and eventually inevitable, remains nevertheless, given human nature, an extremely important psychological factor which must not be neglected. Another argument is that too frequent a suspension of the imposition of the punishment is likely to weaken the effect of repression. Finally, there is also the question of the penal register. Indeed, it remains necessary, if an individual has committed an offence, that the judicial authorities – not the administrative authorities, but the judicial authorities – which might later have to deal with another case concerning this individual should be able to learn that he has been placed on probation two years earlier, for instance.

Finally, I wish to touch on a point which has taken me a little by surprise. Mr. Cannat, in an absolutely excellent manner, proposed the suppression of any punishment which would be under one year. I must say that I do not entirely agree with my colleague on this point, and for the following reasons: Everything has been said about the disadvantages of short term punishments; it is useless to touch on that again, for it is an established fact. But, by following Mr. Cannat one risks entering an extremely dangerous path. One would then arrive at a dangerous weakening of repression. It seems to me that a legal practitioner, for instance a judge who has to sentence offenders every day, really could not understand our adopting a motion of that kind, which would go as far as to say that it would be desirable that all punishments under one year be eliminated. And why? Briefly, for the following reason: obviously, the essential purpose of punishment, in the present status of our knowledge, is the reformation and the rehabilitation of the offender, but nevertheless there remains a grain of truth in the classical tradition. There is not only social defence, there is not only reformation and rehabilitation. When a punishment is inflicted, there still remains the purpose of general prevention and of general intimidation. Under these conditions, if one were to go so far as to eliminate punishments under

one year I rather fear that this would result in a serious weakening of repression.

Mr. *Göransson* (Sweden), general rapporteur:

I would like to present a few remarks regarding what has been said so far on this subject. First of all, with respect to probation the question has been raised if it is necessary to have co-operation between the offender placed on probation and the probation officer, i.e. if there should be an acceptance of the measure by the offender. In Sweden, there are no conditions which the person concerned might accept: he must give his co-operation. It is true that one finds certain rare cases where the offender is particularly stubborn, but if in spite of the fact that he is not willing to accept probation, he is placed under the supervision of an officer who knows how to act tactfully, the offender's whole attitude may be changed. But, this is the exception and I think that, as a general rule, co-operation is indeed necessary. This is, by the way, the reason why I stressed that there lies a very great danger in trying to make supervision a form of punishment. I have seen in my country how courts have sometimes imposed very harsh conditions unnecessary for the offender's rehabilitation, but necessary in the court's opinion for reasons of general prevention. There is a very great risk here. If there should be a principle of imposing severe conditions on those placed on probation only for reasons of general prevention, this might equally become a principle for a probationer to try to deceive the probation officer.

The question of the duration of short term imprisonment has also been discussed and the proposal has been made to eliminate prison sentences of under one year. But, we have in many countries a lot of individuals, for instance drunken drivers, who cannot be placed on probation and in whose cases there is no other solution to be had except prison. I see no reason for increasing the length of their punishment simply to permit the penal institutions to profit from a sufficiently long time. Mr. Mannheim has dealt with this question in his preparatory report and has said: "Perhaps the most obvious remedy seems to be the legal prohibition of all prison sentences under three or even six months. Although we are in favour of it, certain dangers likely to arise from it should not be overlooked. Unless such a prohibition is backed by a sympathetic and enlightened judiciary and supplemented by the provision of adequate alternatives

it may lead to undesirable consequences: in cases where they regard a prison term as indispensable the courts may, instead of choosing one of the alternatives, resort to unnecessarily heavy sentences. Moreover, they may send accused persons to prison on remand for a few weeks even in cases where there is no real need for a remand to prison and where it is clear from the beginning that the sentence eventually to be imposed will not be one of imprisonment. A period of imprisonment on remand may therefore become the substitute for a short prison sentence with the added disadvantage that the accused is deprived of his right to appeal against the prison sentence".

Mr. *Cannat** (France):

I want to reply to Mr. van Drooghenbroeck that the judges must have said the same when all corporal punishments were eliminated. Obviously, if by suppressing short term prison sentences one were to reduce the arsenal of weapons given to the court, it would not be done without substituting something in their place, but by replacing such short term punishments by other punishments. This would perhaps be a way of at least compelling the legislator to exercise his imagination.

I shall reply very quickly to Mr. Göransson and without having had time for reflection, but it seems that the legislative provisions which in certain countries do not allow the granting of a suspended punishment are bad provisions and that a good individualization of the punishment should make a clean sweep of all these Byzantine provisions of which, by the way, there are some in France regarding abortionists and infanticides and which refuse the right to grant suspended punishments. The judge should have at his disposal a whole scale of possibilities and one should not limit him. With respect to the argument that the punishment might become aggravated because punishments under six months or a year would be forbidden, I say that it is sometimes preferable to sentence a man to eighteen months or two years in prison, which would be of some use, than to commit him to prison for three months to no use.

Regarding the duration of short term punishments, I want to add to what I said before, when arguing that one should go from three months to one year, that there is an additional argument for not limiting short term punishments to three months. Indeed, when the punishment is of a long duration, one is obliged to transfer the

prisoner from the jail to a penitentiary, and it is generally not desirable to make such a transfer, because the prisoner is then separated from his family. If one limits the short term punishment to three months, one obliges the country which has adopted that rule to make transfers to a penitentiary already after four or five months. Now, since the length of the jail detention must be deducted, it follows that the prisoner would nearly always be transferred and thus nearly always be separated from his family. If, on the contrary, one holds that short term punishments should go up to one year, transfers to a penitentiary would not be made until after one year.

Mr. *van Drooghenbroeck** (Belgium):

I am completely in agreement with Mr. Cannat on one point, namely when he says that one should require, as a matter of course, a little imagination on the part of the legislator. This is quite right, and it is certain that one should replace short term punishments by other measures – this is precisely the object of our meeting – especially by the conditional sentence, probation and also the fine, about which nothing much has been said until this moment and which can, however, be an excellent measure if well applied. Still, I contend that Mr. Cannat goes a little too far when he says that one should consider punishments up to twelve months as short term punishments. A prison sentence of nine or ten months is, one must admit, not such a particularly short term. And I think that in addition to the argument of general prevention which I took the liberty to stress some moments ago, the argument which Mr. Göransson just developed has also some weight. I must, therefore, vote against a motion which would tend to consider any punishment under twelve months as a short punishment. And I do so, briefly, because this would end in a weakening of repression.

Mr. *Göransson* (Sweden), general rapporteur:

For a half century, we have heard a great deal of criticism regarding short term prison sentences, and I have always been a little afraid of it. I think that if one cannot find something good in the short prison sentence, we risk that, as a result, punishments will be increased again. Now, it is not quite certain that a long sentence is a good thing. There exists a dogma according to which a short sentence to imprisonment is very harmful, but I think that there is perhaps also a dogma

that a long term prison sentence is something very constructive. I do not share that view. During a long term of imprisonment how can one avoid having the prisoner lose all initiative, self-respect and self-confidence? How can one help him to find his place in freedom and get a job? This task is much easier for the one who was sentenced to a short term only. I am, therefore, unable to agree with Mr. Cannat on this point.

Mr. *Dupréel** (Belgium):

I would like to turn their own argumentation against certain speakers. Mr. Cannat declared some moments ago that it is not advisable to impose certain rules on the judge, to forbid him explicitly to use certain measures and to compel him to use others. Consequently, I think – and this is the purpose of my speaking – that in order to do a good job, one must put the greatest possible number of measures at the disposal of the criminal judge so as to permit him to individualize the measure which he applies. Therefore, I think that in a good system, it must be possible to impose long term sentences, just as it should also be possible to impose short term sentences. Only, it is necessary that the training of the criminal judge be made in such a manner that he is entirely aware of the disadvantages of short sentences in certain cases, and that he perfectly well knows, and also has at his disposal, other measures which would allow him to avoid short sentences whenever they might be bad. But, there are cases where short term sentences can have an exemplary character and can be useful. Consequently, by way of summary, I want to state that I am not in favour of the radical elimination of short sentences, but I am in favour of leaving no stone unturned so that the courts, every time that something else than a short term sentence is more useful, may resort to a different measure, with the understanding, however, that when in exceptional cases a short sentence is useful they might apply it. My speech is therefore a plea in favour of giving full discretion to the judge, but to a thoroughly enlightened judge, a judge who has at his disposal numerous measures and knows to apply them properly.

The *Chairman** asked, so as not to prolong the discussion too much, if any member of the Section wanted to support Mr. Cannat's idea, and he asked Mr. Cannat to make a formal proposal to the assembly.

Mr. *Molinario** (Argentina):

I am in agreement with Mr. Cannat's proposal aiming at the elimination of prison sentences under one year. I believe it would be advisable to submit the decision on that particular point to a vote by the Section.

I would also like to see submitted to the Section the question of knowing whether, in cases where suspension of punishment can be substituted for short term imprisonment, it would be desirable that the granting of a suspended punishment to one guilty of an intentional crime or one due to negligence should not preclude a subsequent grant of the same favour to one guilty of a negligent offence or an intentional offence respectively. I would like to have the opinion of the Section on this question which I regard as fundamental and which concerns the two forms of guilt, intent and negligence : Is the granting of the favour of conditional sentence or of suspended punishment to those guilty of a negligent offence possible when they have once been convicted and given a suspended punishment for an intentional offence, and the contrary respectively? If someone will second my motion I would like to have the Chairman submit it to a vote by the Section.

Mr. *Cannat** (France):

I am full of admiration for the very reasonable proposal of Mr. Dupréel. I believe indeed that, in an ideal world where the judges would always understand exactly the consequences of the sentences which they impose, such a proposition would be the best. But, we are far from finding ourselves in that situation and I do not speak of the judges only but of the penal institutions and the whole apparatus of repression. The mechanism of repression does not function perfectly anywhere and under these circumstances we cannot view the problem from the vantage point of ideal conditions.

Actually, I believe that what might divide the Section into two camps is that we are not in agreement on the very meaning and the definition of the term "short punishment". What is a short punishment? From what Mr. van Drooghenbroeck said a while ago, I understood that he was thinking of the length of the time during which the individual suffered. In other words, in the length of the punishment he sees the subjective element of the duration of the suffering of the individual, whereas I rather see the objective element of his

re-education. If I had to define short punishment I would say: "A short punishment is one which does not permit re-education because of its shortness". If we are not in agreement on this definition, we can obviously not agree on all that follows. If, on the contrary, we are in agreement on this definition, we must then consider as a short punishment one that does not permit the prison administration, responsible for the man from the beginning of the sentence, to change that man. And since the first of all elements of transformation is in my opinion the vocational element, because it is both the easiest and the most certain, it follows that all punishments, which do not permit teaching a man a trade while the punishment lasts, are short ones. And this is why I go as far as one year in fixing the length of the short term prison sentence. For the reasons I have just added, I stick to my proposition while apologizing for differing from excellent people and even from people whose regard I cherish.

The *Chairman** announced the text of Mr. Molinario's proposal which read as follows:

In cases in which probation can be an alternative for short term imprisonment, it is advisable that, when probation has been granted to an offender who has committed a crime of dolus or of culpa, such a disposition should not preclude the later granting of the same suspended sentence to the offender of a crime of culpa or of dolus respectively.

He then read the text of Mr. Cannat's proposal to the Section:

The XIIth International Penal and Penitentiary Congress recommends that the different governments eliminate completely from their laws all short sentences of a year and less.

The *Chairman** proposed that the text of these two motions be published in the Bulletin the following morning and that the Section should proceed to vote on them at the beginning of the next meeting. In the meanwhile, the discussion would continue immediately.

Mr. *O'Neill* (Northern Ireland):

I am afraid I cannot support the proposal which has been put forward by Mr. Cannat. To my mind this would be a retrograde step. We have not heard any practical alternative to short term imprisonment and I am sure many of us can visualize innumerable cases in

which short term imprisonment is the only possible method by which justice can be administered in any particular crime. I do agree with the general rapporteur in the statement he made that there is as much danger in too much long term imprisonment as in too much short term imprisonment. If I can give one very brief example, what is the alternative then to a man who has committed manslaughter on the road. A fine is useless. To put such a man on probation is equally useless and the only way in which that man can be brought to the realization of what he has done is to deprive him temporarily of his liberty and so make certain that he will take serious steps to ensure that he will not offend in the same way again.

It has also been suggested – and this relates, I think, to the first proposal – that the judge should be given a great deal of scope. To a certain extent this may be desirable. But I can visualize many judges to whom such a power would neither be wanted nor would be for the good of justice and of the administration of justice. Many judges, as we know, are only too glad to have their powers limited and to know what sentences they can meet out to offenders. And as far as judges can exercise their imagination, unless judges all exercise their imagination in the same way, one is going to have great differences in sentences.

I am sorry, therefore, that, failing the giving to this session of any alternative to short term imprisonment, I cannot agree to the proposal to do away with such imprisonment, and by short term imprisonment I mean sentences from three to six months.

Mrs. *de Bray** (Belgium):

I would like to make a comment from the practical point of view of the professional person, the technician who probably will have charge of the offender in cases where short term sentences would not be imposed. I think that in Mr. Cannat's mind the abolition of short term sentences would lead to an extension of probation. There has been much talk about the judge, there has been much talk about the court, there has been discussion of whether the judge should impose short sentences or probation. But, when the rôle of the judge has ended, the rôle of the social service begins. When the judge has taken the measure which seemed best to him, he can dismiss the case from his mind, but then he turns it over to the social service. Now, if the latter would be put into the situation of having to receive for

probation all the offenders who are not sentenced to short terms but rather placed on probation, I think that one would take away from the social service a great opportunity of success in the exercise of that supervision. I am not here thinking of the number of people who would be put on probation, for this problem can always be solved by a greater number of officers. There is something else. Belgium has little experience with probation. Other countries have a much longer one and it has been recognized that among the conditions of success of probation there are the proper choice of the probationer, the proper choice of the conditions to be imposed upon him and the proper choice of the probation officer. The first of these conditions is then the choice of the person to be placed on probation. The preceding speaker has expressed views which I share, for I believe also that all offenders are not likely to gain by probation. It is, therefore, not advisable to subject them to it, and in such cases the judge must have recourse to another measure which is precisely a short term sentence. To summarize, one of the conditions of success of probation seems to be that it should be a favour granted only to those who can profit by it and that consequently the judge should be able to use it or not to use it.

Mr. *Bouzat** (France):

I would just like to say that I support the formula proposed by Mr. Cannat because I regard it as excellent. It is audacious, it is new, it is animated by a true progressive spirit. A while ago, Mr. van Drooghenbroeck made an argument against Mr. Cannat's proposition which made a great impression upon me and for a moment I was tempted to accept it. Briefly, his position is the following : Fundamentally, short prison terms need not worry us much. They will not be used much, but they might perhaps be useful at certain moments and, consequently, why not keep them in our penitentiary arsenal? This is an argument which has been much used in France for certain punishments. At the time when the French Penal Code was being revised, some people wanted to abolish banishment, deportation. And others answered, by the way rightly, that these are punishments which do not disturb us and which may prove useful at certain critical moments and which therefore must be preserved. I am in complete agreement so far as banishment and deportation are concerned for they have no disadvantages. But, and everybody agrees on this point,

the short term sentences have very great disadvantages – except perhaps for petty violations, imprisonment from one to eight days, which one might retain if they are undergone in cells. But in general, the short term prison sentences have such disadvantages that I believe that it is preferable to take a heroic measure, both new and audacious and truly progressive, and eliminate them, for I am convinced that even if one tells the judges not to utilize them or to utilize them only rarely, the judges in many countries will yield to temptation and routine and the short term prison sentences will inevitably re-appear. That is why I am in favour of this new, audacious, progressive and brutal measure. Once it has been adopted, substitute measures will come of themselves.

Miss *Phillips* (United Kingdom):

I am against the suggestion for the wholesale abolition of all short term imprisonment, because I feel that there must be more alternatives suggested : there are some alternatives, such as are being introduced courageously in England. But, at the same time I have another reason which is that we are discussing three items in this Section and the next two deal with the rehabilitation of prisoners, and I think that some of the evils of short term imprisonment can be lessened if there is an increase of supervision, that is after-care of released prisoners. I think that should be considered not only for long term prisoners, but also for short term prisoners.

I should like, just for a moment, to refer to probation. I agree very much with our colleague from Belgium that there are many cases that are not really suitable for probation and that not only their agreement should be obtained in court to the conditions, but that the people who will supervise them should really have some opportunity of assessing, or to have other people assess for them, whether they are likely to respond to that measure.

Another drawback to short term imprisonment which we, of course, do deplore as a whole, is that in some countries, such as in my own, restitution cannot be made. If persons are sentenced to imprisonment, they do not bear any other penalty and it is sometimes a very good thing that they should make restitution; under supervision and a probation order this is very often combined though it does not form part of the order.

I am not speaking, therefore, in favour of short term imprisonment

but merely against a wholesale abolition of a measure which can be useful but should be much less used than at present and other measures developed. There are such measures in development in England for young prisoners, such as attendance at centres where they do some work during their free time, and other things of that sort.

Mr. *Pettinato** (Argentina) supported Mr. Cannat's proposal. In fact, his experience of seventeen years in the management of several penal institutions permitted him to assert categorically that no penal institution is sufficiently organized to undertake the social re-adaptation of the offender in a period of less than one year. Such re-adaptation was in his opinion the real social purpose of punishment and that is why he adhered to the proposal made by Mr. Cannat.

The *Chairman** pointed out that the vote on the propositions presented would be taken in the morning at the beginning of the meeting, and he drew the attention of the assembly to article 17 of the Congress Regulations regarding the manner of voting. Moreover, he thanked the participants in the discussion for the interest they had shown and then adjourned the meeting.

Morning Meeting of Tuesday, August 15th, 1950

The *Chairman** opened the meeting and pointed out that the Section must decide on the two propositions presented the day before. Mr. Göransson, general rapporteur on the first question, had stated that he intended to incorporate Mr. Molinario's proposition in his conclusions. The Chairman asked the latter if he, nevertheless, wished a vote on his proposition.

Mr. *Molinario** (Argentina) said that if his amendment were incorporated in the text of the resolution which the Section would adopt his purpose would have been fulfilled and that it would not be necessary, so far as he was concerned, to take a formal vote.

When a member of the Section asked for the floor, the *Chairman** pointed out that remarks could be made on questions of procedure

but that the Section would not re-open debate on the substance of the propositions made.

Mr. *O'Neill* (Northern Ireland):

If the proposal put forward by Mr. Molinario is accepted it becomes nonsensical if the second proposal is carried. The second proposal is to abolish short term imprisonment. Mr. Molinario's proposal deals entirely with short term imprisonment. If, therefore, Mr. Cannat's proposal is accepted, the first proposal has no meaning whatever.

The *Chairman** thought that one should interpret the position of Mr. Göransson as representing a conditional acceptance of Mr. Molinario's proposition, which naturally would lose all significance if Mr. Cannat's proposition were accepted, but the general rapporteur had accepted it in the event the proposal for the complete abolition of short sentence were voted down by the Section.

Mr. *Molinario** (Argentina):

I want to clear up this problem of the order of the questions to which reference has just been made. I do not believe that my proposition is subsidiary to that of Mr. Cannat. It applies, as a matter of fact, exclusively to the system of suspended punishment which is simply one of the measures that may replace short prison sentences but is not the only one of these measures. Even if Mr. Cannat's proposition were accepted, mine would lose neither its importance nor its justification since Mr. Cannat's idea is that that short term sentences should not be merely eliminated but replaced by other measures, among which the conditional sentence and the suspended punishment take a leading position. Since my proposition refers directly and concretely to suspended punishment, it consequently retains all its value, even if Mr. Cannat's proposition were adopted.

The *Chairman** stated that there was no need to proceed to a vote on Mr. Molinario's proposition which the general rapporteur had agreed to incorporate in his conclusions. The committee which would edit the text of the resolution would keep in mind the discussion which had just taken place.

Mr. *O'Neill* (Northern Ireland):

This is the most important question of the three we have to discuss

and I suggest that a vote on any proposal be deferred, especially on such a far-reaching one as the abolition of short term imprisonment, whether that be imprisonment for not exceeding three months, six months or a year. No alternatives have been suggested and the merits of the suspended sentence, probation or the deprivation of civil rights have only been mentioned very superficially. To take any decision now, before members have time to consider the implications of the present proposal, is in my opinion most unwise.

Mr. *Cannat** on the contrary thought that it was urgent for the Section to get rid of the extreme proposition so as to be able to go ahead, and he therefore requested that it be "decapitated" as quickly as possible.

Mr. *Lattanzi** (Italy) thought that Mr. Molinario's proposition went beyond the limits of the question submitted to the Section for study, which was to examine the short term prison sentences and their replacement by other measures. The problem raised by Mr. Molinario had both an autonomous character, as he himself had stated by the way, and a quite general character. The speaker thought that once the measures designed to replace the short term sentences had been specified, Mr. Molinario's proposal might be examined.

The *Chairman** stated that since Mr. Molinario had agreed not to submit his proposition to the Section formally, there was no reason to pursue the discussion. Furthermore, the Chairman wanted to proceed to a vote on Mr. Cannat's proposition. The text of that proposition had been published in the Bulletin of the day, and there was no reason, it seemed, to postpone the vote.

Mr. *Williams* (Northern Ireland):

I wish to move formally that this vote be deferred.

Mr. *Cannat** (France) thought that it was indispensable for the Congress to take a formal stand. He did not expect a majority for his proposition and knew perfectly well that it would be rejected, but he believed that it would be very interesting for those who would have to examine the problem in the future to see that the total elimination of short term sentences had been proposed already in 1950.

Mr. *Williams* (Northern Ireland):

When I say defer, I am prepared to agree to any small committee being set up for to-morrow to come to a more general agreement upon the proposal. I am not opposed completely to the proposal, but I am opposed to it in its present form, and I think we could perhaps meet some of the difficulties by to-morrow if a small committee were able to get together to meet some of the objections in the present proposal, objections which may not be fundamental.

The *Chairman** agreed with this suggestion and proposed that a committee be designated to study the proposition of Mr. Cannat in the sense indicated by Mr. Williams. The Section might proceed the next day to a vote on the conclusions of this committee and eventually on the proposition of Mr. Cannat itself.

The Chairman proposed that the committee be composed of Messrs. Göransson, van Drooghenbroeck, Muller, Cannat and Williams. Mr. Belinfante would function as secretary of the committee.

These propositions were adopted by the Assembly.

The *Chairman** introduced the examination of the second question of the programme of the Section:

"How should the conditional release of prisoners be regulated? Is it necessary to provide a special régime for prisoners whose sentence is nearing its end so as to avoid the difficulties arising out of their sudden return to community life?"

Mr. *Dupréel** (Belgium), general rapporteur [1]):

The first impression which arises from the examination of the ten national reports [2]) I have read is that everybody agrees on the utility and the need for a good system of conditional release within the framework of the general organization of the execution of punishments by imprisonment. Historically, conditional release was introduced as a favour designed to reward those who behaved well in the institutions, so as to encourage them by the promise of anticipated release. But little by little ideas have changed and more complicated concepts have arisen.

In most countries, conditional release is still regarded as a

1) General report, see volume V, page 182.

2) See list of rapporteurs, loc. cit., note.

discretionary measure, which means that it may or may not be granted to a prisoner. Nevertheless, it is generally desired that conditional release be used as often as possible, and this is why one has been led to say that it should be relatively mandatory, which means that it should in fact occur nearly always. It is desirable that such be the case since the results are good. The fact that conditional release is discretionary is, however, not entirely general. For instance, Swedish legislation provides for mandatory conditional release. In this system, five sixths of the sentence are indeed served in prison and the last sixth always takes the form of conditional release. This is tantamount to saying that there is always, in the punishment pronounced by the court, one part which is privative of liberty and a final part which is served in freedom. Besides this mandatory conditional release, the Swedish law provides for a discretionary one which may be granted under certain conditions. However, this latter form is rather rarely applied in Sweden. In a general way, one must note that the majority of the rapporteurs pronounce themselves against a mandatory conditional release and prefer to see this institution keep its discretionary character.

When conditional release is discretionary, the question arises as to who is the proper authority to grant this release. There exists in this respect a whole series of systems, and usually it is the Ministry of Justice which is charged with the authority in this connection, with the advice either of certain judicial or administrative authorities or of both, as is the case in Belgium. But, as far as the future is concerned, the reports clearly reflect a tendency to confide the power to grant conditional release to a specialized board. It is in the United States that one has defined, in the most complete manner, the conditions which this board should fulfil. The authority should be impartial, capable, discrete and completely informed about the cases under consideration. It has been suggested also that in a practical way it should be so organized as to consist of a judge, a lawyer, a medical anthropologist, an official of the prison administration and a representative of after-care organizations. This board would be familiar with the court and the administrative histories of the case, the latter including a social investigation and giving information on the personality and the environment of the prisoner. A board made up somewhat in this manner functions in the Canton of Geneva.

Opinions are divided on the matter of knowing whether the

judge appointed to membership on this board should be the one who sat in the case or some other judge. Both opinions, well defended for that matter, are expressed in the reports. In practice, one must observe that it is very difficult to require that it be the sentencing judge. Such a solution indeed raises difficulties of a geographical and personal nature, due to the fact that the judge may have been transferred or promoted and is consequently no longer available in the locality where the board is sitting.

Another important question is to know what data would best furnish a basis for granting or denying conditional release. Everybody agrees that the criteria of good conduct in prison and probable reformation (repentance, desire to behave well in the future) are important but in themselves insufficient. Consequently, one should resort to another concept which is the following : Does this prisoner one wants to release present a certain reasonable probability that he will lead an orderly life? In other words, may one hope that if one releases him earlier and imposes a series of conditions on him he has a chance to re-adjust socially? If the qualified persons composing the board have the well founded belief that this anticipated release will be successful, i.e. that the individual will re-adjust socially and will probably not recidivate, they must grant conditional release. Thus, the social element plays a dominant rôle in this connection.

It is admitted, in a general manner, that the conditions for conditional release should be furnished with certain safeguards. Especially, one must be able to count on a competent and watchful supervision assured by adequate facilities. These facilities will generally be furnished only if the State intervenes to help in the work of social re-adjustment. There exists here also a controversy on the point of knowing whether supervision, which is an essential element in the social re-adaptation of the offender, should be assured directly by the State, i.e. by official authorities, or rather be organized by private associations. The rapporteurs do not fail to stress, in accord with their personal opinion, the advantages of the one or the other system. Generally speaking, the private organizations are very flexible. They have a direct action and reduced running costs because they appeal for help to benevolent persons. On the contrary, official organs nearly always are somewhat cumbersome in their functioning. Nevertheless, the present tendency is to appeal

at least to a professional staff. Questions of social assistance have become so technical and presuppose such a lot of knowledge that it seems useful to have at least a skeleton staff of professional workers who then can call in volunteers who will act under their technical direction.

It is very difficult to define precisely the conditions to be imposed on a prisoner released under supervision. One cannot give a general enumeration of these conditions, for they will depend essentially on the individual to whom they must apply. It looks as if the present English law had gone farthest in the direction of individualization. It provides for six different procedures of conditional release depending on the category of prisoners envisaged. All that one can say is then that one must primarily consider the individual to whom the conditions will be applied and especially – and here I agree with what has been said by the general rapporteur on the first question – one should not impose too harsh or even impracticable conditions which are really an incentive to violation.

When conditional release has been granted, it is necessary that the individual behave, for the value of this institution lies precisely in that it can be revoked. A sword of Damocles must be suspended above the head of the released prisoner in such a way that he must return to the institution if his conduct is not satisfactory. But, the eventual revocation of conditional release should also be surrounded by important safeguards. It should not be possible to have it done by the rashness of the supervisor or the authority charged with granting or revoking release. It seems, consequently, that the best system is that revocation be ordered only by the authority which has granted conditional release, an authority offering equal guarantees of impartiality and competency. It is not desirable that the law should show itself too severe in that respect and necessarily demand revocation in certain specific cases. At any rate, it is useful to provide that in principle a warning will always be given before revocation is ordered, except of course in particularly serious cases. It would also be wise to institute differentiation in revocation, so that it might be either complete or, on the contrary, only partial.

I now come to the second part of the question: Is it necessary to set up a special institutional programme for prisoners whose release is approaching? This is a question of establishing a pre-freedom

régime in the prisons, and nearly all the rapporteurs claim to be much in favour of it. While this transition from the execution, properly speaking, of the punishment to conditional release is generally recommended, one nevertheless finds rather varied ideas regarding the organisation of such a régime. One group of rapporteurs remain faithful to the principle of a progressive grade system of penitentiary treatment. The first part of the punishment should be executed in a rather coercive manner, then a progressive amelioration should be arranged arriving finally at the last grade prior to freedom during which one grants a certain responsibility and also certain favours to the prisoner. Others visualize a completely different system consisting in transferring the prisoner, before his conditional release, to a special institution, organized solely with a view to preparing him for his approaching release. Still others believe that a pre-freedom régime should be organized in all institutions which may have to release prisoners some day. Finally, several rapporteurs are opposed to that kind of gradation and prefer to see the whole prison régime organized from the very beginning with a view to conditional release which in all likelihood will occur toward the end of the execution of the punishment. The argument of those who believe that the whole prison régime should be organized in anticipation of the release is that it is unhealthful to begin by applying a deforming régime which is the coercive régime of which the protagonists of the progressive system are thinking, and then suddenly, at the end when release becomes likely, hurry up and organize a less deforming régime which it is hoped will prepare the man for freedom and in which one tries to repair the damage caused by the first years of incarceration.

After having given this brief analysis of my general report, I now present my conclusions to the Section; they are worded as follows:

1. The protection of society against crime requires the integration of conditional release in the execution of penal imprisonment. It should be used as a normal procedure, i.e. whenever one may hope for a favourable result from its use.
2. Conditional release is not automatic: it is proper that it should be granted, in an individualized form, when there exists an accumulation of factors which point to its probable success.
   These factors are:

   (a) The co-operation of the prisoner (good conduct and attitudes);
   (b) The vesting of the power to release and to select conditions in an impartial and competent authority, completely familiar with all the aspects of the individual cases presented to it;
   (c) The vigilant assistance of a supervising organ, well trained and properly equipped;
   (d) An understanding and helpful public, giving the released prisoner "a chance" to rebuild his life.
3. The functions of prisons should be organized and should operate in such a manner that they will as a general rule, from the very beginning of the prison term, work towards conditional release which precedes complete freedom.

The *Chairman** thanked Mr. Dupréel for his clear and complete presentation and gave some information on the question of the organization of the work of the Section in coming meetings. He then called for discussion.

Mr. *O'Neill* (Northern Ireland):

I just like to express my thanks for the very excellent paper which we have just heard, summarizing the reports which have been received on the subject. I do not intend to go into details on the various methods of release at present in use in Northern Ireland and Britain. But, there is one system — I do not know if it is an innovation or not — which we have been adopting in the last three years and which may or may not be paralleled in other countries. It has been our practice to allow prisoners week-end leaves from time to time, especially as their sentence is due to expire, in order to enable them to secure employment and, as the wording of the question is put, to help them to avoid the difficulties arising out of their sudden return to community life. This is also extended, for we very often give them Christmas leave and leave to attend the funerals of relatives or even to go to a relative who is very ill. The leave is given usually from Friday evening until Sunday evening or Monday morning. At first, the experience was tried with short term prisoners only, that is to say prisoners serving up to twelve months. Later, we have extended the practice to cover convicts, that is those serving three years or more. So far it has been confined to first offenders. Later on, we may extend it to other offenders, but naturally, if we extended it to what we might call habitual criminals, it may only give them an opportunity of preparing the

way for the next crime which they wish to commit, and no one wishes to go as far as that. The permission to these prisoners is given by the Minister, that is to say the administrative head. He receives a report from the governor of the prison as to the behaviour of the man in the prison; we then take into consideration the nature of the crime, because for certain crimes, particularly sex crimes, we do not think it advisable to give this week-end leave. We take all the facts into consideration and in approximately seventy per cent of the cases the application for week-end leave is granted. Since this came into force three years ago, not one single prisoner has failed to turn up on time. In fact, in one or two cases, they have come an hour too early.

As I say, we hope to extend this privilege to other prisoners and even to give it, perhaps, more frequently. I must bring this forth as a suggestion of a contribution which may or may not be paralleled in other countries.

Mr. *Göransson* (Sweden):

If we have only one form of conditional release, the facultative, we can only release those prisoners whose prognosis is good. But what to do with the others? We would be excluding from after-care and supervision those who really need good after-care and effective supervision, and those bad cases are in the majority, at least in Swedish prisons, nowadays that the suspended sentence has taken individuals with a good prognosis away from the prisons. Therefore, we have constructed a system with two forms of conditional release, first the facultative one for persons with good prognosis who are released after two thirds of their term; secondly, the obligatory form for the others. Every one who has a sentence of at least six months may be conditionally released after five sixths of the term without respect to his co-operation, his conduct and attitude. If, for example, he has a sentence of six months of imprisonment, he must be released obligatorily after five months even if he has behaved himself very badly in prison, seems to be a hopeless recidivist, and so on. We have practised this obligatory form more than five years. I cannot talk about success, for it is quite impossible in the case of the type of prisoners that I am talking about here. But, we have occasion nowadays to take care also of those ex-prisoners who are dangerous to society and who

need, more than others, help from the supervision organization. In that way, we can insist that the ex-prisoner take work, continue working, abstain from alcohol, and so on. I should not like to see the resolution of the Section exclude this obligatory form of conditional release which, at least in some countries, may be of great importance.

Mr. *Molinario** (Argentina):

I want first of all to congratulate Mr. Dupréel on his excellent general report and particularly on the fact that he has known how to conquer with both elegance and precision a difficulty contained in the very subject of the question presented to the Congress. Indeed, as I stressed in my report, the wording of the second question of Section III leads to an inevitable difficulty. To begin with, we are asked how the conditional release of prisoners should be regulated; immediately afterwards, we are asked if it is necessary to provide a special régime for prisoners whose sentence is nearing its end, so as to avoid the difficulties arising out of their sudden return to community life. Everything would then cause the reader of the question to think that this need of providing a special régime for prisoners whose sentence is nearing its end naturally refers to those among them who are about to recover their freedom through conditional release. But, the questions are in fact not necessarily linked together, and I think that the second question, namely the need of providing a special prison régime, must be considered not only for prisoners who will be released conditionally but for all categories of prisoners. My point of view is based on the consideration that conditional release figures in the various legislations in two very different ways. Sometimes, it is a kind of prize granted to prisoners who have proved to behave well in the institution. But, it is also a stage in a progressive system. If such is the case, each prisoner must necessarily pass through a special stage before obtaining conditional release. However, in countries with a Latin tradition in legislation, where conditional release is granted as a favour to prisoners who have behaved well in prison, this preliminary stage does not exist. It is therefore necessary to decide, first of all, if the second part of the question refers only to prisoners who will be released conditionally, or if it should refer to prisoners in general, without limitation or distinction. I think that it

would be necessary for the Section to express its opinion on this preliminary question which I consider absolutely necessary in order to proceed in a profitable manner. I think that the question should be interpreted in a wide sense, namely that a pre-freedom régime should be provided for all categories of prisoners and not only for those who will obtain conditional release.

The *Chairman** stated that to interpret the question in that manner would exceed the scope of the agenda. The Section was supposed to discuss conditional release only and the proposition of Mr. Molinario would more than widen the question of conditional release. Moreover, he asked the general rapporteur to be so kind as to give his opinion on that point.

Mr. *Dupréel** (Belgium), general rapporteur:

I shall make a conciliatory proposition on the question which has just been raised, but first of all I should like to respond quickly to the various speakers, in their order.

Mr. O'Neill has spoken of the advantages of a system of week-end leaves, these brief outings which permit the prisoner to resume contact with free life. This system is not applied in England alone. In Belgium especially, we have for some time been in the habit of granting leaves or furloughs, as they are more correctly called, under certain particular circumstances: family events, deaths, religious holidays important for the family, weddings, etc. Sometimes we even grant furloughs so that the prisoner might personally take certain important steps, such as the sale of a property or other things of this kind. This is certainly a very useful system which permits one to judge the qualities of a man with a view to his social re-adaptation. But in my opinion, this institution does not belong with conditional release, properly speaking. In Belgium, by the way, we call it temporary release. It is a simple interruption of the punishment, because the man returns to the institution afterwards. Now, I think that essentially the Section is here called upon to discuss release which one expects to be final.

Mr. Göransson was right in presenting a plea in favour of the two systems of conditional release. If you followed my remarks in the course of the discussion of the first question, you will understand that I am quite ready to favour the greatest possible number of alternatives in the application of punishment. I think, however, that the system of

automatic conditional release, such as it exists in Sweden, is not properly speaking the conditional release which this Section is examining. It is rather a kind of manner of executing the punishment, and I would be tempted to say that it is a punishment under supervision. One of the devices of this punishment is that the man is set free. In reality, however, such a system has the following significance: the judge, when sentencing him, already knows that five sixths of the punishment will be served in prison and one sixth outside the prison. The result is that if the judge is, for instance, of the opinion that the man should stay one year in prison, he will pronounce such a sentence that one year will represent five sixths of the total. Afterwards, the last sixth will be undergone in liberty in this very particular system of punishment which continues outside the institution. This system has certainly its advantages. This is so true that in my own country, Belgium, we have in practice come to do the same. When we are faced with a very difficult case, a person who behaves badly in prison and who does not leave much hope, it happens very often that conditional release is nevertheless ordered some months before the expiration of the punishment. The officials who make such a request stress that they propose conditional release in order to be able to place the individual concerned under supervision. They do not pay much attention to the question of knowing whether or not he will behave well or badly, but state as their opinion that it is better to release him conditionally rather than to let the punishment come to an end completely and then catapult him into freedom without having any kind of hold on him any more. One notices that in practice the two systems have a certain resemblance and Mr. Göransson is perfectly right in showing that there may be an advantage in keeping the two methods. But, and the Swedish delegate seems to agree on that point, if one has one system only, it is preferable that it be that of discretionary release. The mandatory system cannot be conceived of as combined with a discretionary system, which may then, by the way, be made more flexible so as to permit a much earlier release than after five sixths of the punishment. Such is the case, for instance, in Belgium where conditional release can be granted as soon as a third of the punishment has been served, which is certainly an advantage.

I finally come to the statement of Mr. Molinario. I know how much the Argentine delegation is attached to the pre-freedom system to which their country has paid very special attention. I

think that there is really a way of combining the points of view expressed by Mr. Göransson and Mr. Molinario. What is actually wanted is that release should always be prepared so that ex-prisoners should not be pushed outside without having gone through a preliminary stage designed to prepare them for release. I suggest, therefore, that in order to combine these two ideas the wording of item III in my conclusions be modified. The first sentence would be retained in part, and we might then say: "The functions of prisons should be organized and should operate in such a manner that they will, from the very beginning of the prison term, work towards freedom". This means then that the prison treatment should be such that it tries not to be deforming but to prepare the man for the freedom which he will recover at any rate some day or other – we are not speaking of life sentences here. It would therefore be useful to make a recommendation that the prison régime be socially and humanly sound and oriented towards preparation for freedom. One would then add to clause III a second sentence which would read: "In any case, it is advisable that the social re-adjustment be especially prepared during the last period of the prison term, which may be undergone either in prison or outside of it under an effective system of supervision". In this way we would introduce the idea that the last period, the one which more particularly prepares for release, might be served either in the institution or outside, but it is distinguished from the discretionary conditional release of which we have spoken, though it can be combined with it, in that the pre-freedom period in the institution and the period of release under supervision or effective control may be combined. I think that this wording would express in a satisfactory manner the desire to see the whole régime conceived with a view to future release, as well as the desire that special attention be given to the last part of the punishment, whether served in the institution or outside.

Mr. *Molinario** (Argentina):

I agree in principle with the wording just submitted to the Section by the general rapporteur. I merely think that perhaps it does not specify enough the content of the pre-freedom stage. It says that the social re-adjustment should be especially prepared during the last period of the prison term, but it does not say how that social re-adjustment should be prepared. I therefore propose

that we add to the wording of Mr. Dupréel an expression such as the following: ".... be especially prepared *by gradually bringing the prisoner nearer to free life*". I think that this specification is indispensable. Indeed, the serious problem, which arises not only for the prisoner but also for society at the moment of the prisoner's release, is exactly that of knowing if he will be able to behave in free life with the ease and the disposition which those who live normally in society must have.

The amendment which I have proposed aims at calling to mind the method instituted in Argentina by Mr. Pettinato, the director of the penal institutions of that country, a method which I have described in detail in a report which is at the disposal of all congressists in the publication room of the Congress. This document shows how this Argentine pre-release system has been conceived which must be applied more particularly to prisoners who have served a long punishment, because they are the very ones who have most lost the possibility of behaving normally in freedom due to the influence of time and their long separation from the surrounding society. For these reasons, the pre-freedom régime is restricted to prisoners who have been sentenced to a period of six years or longer of which they have served two thirds. We believe, indeed, that he who has been sentenced to a short prison term will not thereby have lost his social habits and the faculty of moving in free life; whereas somebody who has been isolated during many years will, simply due to the changes in the conditions to which he has been subjected, more than anybody else be in need of exactly this preparation. This is done by making most of the activities of free life available to the prisoners, by informing them periodically through movies, the radio and talks of what happens in the outside world. They are being prepared to live in the free community by acquainting them with the changes that have happened in social life during their imprisonment. This job should be undertaken inside the prison rather than outside. Naturally, week-end leaves are a proper way of bringing the prisoner in touch with social life, but it is not the best way. By the way, in Argentina, as in England and Belgium, the prisoner can leave prison in order to attend funerals, weddings and the other more important occasions of family life. The nucleus of the family is regarded in my country as the basis of social organization, and everything that concerns the family concerns the offender, too, even if he is in prison. But, what I would like to say

is that training for freedom should be an unremitting endeavour, undertaken consistently and daily and not only during week-ends. To that purpose, Argentina has created, in the seventh wing of the Buenos Aires penitentiary, a special pre-freedom section in which the prisoners lead a nearly normal social life. We know very well that the society of prisoners is not the society of free men, but we nevertheless have certain means which permit them to develop among themselves those co-operative relationships which constitute the basis of social life. For instance, they are in charge of everything that concerns the upkeep of the wing, as well as of food. They eat together at tables and may receive their families on certain festival days, for instance Christmas. I mention these few facts only to show that this effort toward social life is conceived of as continuous. Precisely in this lies the very essence of the pre-freedom régime. Such is the sense which one should give to the amendment which I have proposed for insertion in the new version of item III that Mr. Dupréel just suggested.

Mr. *Dupréel** (Belgium), general rapporteur:

May I ask the Chairman kindly to designate a small editing committee for this question too; its job would not be to make modifications in what has been discussed in the Section, but simply to formulate the text of the conclusions in a practical manner. I have indeed the impression that we are very close to an agreement. But, as Mr. Göransson has pointed out to me, if we modify item III of the conclusions so as not to exclude the mandatory conditional release, it would also be necessary to change slightly the wording of number II, beginning with the words: "Conditional release is not automatic...." Here we must introduce the idea that conditional release properly speaking, which constitutes the essential element of the institution, is not automatic in principle but that there may be other forms of release. Also, following Mr. Molinario's observations, one might specify in a very brief manner what is meant by special preparation for social re-adjustment. Since we agree on the principle, this is also simply a question of wording which has to be settled and, consequently, it would be useful that a committee be charged with this task.

The *Chairman** was happy to state that there was nearly unanimous agreement on the questions regarding conditional release. This circumstance would allow the Section to devote more time and

attention to the points on which profound differences existed, and therefore Mr. Cannat would perhaps not be executed as rapidly as he would like.

The Chairman proposed that the final draft of the resolution on conditional release be prepared by a committee composed of Messrs. Dupréel, general rapporteur, Molinario, Göransson, Mathieu and Reckless.

The Section gave its consent.

The meeting was adjourned.

Appendix

*Statement by Mr. Thomas Givanovitch** *(Yugoslavia)* [1])

The criminal policy measure of conditional release, the regulation of which figures in the penal codes themselves, is in its details organized differently in the different codes. One should proceed to the international unification of this regulation, since truth in this matter is internationally the same. But this truth must naturally be stated and the work of the XIIth International Penal and Penitentiary Congress should contribute to this.

We shall state briefly our opinion on certain problems which arise with respect to the institution of conditional release (anticipated or preparatory) and in the solution of which the codes differ.

1) The question which arises first is to know if it is necessary that all offenders sentenced to imprisonment for felonies and misdemeanours might be conditionally released, for instance both first offenders as well as recidivists, citizens as well as aliens. It is consistent with the spirit of the institution of conditional release not to make, at

[1]) Prof. Thomas Givanovitch, of Belgrade (Yugoslavia), who was not able to participate at the Congress, sent the following communication regarding the second question on the programme of Section III (conditional release). This communication expresses only the strictly personal views of the author.

least in principle, distinctions between these different groups of prisoners.

2) Another question is that of knowing what fraction of the duration of punishment should be served by the prisoner before he can be released conditionally. It is consistent with the principle of a certain proportionality of the punishment to make a distinction in that respect, namely that one take into account the duration of the sentence imposed. One should, however, not go too far in differentiation, as is done in certain codes. But one may take recidivism into consideration, as certain legislations do, by requiring, in view of the gravity of the case, that the recidivist serve a larger fraction of the sentence. Moreover, in fixing the fraction, one should not lose sight of the exemplary purpose of repression.

3) Conditional release should naturally be granted on the basis of a thorough knowledge of the prisoner's soul with respect to criminogenesis. Consequently, one should ask oneself which authority will be most competent to evaluate it. One generally assigns this duty to the administrative authority of the prison (recommendation by the governor after advice of the consultative committee of the institution, decision by the Minister upon recommendation of the board of conditional release of the Ministry). The XIth International Penal and Penitentiary Congress of 1935 and especially the IVth International Congress of Penal Law of 1937, having recommended the appointment of a surveillance judge for the penal institution (or of the prosecutor or of a mixed board headed by a judge), this judge was given, among other things, the task of recommending conditional release (our report took the same point of view). In every case, it would be useful to consult the judge who had imposed the sentence and who had therefore had the opportunity of penetrating the soul of the defendant.

4) The question of knowing if conditional release should be to a certain extent mandatory could be answered affirmatively only at the expense of the realization of the aim pursued by this institution. Indeed, by becoming mandatory in certain cases, it would cease to be an incentive to, and a reward for the moral reformation.

5) The question asks if one ought to provide a special régime for prisoners whose sentence is nearing its end so as to avoid the difficulties arising out of their sudden return to community life. One

must accept this positive idea, the application of which will have the purpose of enabling the prisoner to undertake again, as the commentary to the question says, the control of his life and future.

The selection of the prisoners nearing their release and "showing sufficiently positive signs of reformation as to be worthy of support" should naturally be assigned to the authority which has the power to recommend conditional release (see 3).

6) Furthermore, the question arises of knowing what basis for evaluation the competent authority should have in order to make a decision on conditional release. The solution of this problem should naturally be inspired by the purpose of the institution of conditional release. This purpose is to provide the prisoner with an incentive to moral reformation. Now, the symptoms of this reformation are good work habits, correct behaviour toward fellow prisoners and the administration, obedience to prison discipline, the performance (in so far as it is possible) of civil obligations fixed by the sentence, changes in the character which led the prisoner to criminality or at least the acquisition of the power to control his character and especially his passions. These symptoms reveal the possibility of the social readaptation of the prisoner and should serve as the basis for evaluation by the competent authority.

7) In spite of the eventual presence of the basis for evaluation (see 6) which justifies the conditional release of the prisoner, one can ask oneself if conditional release should be permitted in case the prisoner should be subjected to a security measure privative of liberty after having served the sentence. The question is resolved in different ways in the legislations, but considering the fact that punishment has its specific aims, apart from the aims which are common to it and to the security measure, we are of the opinion that conditional release should also be permitted in these cases, the prisoner being afterwards submitted to the security measure privative of liberty pronounced against him.

8) Conditional release should also be provided for in the case of those security measures privative of liberty where it is particularly difficult to establish with some certainty that their specific aim of reformation has been achieved and that consequently release should be final. This is the case of the internment of recidivists in a house of custody and of internment in a labour training institution.

Afternoon Meeting of Tuesday, August 15th, 1950

The *Chairman** opened the meeting and announced that the Section would proceed to the consideration of the third question of its programme:

To what extent does the protection of society require the existence and publicity of a register of convicted persons ("casier judiciaire") and how should both this register and the offender's restoration to full civil status be organized with a view to facilitating his social rehabilitation?

Mr. *Vrij** (Netherlands), general rapporteur [1]):

The penal register was born because of the judge's interest in knowing about recidivism. In order to form a considered opinion about the accused, it was necessary to know if he had been previously convicted. Whether one envisages legal or actual recidivism, the judge would in any case like to be informed of what has happened previously. The first question of Section I deals with the pre-sentence report which is the result of a study of the offender. If upon conviction he then suffers a privation of liberty, imprisonment, conditional suspension of punishment and parole supply additional data about him, his "record". In Holland, since 1930, we have assembled in a personal case history file the reports of the social workers and the psychiatrists about the prisoner together with all the notices from the prisons and the prisoners' aid societies on his conduct during his punishments. But, in the interest of the innovation which the personal case history file represents, it is also necessary to keep a register of convicted persons. First of all, it is basic to the rest. The penal register alone records previous convictions, the starting point of the pre-sentence examination and of later check-ups. Furthermore, in a great many cases which do not justify the making of an informative examination, the court can easily secure a copy of the criminal record. The convictions mentioned therein furnish most often the only exact, although necessarily somewhat limited information, as Mr. Lassen notes

1) General report, see volume V, page 360.

in his report [1]), on the defendant's past. The court knows that the official criminal history, scant and bare as it is, is everywhere and always correct and exact. It would be desirable to make certain data more specific and in place of "theft", for example, state the type of theft, without advocating as ideal a penal register containing all possible details. Must one support the idea that the penal register be developed into a personal case history? Since the latter is set up only for a limited number of offenders, it is important to keep it separated from the penal register, especially when they are kept in the same place. As it would be impossible and dangerous to copy the case history on each occasion, the entire personal case history file should be transmitted for consultation or completion. Keeping it up-to-date requires much more work from a greater number of officials; a notation might easily escape being made in it, while in the case of the penal register, in view of the importance of being able to report that the registry contains *no entries*, completeness is the rule; its very brevity is the best insurance against mistakes.

When, during the nineteenth century, the administration of justice involved the reporting of all sentences by every jurisdiction, the classification of these summary reports in a central register in the Ministry of Justice functioned badly. After Bonneville de Marsangy, in France, had envisaged the bringing together of all the notices of the sentences imposed on a given individual by having such notices sent to the clerk of court in the district of his birthplace, a ministerial circular of 1850 set up an individual register or file for each offender, containing all the notices (Bulletin No. 1) received from the courts which had sentenced him. Upon the request of the prosecuting authorities, the clerk of the court transmitted a report (Bulletin No. 2) containing either a copy of these notices or the reply "no entries"; the judge could then learn at once about the previous criminal record of the accused.

A complete penal register is necessary in each country. In Anglo-Saxon countries and elsewhere where such a register seems to be missing, how is it possible for the court to be certain of taking the previous criminal record of the accused into account? The American report says nothing on this point. As the mobility of a population increases, the police find it increasingly difficult to trace a given

1) See list of rapporteurs, loc.cit., note.

individual's criminal history. The police undoubtedly set up a modus operandi file, based on the techniques employed in certain crimes, in order to locate persons who use a peculiar fraudulent trick or a special form of burglary. But to learn about past criminality the police should in addition consult the penal register. If, as in Sweden, the police publish a list of persons arrested or "wanted", such a special publication, which might raise unjustified suspicions, should not be circulated outside the police departments. Records concerning the conduct of a prisoner during his prison term should not leave the institution except when they are included in his personal case history. The variety of penal registers maintained by different administrations, as in certain Scandinavian countries, should be replaced by a single register in the local jurisdiction. For this purpose, the French system of decentralization, through the offices of the clerks of court, has never been equaled.

The content of the penal register has not been much discussed in the reports. The judge should be able to find in it all sentences to punishments or security measures, including measures against juveniles, which furnish him with his chief information about the past of the adult. To important minor offences, the convictions of which are also registered, it is necessary to add violations of traffic laws, drunkenness and offences against economic laws. By including disciplinary and administrative decisions which result in the loss of certain offices, the prosecuting authorities would no longer need to seek data in special registers of uncertain value. To add bankruptcy notices would duplicate the *civil judicial register* which in turn would seem to be a more suitable depository for social information of a non-criminal nature. Should we copy France, who in 1945 increased the scope of reporting? Should we also add notices of dubious acquittals or of acquittals due to a withdrawal of the complaint, as in Italy?

Since the penal register may be challenged in criminal cases, it does not make unnecessary the introduction of authenticated prior sentences. The practice of reciting the prior criminal record at the beginning of the trial is criticized; the public should never be informed of it and if the judge already knows it from the documents in the case, the jury should not be informed of it until a verdict of guilty has been rendered. In order to keep it secret, the copy of the

penal register should not remain among the documents in the case but should be sent back.

Since the penal register should serve the administration of justice, it should also serve the administration of foreign justice. First of all this makes the register more complete. From the beginning France arranged with other countries to exchange reports of sentences of their nationals. At our second Congress France drew attention to the penal register, and the third Congress demanded the adoption of a uniform system by means of international convention and, until such time, an exchange based on bilateral treaties. Besides, a foreign jurisdiction may, in order to prosecute a particular individual, request information on his prior sentences; such assistance is often given without any treaty.

However, in this connection one becomes conscious of a preoccupation with the attitude that should be taken with regard to recidivism and the effect it should have on the determination of the punishment. In what foreign justice might one have enough confidence to utilize the sentences which it imposes? The congress of the International Association of Penal Law of 1937 postulated a multilateral convention defining the mode of exchange of information contained in the penal registers and special conventions to set up the procedure.

I shall now take up the second part of the problem which concerns the information on the convicted offender and his social rehabilitation. Apart from its essential function as a source of information for the administration of justice, the penal register serves other purposes: it furnishes criminology and judicial statistics with information of an impersonal nature. On the other hand, criminal statistics which needs more numerous data must secure more detailed reports from the clerks of court. Since criminologists and statisticians observe secrecy and avoid everything that might identify the offender, the latter's interests are in no way injured.

The matter takes another turn when it comes to other secondary purposes, namely the transmission of personal information to persons interested. This is what has caused people to talk about the public character of the penal register. Bonneville de Marsangy who advocated the placement of the penal register "in the clerk's office of the district of birth.... from the three points of view of the repression of crimes and misdemeanours, the purity of

the lists of electors and jurors and social moralization", hoped that the last mentioned effect would emerge from the criminal's fear of dishonouring his family and from his need for public respect – in brief, from the threat residing in "local publicity", in order to use his own expression. Experience has demonstrated that moralization induced by the beginner's salutary fear of having a "register" cannot balance the demoralization of the convicted offender caused by the disastrous aversion which people have for all those who "have one"; nevertheless the unfortunate publicity of the "register", no matter how restricted, has been retained. When plans are made for reducing it as much as possible, the interests involved must be weighed in order to decide what items of information lend themselves to transmission.

Sometimes (consider the lists of electors or jurors of which Bonneville de Marsangy spoke) the law excludes from the exercise of certain rights those who have undergone certain sentences. When a non-judicial public administrative service must determine the facts one could not legally deny it a copy of the penal register. Nevertheless, the situations in which this single fact is decisive should be reduced in number or abolished. If the court wants to know the criminal record of a witness the matter is placed at the judicial level. Then there are the cases of people who merit honorific distinctions or have the necessary qualifications for positions of trust or for a representative function, both more or less spectacular illustrations. Since in all such cases, the authority of the State would be rendered a disservice by public discussions concerning the past of the person involved, the administration is compelled to enquire into his criminal record. A prior conviction may cause it to hesitate to grant a favour to a person whose present merits are unquestioned; by failing to do so he is in no way harmed.

Public social assistance services which must form an opinion about some poor client have as much right as have the prisoners' aid societies, if not the courts, to a report from the penal register. In such cases it is not a question of hampering resocialization but the contrary.

In most other instances, when it is in the interest of the State to secure information, it concerns candidates for public office. Cases in which a private person would be interested would involve the filling of vacant jobs in his business. The State can with greater

justification than a private individual demand to be informed about a person to whom it proposes to confide a part of its task; furthermore, it is obliged to select candidates with the best qualifications, while a private employer has full freedom of choice. But, the two groups become less distinct when one compares state enterprises and great commercial groups. Private employers know to a large degree how to get information from the penal register either directly, by pleading a serious need, or by putting pressure on the candidate, when he alone is in position to secure the information. Our fourth Congress already regarded the too free use of the register "as a real hazard for the aid to prisoners, an obstacle to finding jobs and, therefore, a fatal cause of recidivism by released prisoners". There are unquestionable instances, such as those involving positions in child welfare services or many positions of trust of a less spectacular nature than those already mentioned, but there are also abuses growing out of a century-long battle in which justice has had to concede too much to other state organs and to society. Our tenth Congress at Prague, in 1930, demanded that one "conciliate the need for knowing the past history with efforts tending to make it easier for a released prisoner to earn his living honestly". That Congress wanted to improve the chances for rehabilitation. Should not we also consider a reform in the penal register system?

In France, according to recent legislation, the clerk of court in the district of a person's birthplace transmits the complete criminal record (Bulletin No. 2) to certain public administrations and to the judicial authorites, but to others and to the individual involved he sends an expurgated report (Bulletin No. 3) containing only unconditional prison sentences for crimes or misdemeanours. In the countries that do not permit the sending of a copy of the criminal record either to the person involved or to private persons the custom has developed of issuing a certificate of good moral character or a certificate of good conduct and moral character. For specified purposes, the person involved may apply for such a certificate to a local authority, usually the mayor. The latter prepares it on the basis of information which he secures from the penal register and the impression gained of the applicant in the locality (police report, etc.). In many places (in the large cities of the Netherlands, for instance) he is aided or even replaced by a

special committee in forming an opinion about the applicant.

In spite of all efforts made to educate public opinion people do not rid themselves of a stubborn repugnance to those who have had anything to do with a criminal court and especially to ex-prisoners. To their minds the stigma persists. Without regard for the development of his personality and the power of goodness, they brand the unfortunate with a single event from his past although it is a grave mistake to identify a person as he is to-day with him who once made a misstep. By making a single error dominate an entire life one kills all effort and deprives a person of his chance.

Fortunately human memory is short; a sentence once public property becomes forgotten. Let us not consider as an ideal to know everything about everybody. Justice, however, which is called upon to repress and prevent offences is obliged to take notice of earlier ones in order to be able to deal with those of the present. It can do so without causing inconvenience. Enlightened by resocialization agencies it has conquered prejudice; on the basis of daily experiences and the science of criminal prognosis, it weighs what it may expect to happen in the life of an offender in the near future.

Neither other public administrative agencies nor private individuals have acquired the habit of thinking in terms of future conduct; they are not specialists in the accurate evaluation of the simple and often sinister facts in the penal register. Thanks to Heaven that it is not their business. They do not worry about sanctions but about work; will the fellow fill a job satisfactorily? A clean penal register yields meagre information; are pupils or soldiers who have never been punished always "the best" as says the report of Lattanzi, and would anything else be true of workers and functionaries? One must weigh social qualities, both positive and negative, and the criminal part occupies only a subordinate place there. The evaluation should be made by an authority that has available all the sources of information about the offender in his present environment and in consultation with a committee of persons competent in such matters. This local authority should, if possible, be a non-political person. In Belgium, for instance, the question is raised whether the three Prosecutors-General attached to the courts of appeal are suitable in view of the local and social character of the problem.

If it is no longer a question of simply expurgating the penal

register report in accord with the law but to use it as one element in the evaluation of a total situation, the extract of the register issued to the person involved or to most of the public services should be replaced by the certificate of good conduct and moral character provided for in each country by uniform legislation. This social certificate is individualized and can be differentiated depending on the special purpose to be served (one would not, for instance, mention a morals offence unless there were a question of a situation presenting dangers in that direction).

Rehabilitation is of general interest for society itself. This interest tries to reach a balance with the interest to reduce the risk incurred in getting people to work. The strength of this general interest introduces, in the case of adolescent offenders, a new element in the evaluation. As for migration, the immigrant country will probably continue to request from us a copy of the official penal register, in which case the degree of expurgation becomes important.

In the third part of my general report I have spoken of the stigma of punishment and of rehabilitation, and I must draw the attention of the Section to a question of terminology which might give rise to certain difficulties. In the English text the word "rehabilitation" has been used to translate what is called in French "reclassement", whereas the French word "réhabilitation" has been translated into English by "restoration to full civil status". Therefore one speaks in the French text of the question of the "réhabilitation pour faciliter le reclassement", whereas in English one speaks of the "restoration to full civil status to be organized with a view to facilitating the rehabilitation". The word "rehabilitation" has, therefore, a clearly different sense in the two languages and a certain confusion might result from it. I hope, however, that since the possibility of such a confusion has been pointed out before entering on the matter it can perhaps be avoided to a certain extent.

The amount of information furnished directly by the penal register or indirectly through the certificate of good conduct and moral character, should shrink as time passes; after a long period without further convictions the transmission of information becomes less necessary and even unjust. At some given moment one might then stop it, for instance after a certain number of years fixed in advance or when the competent organ regards such closure as justified. This is simply suppressing, at some given moment, one of

the consequences of the penal register until then in force; such a suppression is no new device which should be given a special designation. Only one of the rapporteurs, Mr. Vetli, refuses to accept the idea that in the case of the judge, who should, prior to each sentence, consult the complete record of earlier punishments received and would know how to evaluate them, there should be no expurgations allowed; all the other rapporteurs hold that the previous sentences should never be passed over – both sentences and restorations of rights should be indicated to the judge.

The cancellation of the effects of the punishment is the natural consequence of their origin and one can make no distinctions when these effects are not all cancelled at the same time, such as when a civil right is restored later than when freedom from imprisonment is regained. The situation was different when punishments were infamous; when it became a question of annulling this change of status, there was reason for the person's "restoration to full civil status". When the infamous character of punishment was abolished, the idea of underscoring the end of the punishment and the beginning of a new life still seemed attractive.

However, modern criminal law is not in favour of signalizing this change of the offender's status; the prison warden or the parole officer will not fail to make him conscious of the significance of that important moment and, if a symbol is needed, to highlight it for him in some way, but so far as the outside world is concerned it is wisest to have it pass as imperceptibly as possible.

"Restoration to full civil status" has a special character only if rather long after the end of the punishment it transforms an offender from a person punished into one who is again a full-fledged citizen. But the intermediary phase, and hence the device itself, is rather equivocal from two points of view. In the first place, after conditional release there would be a second period of "parole" to which no proper status could be assigned. Besides, after the end of the punishment, there would remain quite evident dishonouring effects. Furthermore, removing from someone a punishment imposed by judicial decision would have the desired effect only by an equally judicial act of restoring his full civil status and not by a simple restoration at law which automatically arrives with the passage of time and has no "re-honouring" effect. It would have no positive value for the convict unless the judge not only makes note of the

absence of new convictions but also produces evidence of good conduct, if not of moral reformation. Would the State show desirable prudence in venturing on such delicate assessments?

In these days, the infliction of punishments which result in the loss of rights tends to have the character of security measures. Consequently, if such privation of rights avoids infringement on the honour of the offender, modern social re-adaptation does not benefit by an official restoration to full civil status. Would it not be better always to respect this honour rather than to make it subject to laws that would first damage it and then later try to repair it? Since the principle of punishment does not imply that compensation for good behaviour is merited, the social rehabilitation service should regard it as natural that the discharged prisoner behaves honourably after his release.

In countries where the procedure of restoration to full civil status is rooted in custom it should be aimed at rendering the best possible results. It will be only one aspect and no publicity should be given to it except at the demand of the person involved. The need for introducing this procedure is hardly felt elsewhere and the Anglo-Saxon countries are unacquainted with it. It is to be hoped that the criminal law will again subject it to study.

In view of these considerations I submit the following draft resolution to the Section:

In addition to informative reports and personal case histories, the registration of certain repressive sentences is indispensable for informing the judge, promptly and accurately, about the previous court history of the accused and thus assist him in his task of fixing punishments and security measures, as well as helping the police in the investigation of crime. The filing of reports of sentences concerning a given defendant in the office of the clerk of court in the district of his birthplace has proved to be the most suitable system.

The copy of the penal register shall not be read at the trial; the jury shall not be informed about it until after a verdict of guilty. After the sentence, it shall not be incorporated in the official record of the case but shall be returned to the authority charged with its care. The indiscreet use of the register or of copies thereof shall be punished.

Legal provisions that make the exercise of certain rights dependent on the content of the penal register shall be eliminated in so far as possible.

The transmission of more or less expurgated copies of the penal register for the use of public administrative agencies of private individuals, whether directly or through the persons involved, shall be replaced by the transmission of a social certificate prepared by a local authority with the advice of a committee

of experts. While based on copies of the penal register and on local information, this certificate shall keep in mind the interest in the social rehabilitation of the individual.

Like the expurgation of the register, the procedure of restoration to full civil status of the person, based on moral reformation, should be individualized; the action taken shall not be publicized except on the demand of the ex-prisoner.

The penal register, the transmission of copies thereof or the social certificates, the expurgation of the register and the procedure of restoring offenders to full civil status shall be regulated by law.

An international convention signed by States shall fix uniform standards for the penal register. In addition there should exist regulations governing the exchange of registered information and other data.

I also wish to add that the question submitted to the Section is extremely important from an international point of view. It is indeed very interesting to examine the penitentiary problem from the point of view of comparative law, and here we face a question which urgently calls for uniformity. Such uniformity is absolutely necessary if one really wants to gain all possible profit from the penal register, but the study of the reports which I have received and which have greatly interested me, has nevertheless taught me that the effort to introduce uniformity in the systems of penal registers has made no progress in our torn world in the course of the last decades.

The *Chairman** thanked the general rapporteur warmly for the clear presentation he had made to the Section and thought that it was gratifying that the International Penal and Penitentiary Commission had chosen such competent persons for presenting the questions studied by the Section. He then called for discussion.

*Chevalier Braas** (Belgium):

I have listened with great interest to the thoroughly documented report of Mr. Vrij. Indeed it is evident that two questions arise : that of information for the judicial authorities and that of the rehabilitation of the offenders. I completely agree with the general rapporteur and want to call the assembly's attention to the dangers of the penal register and the danger which may result from indiscretions connected with this document. The penal register should in all cases be restricted to the departments of justice and the central administrations. To-day it is no longer possible to

conceive of entrusting it to administrations of a subordinate character, for instance municipal administrations, as is done in Belgium. Indeed, such a procedure involves a whole series of regrettable indiscretions from the point of view of rehabilitation and of conditional release. It is true that they are threatened by the penal code — the violation of professional secrecy — but they are insufficiently repressed, either because ignored or because it is impossible to prove them. The first conclusion then which I suggest is that the penal register should obviously be continued, but that it should be kept by the prosecuting authorities with the aid of the clerk of court and centralized, as is done in Belgium, which is excellent. As soon as the clerks know that a sentence has become final, they must, by way of the prosecutor's office, inform the department of justice which will "catalogue" it, if one may use such a term.

With regard to the suppression of this documentation, I do not think that it would be possible and I do not see how the courts of any country could decide upon the fate of the accused without having some data, especially regarding their civil status, their family situation and above all their criminal record. In another Section they have spoken of the pre-sentence report, of an investigation preparatory to the court appearance. They have more or less agreed to say that in a certain number of cases this preliminary examination is desirable, for instance when cases regarding children or morals are concerned. If the penal register is eliminated the judge is deprived of a source of information regarding the personality of the offender. I think, therefore, that one can trust the judges of the various countries, as one can trust the high officials of the public administrations. There is no reason for fearing that an individual's criminal record will be disclosed in court. Everybody knows that the judges and presiding judges are extremely scrupulous with respect to the disclosure of facts which are painful to the parties appearing before them. To eliminate the penal register and deprive the court of all documentation, as some people perhaps propose, would mean depriving the courts of all guidance with respect to the person and the individuality of the offenders, and this would be absolutely dangerous. I think that a second conclusion should be suggested to the Section. After the one which consists in limiting the information of the penal register to the departments of justice or to officials

charged with the prosecution of felonies and misdemeanours, and to them only, the necessity of this communication must be proclaimed, it being understood that it will depend on the discretion of the presiding judges to avoid any public mention of it that might dishonour or discredit the defendant. This need of having the criminal record in the dossier must be regarded as absolutely required.

It will be objected that in this way an individual carries his past with him and that he is followed by this document all during his life. This is an absolutely unfortunate circumstance, I recognize it, but it corresponds to a real necessity. It is certain that there have been conversions, that there have been individuals who have come back entirely to the right path and that the penal register has been an obstacle for them. But the disadvantages which one wants to avoid, namely those of malicious or indiscrete disclosures, will no longer exist if the information from the penal register is limited to the higher administrations and to the courts, and if it is excluded from all inferior, all municipal authorities, all having no judicial character. By way of conclusion, I think, therefore, that we must retain the use of the penal register, but that it must be adapted, if necessary through internal provisions, to the sole necessity of knowing the personalities of offenders. This is a special problem, which can certainly be made the subject of certain uniform provisions. But I would not like that too radical steps be taken in this field in view of the considerable importance attached to the individualization and the personalization of punishment and sentences.

Mr. *Reckless* (U.S.A.):

There are several very important questions, which are bound up with the very fine examination of the question this afternoon. The first, of course, is the conflict between the security of society and the rehabilitation of the offender. I am using rehabilitation here in a social sense rather than in the sense of restoration of civil rights. I should like to mention one or two things, specifically concerning how this works out in the United States.

In the first place, we have a tendency to think that children should not be registered and their fingerprints taken by the police. In instances where children are called to the attention of the police, the police are supposed to keep their names on record in a special civilian file, and if the police need take further action they are

supposed to turn the children over to the juvenile court. The case history records of the juvenile court are supposed to be kept quite confidential and even social agencies must get special permission from the judge or the chief probation officer of the court to see the child's record. Frequently, in the laws of the States – that is, the member states of the United States – there is a definite provision stating that a child's delinquency, under the legal age limit according to the juvenile code, does not constitute a criminal record in any sense.

I should like to make a few more comments as to how this problem works out with the adults. First, as to the pre-sentence examination referred to a little moment ago, I should like to say that in the pre-sentence investigation the previous criminal record, as determined by a man's previous commitments to penal institutions, his previous arrests, etc. becomes a part of the social investigation. To illustrate: After a man in the United States has been found guilty by an adult criminal court, the judge, according to the law, may call for a social investigation which is a pre-sentence investigation. The social investigation is supposed to help the judge to determine whether or not the man is a good risk for probation or suspended sentence. Therefore, the criminal part of that social record is just as important as the social part, and by the social part I mean the man's educational history, his work history, his family history, his habits and attitudes and other private elements in his personality and social background. The judge does not use this information in determining guilt or innocence. The man has been proved guilty, found guilty by jury or has pleaded guilty, and the procedure is that the judge calls for a social investigation of which the criminal record is a part as well as the other social background information.

Now, there is a certain tendency in the United States to transmit this pre-sentence investigation done by local authorities to the prison, to which the man is committed, because there is so much information there that would be of help to the prison. All prisons want that information and it is recognized that the data of the pre-sentence investigation made for courts should go to the penal institution too.

As the terminal part of a man's legal commitment comes parole which, of course, you are thinking of in terms of conditional liberation. At that point, authorities in America attempt to assemble everything known about the man in his previous life and until he goes back to a certain job in his community and to his residence. They want all the

facts summarized and put before the parole board. The parole board is the releasing agency and wants a complete digest of the man's total history. But the criminal record is just a part of the total social record that the parole board wants before it makes a decision as to whether it can release the man under the law or whether he should remain longer in the institution.

After the man is released, this social record goes to the parole agent or parole officer who supervises the man in the field. It is supposed to be used with great discretion which includes as a guide to help this man find a job, to help him with his family problems and also as a guide for the parole officer to notify the local police in case certain unusual problems arise with reference to this man. But the way we like to have it done is that the parole officer notifies the local police that such and such a person is out on parole and that he is supervising this offender, and that, therefore, the offender is in the community. And if the police desires to have any information it should contact the parole officer rather than make an investigation arrest, bringing the man out of his home, taking him away from his job, embarrassing him, humiliating him, etc.

The *Chairman** noted that nobody else wanted to speak, and he asked the general rapporteur to express his opinion on the speeches that had been made.

Mr. *Vrij** (Netherlands), general rapporteur:

At first sight one might deduce from the fact that only a few speakers have intervened that we should be close to being unanimous on the question under discussion. Now, this is not at all the case, and by giving some additional explanations I would like to provoke a discussion which would permit us to gain a full understanding of the problem. Above all there is in this matter a difference between the Anglo-Saxon way of thinking and that of the other countries represented at the Congress. The fact is that the evolution of the knowledge regarding the offender is far from being uniform. On the contrary, it has two clearly different forms, especially on account of the long history which it has had in the countries of Europe. The registration of sentences has been ordered by law in nearly all countries, even from the beginning of the 19th century. But exactly a hundred years ago it took a new form on account of the innovation

brought about by Bonneville de Marsangy which has rendered that registration much more effective. From the beginning of the 19th century each clerk of court was obliged to keep a register of everything done by the court. After the Napoleonic era it was also required that copies of all records be sent to the Department of Justice, the central organ. But nothing constructive was undertaken within that department, where the communications received from the various clerk's offices were not even classified. Then came the bright idea of Bonneville de Marsangy to decentralize the register so that the responsibility for it could be divided. The clerk of each court would have to register, and keep short extracts of, only the sentences which were sent to him by all other courts and referring exclusively to individuals born in the district of the court. In this way, each clerk's office was to keep its own register, the Department of Justice dealing only with sentences of offenders not born in the country and a few other exceptions. This decentralization also favoured the exchange of copies of the register, and France, even at that time, developed the remarkable habit of organizing exchanges even with other countries, and in the beginning especially with countries which no longer exist as such, for instance Bavaria and the Austro-Hungarian monarchy.

In this connection it is interesting to note the misunderstanding which seems to exist regarding the penal register since the time of the second of our congresses. People have continually talked about this institution, but the very fact that the term "casier judiciaire" has never been translated into English proves sufficiently that in Anglo-Saxon countries there existed no institution like the one which is so common on the European continent. And we have the evidence of that to-day, since in the very question which has been submitted to the third Section of the present Congress, the words "casier judiciaire" have been added in the English version to the words "register of convicted persons". Indeed, it seems that no recognized standing expression in English corresponds to the French "casier judiciaire". Now, if we are all convinced of the very great importance of the exchange between states of information regarding offenders, it would be proper that the question of the uniformity of the registers should be the first to be solved. Occasions such as the present Congress have hardly any sense if one does not make an effort to compare the systems in existence, in order to examine what are the difficulties to be surmounted so as to arrive at uniformity and discover

whether one of the systems is more efficient than the other : On the one hand, the Anglo-Saxon system and, on the other hand, the French system and its derivatives, among which I would place the Scandinavian systems, for I believe that there have been attempts in those countries to copy the real French system, with more or less success, as revealed by the well documented and very useful reports presented by the Scandinavian countries. It seems, for instance, that the fact that there should be only one penal register has not been fully realized there.

What about this comparison? When listening to Mr. Reckless presenting the American system, the general rapporteur could perfectly well imagine a Frenchman — in order to take the purest realization of the other system — saying that he has not heard one word being said regarding the penal register. The American speaker has made a brilliant contribution to the study of the first question of Section I, namely that of the pre-sentence report, concerning what should happen to this document after sentence and especially if it should be complemented so as to become an even more useful document than the one prepared at the beginning of the judicial process. But, the special purpose which one wants to fulfil by means of the penal register has not been appreciated by American thinking. The Anglo-Saxons, however, might object to the French and to all those who have followed them in that matter that they care only about one single thing: the registration of recidivism. Now, modern penal thinking teaches us that there are so many other important factors which must be taken into consideration that one may wonder why the old-fashioned European continent has restricted itself to this single item of recidivism.

I had to ponder this question myself when I came to search for a point of agreement among the very heterogeneous reports submitted to me. Being a continental European myself, I felt more inclined to follow the traditions of European thought, which had led me to adopt the following position. It is certainly fortunate that the United States and also Holland, for example, as I had the honour to say in Section I in the discussion of the first question of its programme, have introduced the custom of making pre-sentence reports. It is very fortunate also that very many countries show great interest in this institution and are developing it in their own penal systems, and it may be hoped that after the discussions of this Congress an even greater

number of them will want to utilize this means of information. But, I have never heard a single one of the Americans or the Englishmen, with whom I have had the pleasure of talking during the Congress, say that a pre-sentence report should be made in every case. They regard it as an impossibility and a vain expenditure of efforts too precious to be wasted to make a pre-sentence report in each case. In order to resort to a report, it is necessary that one should be faced with an offence of a certain gravity, though the first Section has come to agree on the fact that the limit in that respect should not be fixed too high. Now, what is the value of the special fact of recidivism? When an individual is sent before the judge for a minor offence, the latter will often be inclined to say that the case he has to decide is rather simple. He will not want to disturb the probation officer or any other person charged with making pre-sentence investigations. This would appear to him as a measure really out of proportion to the importance of the case, and he will think that it is preferable to be content with immediately sentencing the individual concerned to a fine. After that, the offender will laugh and think that because he behaved himself well in court and made a good impression, the judge did not fine him heavily. The judge would probably have acted differently if he had known not only the fact that this man had been brought before him because of a more or less insignificant violation, but that he was a very dangerous criminal. Such individuals can often be held only for minor facts of that kind, as also happens by the way quite often in the United States. Al Capone and many others could not be held except for certain more or less insignificant offences which they had committed, and it was only later that one was able to prove the really serious charges against them.

I think, therefore, that there is some very important truth in that very old idea that the knowledge of recidivism is a very valuable thing in itself which should, therefore, be obtained in all circumstances, and even in the cases in which the judge does not regard it necessary to order a more general investigation. The first thing he should want to know is, how many times this man has been convicted previously and what sentences he got. I do not think — I said so in my general report and I repeat it — that it is necessary to complement the penal register, this very dry and very plain record of sentences. We should not start from the idea that the modern world is in duty bound to develop and amplify this institution. It has only the aim of showing

recidivism, and this is the only reason it is used. But as such, one should be able to resort to it in each case and to organize it so as to assure a complete knowledge of the criminal history. In fact, I ask Mr. Reckless and all Anglo-Saxons : How is it possible for the probation officer or for any other person who has to make a pre-sentence report to collect all the data concerning the offender under investigation if the latter does not furnish them himself? How will that officer know in what direction he should turn to obtain full information? One does not know where the man has spent the greatest part of his life.

Therefore, I think that one should limit oneself to a single and quite simple thing, but a thing which serves as an essential basis for the understanding of the case, one on which one should be able to count, one which should be certain and complete. And that is why I have, with sincere conviction, described the system of the penal register and have proposed, aided by the contributions of all the rapporteurs, certain improvements which might be made in that system. I am not at all attached to the French name of this institution which a Dutchman could easily criticize. Is it really a "casier"? Is it really "judiciaire"? But this is of no importance. What I would like is that there should be in this Section a discussion, an exchange of views between Europeans and Anglo-Saxons regarding the desirability of this division of the sum total of the information on offenders: On the one hand, the invention made a century ago by Bonneville de Marsangy, aiming only to assemble the sentences imposed together with a very dry mention of the punishments inflicted, and on the other hand that magnificent development, given to us by the 20th century, of the pre-sentence examination and the collection of its data in a personal case history of the offender, a problem which has been examined in the first Section.

I think, furthermore, and I do not know if this is a matter of pure chance, that there is a second controversy which also separates the Anglo-Saxon and the old European thought: that is the one that concerns the method of "réhabilitation" in the French sense of the term, what the Anglo-Saxons call restoration to full civil status. The fact that the English language does not possess a specific and recognized expression to qualify this institution shows sufficiently that it is not generally known in the United States and the United Kingdom. For that matter, I want to specify beforehand that

I lean in that respect much more toward the Anglo-Saxon point of view than toward the Continental one. I think that restoration to full civil status should no longer be accentuated in penal legislation, for it is not in harmony with modern penal thought. This point of view is certainly not generally shared, for one can see great advantages in that institution, and I am convinced that the Belgian and French members of the Section might come to its defence. But, as far as I am concerned, I think that restoration to full civil status should not be regarded as an autonomous institution; it should disappear as such from the penal law. I hope that I have expressed this idea with sufficient caution in my draft resolution, so that it will not be defeated by the members of the Congress. At any rate, I think that one should not enter upon the discussion of this question before having proceeded to an exchange of views with respect to the first vital question of which I spoke. Should we still talk of a penal register or should we be persuaded by our Anglo-Saxon colleagues that such an institution should no longer retain an existence of its own, but that the special details which the penal register supplies, which only aim to clarify the question of recidivism, should be incorporated in the pre-sentence report of which they only form one part. In that case, this pre-sentence report should naturally be extended to all offenders; otherwise I would not let myself be convinced of the superiority of the Anglo-Saxon system, for to me it seems indispensable that the judge should in all cases have the data about recidivism, that he should know with respect to each offender if he has already been convicted and to what punishments he has been sentenced and this quite independently of the question of the other extremely valuable data which one might obtain by means of the pre-sentence examination and report.

Mr. *Reckless* (U.S.A.):

My preceding and very able colleague has shown an unusually fine sense of discrimination and understanding but I wonder if I could hurriedly describe to you the form of a good pre-sentence investigation in the United States; perhaps that might clarify some of the issues that have been brought into this fine discussion. For instance, a very adequate pre-sentence investigation which is at the same time a social investigation would deal with the following topics.

First, the present offence and the defendant's rôle in it.

Second, previous offences, convictions and commitments to institutions as discovered by local police authorities through full and complete clearance through the Federal Bureau of Investigation which has a record of every police jurisdiction, sheriff, institution, every penal institution that have ever fingerprinted the defendant in the legal process. That record is absolutely complete, much better than could ever be obtained from any clerk or any judicial officer of a court. The second item of the pre-sentence investigation would then cover previous arrests, convictions and admissions to institutions.

Then, the third item in a well made pre-sentence report would include the family history; where the man was born, the social and economic status of his parents, the family background, any insanity and convictions among family members, the conditions of the home, whether there is discord in the home, who is living in the home, etc.

The fourth item would include the educational history and this would be based on data verified at the schools involved, how far the man went to, and reached in schools, and what his grades were. If they have given him a psychological examination that will be included, etc.

The fifth item — work history — would be verified by personal contact with the last one or two employers. If there are other employers of importance to the investigation they would be contacted by writing.

Item six would include the man's social participation and his social habits, what he is participating in, how he spends his leisure time, where he "hangs out" — to use a slang expression — what his habits are, what can be discovered about alcoholism, drug habits, sexual promiscuities.

Item seven would include the medical or the health history, any medical examination at hospitals, any examination by the family physician; it would include any mental examination; if the court has ordered the probation officer to arrange a mental examination by a psychiatrist it will include those findings also.

In conclusion, the probation officer usually makes a summary and says to the judge: "Here we have a thirty-two years' old, white offender, who is married; he has been separated from his wife, has not been supporting his family. This is his second important offence;

he has several previous minor offences in his record; he has been unemployed, running around with bad company; we think that he is a very bad probation risk". This is signed by the chief probation officer and that is what would be included in a well-done pre-sentence examination report.

There are other verifications. In the pre-sentence report, for instance, the marriage certificate would be verified, likewise the birth certificate; there would be clearance through the social welfare agencies to see if his family has been known to have received public assistance or aid from a private or public agency. That clearance is done at the same time as the clearance through the Federal Bureau of Investigation and the local police is done.

Now, when the pre-sentence investigation is presented to the court, it is presented — in the American system — after the plea of guilty or the verdict of guilty by the jury, and this document, this social investigation, includes also the social history as well as all the extant, available criminal history of the defendant. On that basis the judge, according to law, is to consider whether or not to place the man on suspended sentence or probation, or he can deny the man probation and order the sentence to take effect in which case the man is committed to an institution. And, if there are good relationships between the penal institution and the probation office a record, a copy of that pre-sentence investigation, goes to the institution.

Does that clarify a little the nature of the pre-sentence report? I hope that we can bring this up again, when there may be more time. I am sorry this very interesting and controversial subject has come up at the very end of our Section meeting. I am not implying that the Anglo-Saxon system, as worked out in the United States to-day through pre-sentence examination, is better or is worth more than any other system, for instance the French one. I am not suggesting that. I am merely attempting to clarify the nature of a well-done pre-sentence examination.

I should ask this, in all fairness : How many well-done pre-sentence examinations are made in America? Not too many. There are a great many done. There are a great many investigations that are of very limited scope. They represent merely investigations in which the defendant is taken down to the private office of the probation officer and is asked several questions. But the ideal and well-done type of record is a field investigation. It takes in many instances

twenty-four hours full-time employment to do it, to check on sources. A poor investigation takes a couple of hours perhaps; a fair investigation will take one and a half to two full days; a well-done investigation will take three days or more, if the probation officer spends all his time to explore all the sources of data.

The *Chairman** said that he did not plan to close the discussion regarding this question, but to continue it during the meeting of the Section the following afternoon. Nevertheless he gave the floor to the general rapporteur who had asked to say some words regarding the last statement by Mr. Reckless.

Mr. *Vrij* (Netherlands), general rapporteur:

I fear that in trying to clarify matters I have only made them more confused. Indeed, I had not at all the intention of raising the question of knowing what is contained in the pre-sentence examination and report. This question has been dealt with and, by the way, was to be dealt with in Section I and not here. I shall reply in a few moments to Mr. Reckless with respect to the question of what should be said regarding recidivism, but all the other points which Mr. Reckless has raised are probably known to the majority of the members of the Section, and at any rate to the Dutch. I have asked the inspector of the probation service of the Netherlands, who is at the same time inspector of the pre-sentence examination service, to be allowed to show the Congress a certain number of pre-sentence reports made in the Netherlands, and I have right here about two dozen reports emanating from seven different districts. I am mentioning the authorization received only because of the secret character of these documents and the discretion which the members of the Congress would naturally wish to show with respect to them. Besides, I think, and this is something of a point of order, that everybody is out of order, both Mr. Reckless and I. Therefore I invite my interlocutor to continue in private the conversation which has developed, in order not to have the Congress spend any more time on the question raised.

There is, however, one point which bears directly on the discussion, and that is this : Does the pre-sentence report as set up in American practice make certain that the judge knows in all cases whether or not there is recidivism? If we are told that the pre-sentence report is required and presented in a great number of cases, but not

in too great a number of cases, this convinces us that the answer to this question must be negative, and that in America a judge, having before him a man whose case he does not regard sufficiently difficult for an examination to be made, does not possess any data regarding the recidivism of that particular individual.

Then, Mr. Reckless has strengthened my conviction so far at least – although I hope that the conversation which I will have with him to-night will make me change my mind – that if a pre-sentence examination is made, no official who made it and the subsequent report can be sure that he knows and has recorded all sentences whatever which will have been imposed on the particular offender. Therefore, I would be inclined to conclude that if we can, criminologically speaking, come to an agreement on the fact that the circumstance of recidivism is an item which the judge should know in any case, the system of the penal register which now has existed for a century – and we might take some pride in mentioning it – is really superior in this respect to the system of the pre-sentence examination alone. Perhaps the Anglo-Saxons should in turn ask themselves if, at the same time as they develop in a so remarkable manner the system of the general pre-sentence examination, they should not consider complementing this institution with the very dry and very simple system which assures – and one must insist on this word – which assures a full knowledge of previous convictions. I think that this is a question which it would be a good idea to think about until to-morrow afternoon.

The *Chairman** indicated to the Section that the discussion on this problem would continue in the course of the meeting the following afternoon, after the Assembly had discussed and accepted the conclusions concerning the first and the second question of the programme. In order to facilitate the discussions on those conclusions, the Chairman asked Mr. Belinfante, one of the Section secretaries, to bring the Section up to date on the result of the deliberations of the committee appointed to examine Mr. Cannat's proposal concerning the first question of the programme: *Short term imprisonment and its alternatives (probation, fines, compulsory home labour, etc.)* This committee had met early in the afternoon.

Mr. *Belinfante** (Netherlands), secretary of the Section, informed

the audience that the drafting committee agreed on the text of the following proposition:

The XIIth Penal and Penitentiary Congress states once more the serious and numerous inconveniences of short term imprisonment. It condemns the common practice of imposing short term imprisonments.

It expresses the wish that the law shall as little as possible further this type of imprisonment and that the judge shall be free to pronounce to the greatest possible degree alternative measures, such as already exist in certain countries, for instance conditional sentences, probation, fines and judicial reprimand.

The drafting committee had not so far discussed the other conclusions of the general report of Mr. Göransson.

The *Chairman** announced that the text arrived at by the drafting committee would be published in the Bulletin the following morning and would be discussed the following afternoon.

The meeting was adjourned.

Afternoon Meeting of Wednesday, August 16th, 1950

The *Chairman** opened the meeting and called for discussion on the draft resolution concerning the first question of the programme: *Short term imprisonment and its alternatives (probation, fines, compulsory home labour, etc.).* The drafting committee which had been designated and which had met under the chairmanship of Mr. van Drooghenbroeck had done a remarkable job, and the Chairman hoped that the compromise it had arrived at would be adopted by the Section without too long discussion.

Mr. *Cannat** (France) stated that, in the same spirit, he would withdraw the proposition which he had previously presented.

The *Chairman** noted that this proposition would therefore not be submitted to a vote.

The draft resolution submitted to the Section read as follows:

1. Short term imprisonment presents serious inconveniences, from a social, economic and domestic point of view.
2. The conditional sentence is without doubt one of the most effective alternatives to short term imprisonment.
   Probation conceived as suspended pronouncement of sentence or as suspension of execution of sentence, appears also to be one of the solutions much to be recommended. The granting of suspended sentence or of probation to the offender should not necessarily prevent a later grant of a similar measure.
3. Fines are quite properly suggested as a suitable substitute for short prison terms. In order to reduce the number of those imprisoned in default of fines it seems necessary that:
   (a) the fine be adjusted to the financial status of the defendant;
   (b) he be permitted, if need be, to pay the fine in instalments and be granted a suspension of payments for periods when his income is inadequate;
   (c) unpaid fines be converted into imprisonment not automatically but by a court decision in each individual case.
4. It is suggested also that recourse should be had to judicial reprimand, compulsory labour at liberty, the abstention from prosecution or a ban in certain cases against exercising certain professions or activities.
5. In the exceptional cases when a short term imprisonment is pronounced, it should be served in conditions that minimize the possibility of recidisvism.

To summarize:

The XIIth Penal and Penitentiary Congress states once more the serious and numerous inconveniences of short term imprisonment. It condemns the common practice of imposing short term imprisonments.

It expresses the wish that the law shall as little as possible further this type of imprisonment and that the judge shall be free to pronounce to the greatest possible degree alternative measures, such as already exist in certain countries, e.g. conditional sentences, probation, fines and judicial reprimand.

Mr. *van Buuren* (Netherlands):

The compromise which the committee has reached regarding the proposition of Mr. Cannat, the text of which figures in the summary following the draft resolution properly speaking, may give rise to a certain confusion. I have spoken about this question with a certain number of members of the Section, especially with the delegates of Northern Ireland, and I wish to make a motion to amend the text. The second sentence of the summary, first of all, seems ambiguous if one compares the English and the French versions of the draft, and two explanations are possible. The French text declares

that the Congress condemns the use which is presently made of short term imprisonment. Therefore, one can deduce from that a condemnation of that institution as such. Yet, the English text declares : "It condemns the common practice of imposing short term imprisonments". The use of the word "imposing" seems to indicate that here it is the use which the judge makes of short term sentences which is condemned, and not the short term sentences themselves. I think that we should harmonize the two texts so that no confusion will remain on the real opinion of the Congress. But in doing so, I would like to make still another change in the text. Indeed, there are cases in which one cannot and should not discard short term prison sentences, as Mr. Göransson has clearly stressed in his general report. This point has been made clear in clause 5 of the conclusions presented to the Section, which retains the hypothesis of the use of short term sentences. Nevertheless, I think that this should also be specified in the summary. I consequently propose to amend the second sentence of the latter, so as to say that the Congress "condemns the all too frequent and indiscriminate use of short term imprisonment".

The third sentence of the summary raises still another problem. I have the impression that the Irish members of the Section, and I share their opinion, would like to see a slight modification made in the wording of that sentence. The English text actually says: "The Congress expresses the wish that the law shall as little as possible further this type of imprisonment and that the judge shall be free to pronounce....", whereas the French text says: "Le Congrès émet le voeu que le législateur fasse le moins possible appel à ces peines et qu'il soit loisible au juge de prononcer....". I would like to have the English text say "have recourse to" rather than "further" which would seem more in conformity with the idea expressed by the French text. But on the other hand, I would like to propose another modification in this sentence by introducing the idea that the judge is not simply "free" to impose measures of a different type, but that he should be encouraged to do so. I therefore propose that the third sentence read as follows: "It expresses the wish that the law have as little recourse as possible to this type of imprisonment and that the judge be encouraged to pronounce to the greatest possible degree alternative measures....".

Finally, I would like to remark that in the English text of the

same sentence we should avoid the word "pronounce" which no doubt applies to a punishment, but could not, it seems, in English law be used with regard to a measure, according to what a British member of the Section has told me. As for the rest, I am in full agreement with the draft resolution presented.

Mr. *Hurwitz* (Denmark):

I regret that I have been unable to attend previous meetings of the Section, having been occupied by the work of other Sections. But, I hope that it is not too late to present a few remarks of a general nature which, furthermore, are directly related to my view on the draft resolution which has been submitted for the assembly's consideration. I understand very well that the text to be discussed is the result of a compromise, and that it is also in a spirit of compromise that the remarks of the preceding speaker have been made. But, I persist in thinking that the draft takes too categorical a stand against short prison terms. I believe that it is necessary to recognize the fact that one must resort to short term sentences, and this not merely to a small extent. The wording of the resolution should, therefore, be formulated in such a manner that one does not too categorically condemn a practice which is after all inevitable. It has been for a very long time a mistake of numerous scientific congresses to condemn things that are necessary, and it is hardly desirable to have a gap between practice, on the one hand, and theory and reform movements on the other. We should admit that behind the facts there are realities which one cannot ignore. I therefore propose that in the summary following the resolution we should not use the phrase "It condemns the common practice of imposing short term imprisonments". I would prefer an expression such as: "It warns against the uncontrolled use of short term imprisonment", or some other wording in the sense of that proposed by Mr. van Buuren.

The third sentence, however, should not express a simple wish in the manner proposed here. It should take a more realistic stand. I am thinking of the report which Mr. Andenaes presented on this question; he stated that very few things are known about the consequences of short term prison sentences, and that this question would deserve to be studied thoroughly. We should in fact undertake post-release studies in a scientific manner, so that we might see what the results of short term sentences really are. And

the most judicious wish that we might express would be that this whole matter should be the subject of serious research.

Finally, I should like – and this will be my last remark for I am aware that I am entering this debate at a very late hour – that above all the hope of a transformation of the nature of short punishments be expressed, and not simply their abolition. That type of sentence should be served more and more in the form of work in open institutions, etc. It is the affirmation of this truth which is important and not that of the necessity for abolition, which would in any case be impossible.

The *Chairman** reminded Mr. Hurwitz that if he wanted to propose a formal amendment, he should present it in writing, signed by six members of the Section.

Mr. *Williams* (Northern Ireland):

I quite agree with much of what the last speaker said, and the reason why I intervened two days ago was to avoid too much condemnation of the short term imprisonment. I would like to draw the attention of the last speaker to the new wording in English, which is that it condemns "all too frequent indiscriminate" and in that sense I think we have got perhaps very near to what he has in mind. Now, I would like to make very minor verbal changes in the English, not affecting the basis of the French at all. The first sentence reads: "the inconveniences"; perhaps a better English word for that is "disadvantages". Now, if I may mention for one moment the conclusions in the seventh line, you have: "probation conceived as suspended sentence". In English law, probation is not a suspended sentence. Under Section III of the Criminal Justice Act of Great Britain, 1948, probation is quite distinct from a suspended sentence. If you are put on probation you are not as an alternative sentenced to any imprisonment. Should you fail to keep your probation then you return and then you are sentenced. I would like, therefore, to make this verbal change: "probation conceived as suspended pronouncement of sentence or as suspension of execution of sentence".

The *Chairman** proposed that the discussion be limited to fundamental questions such as the ones raised by Mr. Hurwitz. If a member of the Section merely wanted to move changes in wording, he could suggest them to the officers of the Section who were to prepare the final text of the draft resolution.

This procedure was agreed by the Assembly.

Mr. *Cannat** (France):

I shall not reply to Mr. Williams since what the Chairman just said prevents me from insisting on this point. With respect to Mr. Hurwitz's statement, however, I only want to point out that the text submitted to the Section which does not satisfy him completely, does not satisfy others either, including myself. But it is a compromise. Now, every compromise is fragile, and I beg the assembly not to ruin the proposed solution. It is the result of several hours of difficult deliberations during which an attempt was made to harmonize the points of view of Sweden, Belgium, the Netherlands, the United Kingdom and France. We have, in every phrase and by weighing every word, tried to avoid that anyone would be too definitely pained by the formulation arrived at. That is why it would be wise not to insist too much now on ruining the compromise.

The *Chairman** stated that nobody else had asked for the floor and he asked Mr. Hurwitz if he intended to present a formal motion to amend the draft submitted.

Mr. *Hurwitz* (Denmark) said that he was not at the moment able to formulate a motion in writing and immediately obtain the signatures of six members of the Section in its support, but he reserved the right to raise the question in the General Assembly if he regarded it as necessary.

The *Chairman** put the draft resolution to the vote and it was adopted by the Section without dissent [1]).

The *Chairman** called for discussion on the conclusions prepared on the basis of the earlier deliberations on the second question of the programme of the Section: *How should the conditional release of*

[1]) See final text of the resolution, as edited by the Bureau of the Section in the Proceedings of the General Assembly, page 436 below.

prisoners be regulated? Is it necessary to provide a special régime for prisoners whose sentence is nearing its end so as to avoid the difficulties arising out of their sudden return to community life?

These conclusions were formulated by the general rapporteur, Mr. Dupréel, assisted by Messrs. Molinario and Göransson, as well as by the secretariat of the Section, and the Chairman gave the floor to Mr. Dupréel to present them.

Mr. *Dupréel** (Belgium), general rapporteur:

The committee whose mission it was to find a formula that might satisfy the tenor of the different views that had appeared in the course of the general discussion, met this morning and is now ready to submit its conclusions. The committee has reached complete agreement on a text which on certain points modifies the orginal conclusions of the general report [1]). The first of these modifications consists in saying in clause I of these conclusions that "The protection of society against *recidivism* requires the integration of conditional release....". Indeed, it is especially recidivism which one has in mind here, and this formula is more precise than that which speaks in a general manner of the protection of society against crime.

Mr. Göransson, on the other hand, has asked that at the beginning of clause II the sentence be deleted, which states: "Conditional release is not automatic". As a matter of fact, he had pointed out to the Section, as you recall, that in some countries there is a somewhat special kind of execution of the punishment, toward its end, which consists in placing the offender in liberty even if the prognosis of recidivism is very bad, even in cases where one is faced with an individual who has already a criminal record or with somebody who has behaved badly in prison. The committee has adopted a new and more flexible wording, for everybody has agreed that there can be a kind of automatic release toward the end of the punishment, on condition, of course, that side by side with this institution there is also a system of discretionary conditional release, which might be put into operation much earlier when one has to do with offenders whose prognosis is favourable. Therefore,

1) See text of these conclusions, pp. 250–51 above.

the idea of conditional release of two types has been introduced: a release properly speaking, which occurs as soon as possible with the purpose of rehabilitation, for example as soon as one third of the sentence has been served, and then a different release, which one might call trial release or temporary release, which can occur even in bad cases, but only toward the end of the punishment, for example when five sixths of the sentence have been served, if one wants to imitate the Swedish example. In adopting this formula, the intent of the members of the committee has been to avoid at all cost that a man leave the prison at the end of his punishment without any measure of re-adaptation to social life having been possible.

Finally, at the request of the Argentine delegation, the committee has introduced in the text proposed to the Section the idea that it is useful that, toward the end of the imprisonment, a special régime should be organized in view of release. This is what is called a pre-freedom régime regarding which one can express the wish that it be instituted in all cases. Indeed, one must avoid that a man leave the prison without having been able to have the advantage of a régime preparing him for release.

After these explanations, I shall read the new text of the conclusions of my general report which is now submitted to the approval of the Section in the form of a resolution.

1. The protection of society against recidivism requires the integration of conditional release in the execution of penal imprisonment.

2. Conditional release (including parole) should be possible, in an individualized form, whenever the factors pointing to its probable success are conjoined:
   a) The co-operation of the prisoner (good conduct and attitudes);
   b) The vesting of the power to release and to select conditions in an impartial and competent authority, completely familiar with all the aspects of the individual cases presented to it;
   c) The vigilant assistance of a supervising organ, well trained and properly equipped;
   d) An understanding and helpful public, giving the released prisoner 'a chance' to rebuild his life.

3. The functions of prisons should be conceived in such a way as to prepare, right from the beginning, the complete social re-adjustment of their inmates.
   Conditional release should preferably be granted as soon as the favourable factors, mentioned under 2, are found to be present.

In every case, it is desirable that, before the end of a prisoner's term, measures be taken to ensure a progressive return to normal social life. This can be accomplished either by a pre-release programme set up within the institution or by parole under effective supervision.

The *Chairman** noted that there was no difference in principle between the conclusions of the general report of Mr. Dupréel and those of the drafting committee. Consequently, he thought it possible to proceed immediately to the discussion of the latter, although it had not been possible to distribute the text due to lack of time.

Nobody asked for the floor, and the *Chairman** stated that no objection was made to the conclusions. Consequently, they could be regarded as unanimously adopted by the Section and the Chairman congratulated the whole drafting committee and particularly Mr. Dupréel for the remarkable job they had done.

(Applause)

The *Chairman** asked Mr. Dupréel to accept the task of rapporteur of the Section to the General Assembly for the presentation of the two first questions of the programme.

Mr. *Dupréel** (Belgium) agreed to do so.

The *Chairman** announced that the Section would now continue the general discussion of the third question of its programme: *To what extent does the protection of society require the existence and publicity of a register of convicted persons („casier judiciaire"), and how should both this register and the offender's restoration to full civil status be organized with a view to facilitating his social rehabilitation?*

Before giving the floor to the general rapporteur, who had some more points to make, the Chairman reminded the Section that it was necessary that the discussion on this question be terminated during the day since there would be only one more meeting on Friday to examine the draft resolution to be submitted. Furthermore, he planned to propose at the end of the meeting that a committee be appointed to draft the resolution.

Mr. *Vrij** (Netherlands), general rapporteur:

Yesterday I thought that it would be advisable to reply first of

all to the objections and remarks which had been presented by Mr. Reckless, who had revealed to us Europeans that there was, on all of this question, a great misunderstanding and that even if no speaker asked for the floor, the unanimity reached about the conclusions of the general rapporteur would have been only an apparent one. In doing so, I had to pass over the very keen observations which Mr. Braas had made on this matter; I greatly regret that he is not attending to-day's meeting, for the importance of the questions which he raised obliges me to say something about them. It will, by the way, be a preliminary observation of a nature to help us put some order in the complex whole of the problems which arise with respect to the study of this question. Mr. Braas examined the point of knowing if the local authorities should, in the future, also be given power to transmit information drawn from the penal register, and he expressed the opinion that this information should only be furnished by judicial authorities, which alone would decide what data drawn from the penal register should be furnished, taking into account all interests of the person concerned, interests which are greatly at stake in the particular case. For the moment, I only want to point out in this connection the fact that we are faced with three questions which we should approach in their natural order. There is first of all that of knowing whether or not it is necessary to have a penal register, for we are faced with a difference of opinion, and we must find a solution reconciling the two points of view. Now, Mr. Braas yesterday dealt with the question of what information drawn from the penal register should be furnished, no matter what the system of registration, and this question is undoubtedly subordinate to the first. One must examine what kind of register one wants to adopt before being able to decide the question of the information which should be taken from it. And, in order to indicate my line of thought from the very beginning, the third question is what expurgations should be made, either in the register itself or in the data requested from it. Is it necessary to have as formal an institution as rehabilitation, in the French sense of the term, in order to put an explicit end to the survival of the punishment?

I think that the problem having been outlined, I should go back to the first question which is the one that separated me yesterday from Mr. Reckless. I have drafted a text on this point which I have not had the chance to submit to Mr. Reckless, but I nevertheless

hope that it will be possible to continue the fruitful exchange of ideas begun yesterday afternoon and to find a common ground.

The *Chairman** declared that he intended to ask Mr. Reckless to be a member of the committee which would have to draft the conclusions to be submitted to the Section on Friday.

Mr. *Vrij* (Netherlands), general rapporteur:

After yesterday's meeting I had the chance of conversing, not only with Mr. Reckless but also with a certain number of other Anglo-Saxon members of the Congress, and I discovered that the misunderstanding, which seemed to separate me from them, is perhaps not so great as one might fear. The fact is that we all have, and particularly after the deliberations in the first Section, a sufficiently clear idea of what a pre-sentence report contains also in America, but Europeans think that this is not the problem with which we are dealing in the third Section of the Congress. The question here is not one of preparation for the sentence which the judge is to pronounce, but rather that of knowing what the register has to do with the prevention of crime. The assembly probably knows that at previous congresses Section III has always had the general title of "Prevention". And it is in that spirit that the programme of the Congress has been prepared this time also. It is, therefore, not solely a question of data supposed to enlighten the judge with respect to the decision he is to make.

In a way I challenged Mr. Reckless yesterday when he told me that America perhaps possesses very well-made pre-sentence reports, but that they are made only when the judge asks for them, so that there would seem to be some superiority in the old European system, which might be called the French system, copied and perhaps improved in other countries. Indeed, here the judge gets, and this as a matter of course even if he has not asked for it, an extract of the penal register in each case which he is called upon to examine and which does not involve merely a petty police violation. And, if we study the question of the effectiveness of the system, one must well admit that with the sole exception of that very costly institution existing in the state of the President of the Congress, the New Jersey Diagnostic Centre, one is unable everywhere else in the world to proceed in all cases to pre-sentence

examinations of the kind we have in mind here. All institutions of that kind, and even a probation service and a service of other social workers whose task it would be to make this kind of examinations and to prepare such reports on the widest scale one might imagine, will have to restrict themselves to the most important cases. That is where the superiority lies of which I spoke yesterday, superiority in the sense that the judge will have some data on the man who stands before him even in the mildest cases, even if one is faced with an individual who deserves only a slight fine, for instance, and who does not at all appear to be dangerous criminal – but who might perhaps actually be one, in spite of the insignificance of the offence of which he is accused.

I must now confess that the explanations which have been given to me by Mr. Reckless and by other persons of the Anglo-Saxon world have shown me that there is a misunderstanding on my part. I have learned, and I hope that my American friends will correct me if I say something which is not accurate, that it is possible for the judge to request a pre-sentence examination in each case, even in the mildest cases, with the sole exception of the petty violations. And I perfectly agree that this should be so, as those will notice who have read the report which I have prepared on the first question of Section I. Now, if the judge asks for a pre-sentence examination and receives not only what I demanded yesterday, namely a total list of previous sentences, but also the complete list of police arrests not leading to a sentence, I must frankly admit that this is a superior system. It is superior in that the judge is not only informed of all sentences, but that he also receives the complete list of all the contacts – if one may say so – of the individual in question with the police. What happens actually in that respect in Europe? I am now speaking of the situation in the Netherlands, but I am afraid that the same is true of France, Belgium and the other countries having a similar system. Certainly, the judge does not receive only an extract of the penal register, he is also in possession of a report of information prepared by the local police in which the latter mentions all that it knows of the individual. Therefore, if the local police knows of several arrests or of other instances when it had observed some bad conduct of the individual concerned, it will mention it and the judge will be informed of it. This, I repeat, not through the extract from the penal register, but through the report of information

by the police. But, if the individual concerned has been in conflict with the police in another town or community, it is not at all sure – and all along during my experience as judge I have never seen it happen – that these data are recorded in the information report of the local police. One must, therefore, admit that there is a superiority in a system according to which it is possible to learn about all contacts which a man has had with the police throughout his life, by means of a centralized set-up organized like that for sentences. To that extent, therefore, the Anglo-Saxon system appears to be superior. In another respect, however, I hold to my previous opinion : Why should all this information be given to the judge only when he asks for it? Should not we figure that the judges will often perhaps be somewhat self-satisfied and that they will think that they know well enough the individuals who appear before them? They will start from the idea that they are always the same persons whose type they know, and they will assume that they have no need of information whatever regarding a simple bicycle thief, for instance. Therefore, I fear that the judge often would forego the pre-sentence examination; and if he does so, he will have none of the data collected by the Federal Bureau of Investigation regarding the individual concerned. In that respect, the continental system is in turn superior, for the judge receives these data in all cases – independently of the question of a pre-sentence examination – when he is faced with a felony or a misdemeanour and not a mere violation. The extract from the penal register will figure obligatorily, one may say, in the offender's dossier, whether the judge wants it or not. Therefore, I am led to conclude that we are faced with two systems, each with its own advantages and which one could hardly harmonize in the course of the present discussion – even though I persist in believing that while there are many questions on the programme of the Congress which it might be interesting to compare, we are here in the presence of a problem which must absolutely be harmonized if one does not want the institution to lose half of its value and if it should become international and not only a national institution, as has already been demanded by numerous previous congresses.

I would now like to propose a new text to be substituted for the first paragraph of the draft resolution included in my general report. It would read:

Amongst the information about the defendant which at some phase of criminal procedure becomes desirable for the judge in all criminal offences with the exception of infringement of regulations, the knowledge of his previous convictions is indispensable, to which his police antecedents should be added as far as it is available. The judge should be supplied with these particulars as a matter of course by means of a register of sentences, and if possible all arrests, in a system as centralized as may seem most effective.

Let me point first to the formula in the last part of my proposal. If one speaks of a system as centralized as may seem most effective, one leaves all possibilities open, without taking sides on the differences which exist between the Anglo-Saxon and the continental European systems. A century ago, France considered it advisable to introduce a relative decentralization. All decisions concerning one and the same individual were to be concentrated in one and the same place, but since the assembling of all the data in the Ministry of Justice in Paris, which had been ordered since the time of Napoleon, had not been satisfactory, it was decided that the keeping of the registers would be partitioned among the four hundred courts of the country, in such a way that each court would register all the decisions concerning individuals born in that court district. Here, in fact, we have both centralization with reference to the person as such, but decentralization in the keeping of the registers. It is this system which has allowed the creation of a truly efficient penal register.

In the text which I have just proposed, I have also adopted a flexible formula with regard to the nature of the penal register. We have in fact seen that, side by side with the old continental system, there can be some advantage in collecting data concerning the police record too. This is a question which must, therefore, be left open and the Congress would be wrong to be content only with the traditional system of the French penal register. That is why I have spoken about "the knowledge of his previous convictions to which as far as available his police antecedents should be added". This wording aims at covering the two present systems. And it would be the function of an international convention, which I hope can be prepared promptly, to find the characteristic features of a system which might perhaps lead to uniformity throughout the world. It will finally be noticed that I propose "at some phase of criminal procedure". The Anglo-Saxons are of the opinion that the pre-

sentence examination should be ordered after the verdict of guilt. I would have no objection to such a procedure but the continental criminal procedure does not have this division between the two phases of the trial, and that is why I have adopted a formula which leaves the door open for any solution in this connection. Among the data the judge must have, there are some which are indispensable, but we cannot determine here exactly at what time they ought to be supplied.

In concluding, I hope that the effort which I have made to draft a text, which would be likely to satisfy all points of view of the members of the Section, will receive the support of my Anglo-Saxon colleagues.

Mr. *Goossen** (International Criminal Police Commission):

I speak with some hesitation, as representative of the International Criminal Police Commission, in this assembly where so many experts on the question of the penal register are gathered. At the 17th Conference of the International Criminal Police Commission, held in Paris in 1947, the president of the Commission, Mr. Louwage, presented a report on the subject of the exchange of the court records of offenders. Following this report, the Ministry of Justice of the Netherlands, to which the police department belongs, studied very carefully the procedure to be followed and came to the following tentative conclusions: (1) Besides the penal register kept in the offices of the clerks of court, there should be a central register in the Ministry of Justice combined to the greatest possible extent with the identification services of the police department where all police data are received and centralized. (2) The local police must demand of this central identification service all information known with regard to an offender who has just committed a felony or a misdemeanour, so that these data may be of service to the court. These data should include the number of reports prepared by the police and a summary of facts, as well as an extract of the penal register. This information should be entered on a blank which should be transmitted to the judge and added to the offender's dossier.

Mr. *Molinario** (Argentina):

I want to raise two special points. Mr. Vrij has declared in his excellent report: "The amount of information furnished directly by the

penal register or indirectly through the certificate of good conduct and moral character, should shrink as time passes; after a long period without further convictions the transmission of information becomes less necessary and even unjust". In this respect, I agree with Mr. Vrij, but it must be noted that nothing is said about this particular aspect of the problem in the conclusions, although it is extremely interesting and important. I therefore think that the conclusions should be complemented by an explicit reference to this point. I also find that the expression "should shrink as time passes" is a little vague. Certainly, our conclusions cannot be too specific, since they address themselves to all countries of the world, but nevertheless I am of the opinion that the text of the report is a little indefinite and that it ought to be made more specific. Since most of the legislations of the world have instituted the statute of limitation, one might make a reference to this institution and say that the penal register will make no references to the previous convictions, when the time provided for by the statute of limitation has lapsed. It is well understood that when the individual entered in the penal register has committed a new offence, the judge who examines that new case must have in his hands the entire criminal record of this person; here I am referring only to the certificates delivered to the administration or to private individuals. By making a concrete reference to the statute of limitation one will have a relatively flexible system, adapted to each country, and applying to all countries of the world that are familiar with the institution of the statute of limitation.

Furthermore, I am in full agreement with the general rapporteur in believing that we are here facing a question which is extremely important and indispensable for realizing a universal social defence. Under these conditions, the Congress should equally emphasize the necessity of an international agreement dealing with the exchange of the criminal record of the accused, and I believe that one might recommend to a subsequent congress that the job be undertaken of furnishing to member countries of the International Penal and Penitentiary Commission a type of uniform blank and of drafting a model treaty for the exchange of such blanks in the future. This would be a very useful dual achievement which could greatly contribute to the satisfactory functioning of the whole system of universal social defence against crime.

Mr. *Huss** (Luxemburg):

First of all I join wholeheartedly in the excellent suggestion just made by Mr. Molinario. I would also like to present some considerations pertaining to the subject, although they are different in certain respects. I have in mind the question of restoration to full civil status. The third question of the programme has placed before the Section for discussion the problem of the restoration of rights which should also, like the penal register, be so developed as to assure the social rehabilitation of the offender. An important alternative comes to mind in that respect. It is the question of knowing which one of the two present systems should be adopted: the institution which one might call the *judicial restoration to full civil status*, granted on the basis of a special enquiry which aims to show in a positive manner that the offender has been reformed, or rather the institution of a *statutory restoration*, which occurs automatically after a certain lapse of time — ten years, for instance — after a felony or a misdemeanour was committed, or perhaps ten years after the sentence and on condition that there has been no recidivism. This system has already been instituted by the legislations of certain countries, among them Luxemburg, and I think that the provision has been copied from what had been done in France earlier. In formulating such legal provisions, one can elaborate them at will by providing for special time limits in certain cases. This is a matter of pure technique which can aim at recidivism by petty violations following a misdemeanour or by a misdemeanour following one or more petty violations. It is very natural that countries which do not have a penal register of the French or continental type would be inclined to reject the quite simple mechanism of statutory restoration; this is also one of the points which connect this particular subject with the third question of the programme of the Section, namely that of the penal register. Another point which brings this problem back to the penal register is that of knowing at which moment the conviction should disappear from the penal register itself or from the extracts of the register. Here, too, we come close to the question raised a moment ago.

In the meanwhile, I think that the system of the penal register properly speaking and that of the social enquiry which was mentioned yesterday are not mutually exclusive; they can be judiciously combined, as has been done for that matter in certain

countries, particularly in Switzerland and also in Germany, as far as I know. Consequently, the question of restoration is not indissolubly linked with that of the penal register, at least in the sense that for countries which know the pure system of such a register, the question remains open; it is understood, it is true, that in countries which do not possess such an institution, the functioning of statutory restoration will not present the advantage of simplicity to a high degree, for it will be necessary to make an enquiry anyway.

Against restoration to full civil status, the objection has been raised that it results in a real statute of limitation, and it can be seen that it is again this idea of limitation which comes to the surface in connection with this aspect of the question. This objection has been expressed in the very documented report of Mr. Waiblinger (Switzerland). But, I do not think that the argument is decisive. As a matter of course, it is not a question of having the statute of limitation apply to prosecutions. The criminal act is established and branded by judicial decision. Therefore, the statute of limitation can operate only with respect to the punishment, and this is also what Mr. Molinario has in view. Now, while the two institutions resemble each other from the point of view of the automatic nature of their effects, one must not consider them identical. Restoration to full civil status, contrary to the statute of limitation, presupposes in fact the reformation of the prisoner. Everybody knows that there exists a controversy with regard to the aim to be assigned to penitentiary treatment, a controversy which is rather theoretical for that matter: Should one have a moral reformation in mind, that is to say an internal conversion, or rather a social reformation, that is an absence of reprehensible conduct? One might be tempted to look for the partisans of judicial restoration among those who want penitentiary treatment to be truly moralizing, and on the other hand to look for the protagonists of statutory restoration among those who are satisfied with reformation of a social nature, in other words the absence of conviction. I believe, however, that this idea does not correspond to reality. A partisan of moral reformation could actually perfectly well be in favour of statutory restoration by regarding the absence of conviction as a presumption of moral reformation.

Without taking sides in this controversy, it is possible to regard matters from a more pragmatic point of view. In the presence of the relative simplicity with which the system of the statutory restoration

operates, one may wonder if judicial restoration offers definite advantages. I would not want to prejudge this question, but simply ask the members of the Section, especially those who work in the framework of a legislation containing at the same time the penal register properly speaking and judicial restoration, what difference there exists between the two conceptions. What are the distinctive criteria of the one and the other? Considering the certainty which emerges from judicial decisions, should not a decision granting restoration which would be based on vague data incur the reproach of being arbitrary? And on whom should the burden of proof rest? I would like to know, for instance, if the benefit of restoration would be refused to a man of whom it is said, with a semblance of truth, that she whom he calls his housekeeper is in fact his mistress, or who is addicted to drink in a manner which does not bring him into conflict with the law, in other words, of a man who engages in some misconduct more or less hidden. I would be ready to accept the inconveniences resulting from the necessity of a special procedure, if it would be possible, in that respect, to isolate exact criteria exempt from the danger of arbitrariness.

With regard to this notion of arbitrariness I would like to add one more observation. There has been talk of mentioning in the penal register the result or the existence of previous police investigations or investigations by examining magistrates that ended in being filed, or by judicial order. But, I think that one should take into consideration the arguments against such a conception. There is here indeed a great danger of arbitrariness and even of real error. Imagine the case of a slanderous complaint which also may lead to a judicial investigation. How can the judge to whom twenty years later the extract of the penal register will be submitted, on which there is an entry about that investigation undertaken years ago, know that this investigation which was dropped by a court order was based on a slanderous or diffamatory complaint? Under these conditions, the defendant risks being to some degree charged with the consequences of that ancient slander of which he was the victim.

Finally, I would like to present two very brief observations with respect to the draft resolution presented by the general rapporteur, Mr. Vrij. First of all, one is obliged to notice that the judge who has to decide on the guilt will in many cases be irked by the late production of the penal register. Indeed, he must necessarily have

asked himself earlier if the defendant is capable of the deed with which he is charged. In his conclusions Mr. Vrij proposes, as you remember, that the extract of the penal register should not be produced until after the verdict of guilty. A procedural question arises first of all in that connection. Such a proceeding would presuppose in many countries a modification of the laws of procedure. But independently of that, I would like to point out that the judge will certainly be handicapped if he is not immediately in possession of the extract from the penal register. The question of knowing if the defendant must be regarded as capable of the act he is charged with is indeed a question which judges often ask themselves, and they will be exposed to the temptation of getting this bit of information by extra-legal means. This is an absolutely practical consideration, but I can very well imagine it, having been in a certain number of cases a judge in a court, which had to decide on acts of very great gravity.

The second point which interests me is the wish expressed in the draft resolution that the cases, where the law makes the exercise of certain rights depend on the content of the penal register, should disappear from the legislations. If this abolition is demanded, I believe that we come into conflict with the wish expressed in the matter of restricting the use of short term imprisonment. Indeed, one of the substitutes of short term imprisonment is precisely the forfeiture of certain rights, for instance that of engaging in an occupation, the very example which has been cited in the text of the resolution regarding short term sentences. Now, the only possible threat in such accessory punishments depends necessarily on the production of the penal register. Therefore, although I do not sympathize with the system of forfeitures connected with certain convictions I am of the opinion that one should not completely discard them for the time being.

Mr. *Bates* (U.S.A.):

I wonder if it is not unfortunate that we have two very different subjects tied up in one resolution. With reference to the information to the courts there should not be any debate. The more information the court has on sentences, on arrest or any other type of information, the better. Some references have been made to our own Federal Bureau of Investigation. The information to the courts from the

Federal Bureau of Investigation is based in our country almost entirely on fingerprints. Fingerprints, under most of our laws, can only be taken when a defendant is charged with a serious crime or is alleged to be a fugitive from justice. The result is that arrests for breaches of city ordinances or gaming or things of that kind may be very numerous and not appear on the records of the Federal Bureau of Investigation. Our solution in America for that situation is to attempt to provide that type of information through the probation officer. In some states, for instance in Massachusetts, very complete records based upon the reports of all the nearly two hundred probation officers of that state are available almost instantaneously. I must suggest again that the Federal Bureau of Investigation record which shows a bare list of crimes committed or arrests made, even if it were augmented by a probation record, would still leave much to be desired for the conscientious judge.

With reference to the second point, I have given many hours of consideration to this question of the stigma which somehow or other seems to persist in the public mind. The disconcerting thing about it is – and it is something which we as a group of penologists must recognize and confront and do something about – the disconcerting fact is that the distrust of the public is more often based upon the fact that the man has gone to prison for the crime than that he committed the crime. In other words, instead of giving a man credit for having paid his penalty, it increases the distrust and suspicion which the community has towards him. And, frankly, I think that is our fault. I think we cannot solve this problem by merely expunging the record of a crime any more than by expunging any other disagreeable fact in the man's history. I am inclined to think that what we must aim to do is to interpret to a greater extent to the community what the prison has tried to do for the man. There is something wrong if a man is worse when he comes out of prison than when he went in. I think the time must soon come when the public should be taught that at least we know that the man has no communicable disease when he comes out of prison, and that at least we have done something to find out his capacity and his ability to work. I am not sure the time will ever come when a man can apply for employment and present a diploma from some modern penitentiary as a reason why he should be employed. But why not? If we have really learned to improve a man in prison, why might not the time come

when he, instead of trying to hide that fact, would advance it? It seems to me that if I were an employer, I would rather have a man working for me who has frankly recognized his shortcomings, who has paid the penalty, as Churchill said, in the hard coinage of punishment and will do better, than I would have a man who continually pretends that he never has been arrested for his crime, and whom one would feel that one certainly could not trust. The boy who failed in school is differentiated from the boy who gets medals and honours, and why should he not be? If a man has a recurrent disease, epilepsy, heart disease, why should not that fact be known in his record and why should not his employer and his community make allowances for him? And if he has succumbed to temptation, how can that fact arbitrarily be hidden from the public's view? How many times have not those who have been managing penal institutions seen the tragic consequences of a man who comes out of prison trying to hide that fact from his employer. He never can, because some gossiping neighbour whispers it around among his fellow employees and his job is gone. Contrast that with the man who goes frankly to his employer and says : I want you to know all about me, I want you to know what I did and why I did it, and I want you to help me till I am out! In our country, nine times out of ten, that procedure works where the other one does not. We have thousands of housewives to-day who have employed domestic servants who have come out from our institution for women. During the war, when we really needed help, we did not ask where a man had been because our need for his services overcame our prejudices.

So it seems to me that one should go a little bit slowly, Mr. Chairman, in making too dogmatic a statement that it is for the benefit of the prisoner, even for the benefit of society, that after a given time the record of his crime should be completely expunged. The other method is much more difficult but it seems to me that we are never going to have a complete success until we get the complete confidence of the community, and to do that we have got to help them to face the facts of life and join with us in the effort to complete the reformation of the individual.

The *Chairman** warmly thanked the President of the Congress for the words he had just spoken, which were entirely worthy of

a President of the International Penal and Penitentiary Commission. They would stimulate both the necessary courage and perseverance to go ahead with our important work.

Mr. *Vrij** (Netherlands), general rapporteur:

The question here under discussion falls completely within the administrative field. The programme of the Congress deals not only with judicial but also with administrative problems and, above all, with those concerning penitentiary administration. We should regard it as very fortunate that we are called upon here to examine not only the question of local authorities, about which Mr. Braas spoke, but also that of the police which has its own method, its own ideas and its own activity, which it examined in a meeting which the International Criminal Police Commission held here during the month of June. It is certainly interesting that the delegate of this Commission, Mr. Goossen, has indicated, by citing a simple detail related to the results of the work undertaken by that organization, that the idea is making much progress in police circles and that even in countries having the French system of the penal register it would be necessary to centralize all pertinent data completely, not only judicial decisions but also other facts collected by the police.

In concluding my remarks on the first of the problems in the question submitted to the Section, I agree with Mr. Bates that the question is indeed very broad, but I must now attack the two other problems, and want to say at the start that we should remove the debate from the purely technical field. The question of setting up a penal register and of the principles underlying its organization is a technical question. But when we ask ourselves if certain entries should be expunged from the register in some manner, that is no longer a purely technical or judicial problem but a question of justice, a moral question, and this is perhaps still more true of the third problem, that of the restoration to full civil status. If one conceives this institution in its only true sense, it must have still other effects than a simple erasure in the penal register. Indeed, if that were all, one would have to admit that one is simply faced with a consequence of the penal register itself in which the entries must be made and expunged. But there is more to it. The Section has heard in that respect the very interesting observation which Mr. Molinario has presented with regard to the statute of limitation

concerning entries and which will be given due attention by the drafting committee to be appointed. But, I think that the whole spirit of modern penal law, as I conceive it, is opposed to this idea. Modern tendencies, as taught from the beginning of the century by the well known Dutch criminalist Mr. van Hamel, have taught us that the institution of the restoration to full civil status is somewhat obsolete. I notice with great pleasure that the Anglo-Saxon countries are not much attached to it. In the little time I have I can only make two observations in this connection. First of all, in modern penal law there is no place for an express restoration to full civil status. Indeed, the latter could be nothing but an emphasis of the fact that everything concerning the punishment is finished. Now, I think — and this is the feeling which Dutch jurists generally have — that the termination of the punishment should be as unnoticed as possible. Nothing should be emphasized at that moment. The ex-prisoner himself can have the happy feeling that everything has ended, but any effort to draw his attention to the fact that he has become again a full-pledged citizen is a kind of a slap in his face by society. Now, I believe that it is at that moment that we should remember that we are all sinners and that society too is very imperfect. I need not stress this idea which has been repeated at all congresses, but I am convinced that it is especially in that situation that the guilt of society must be felt. If society were to take this occasion to emphasize the ex-offender's new situation, this would run counter to social rehabilitation. The latter will be much easier if the judge does not intervene at that moment by a statement that everything is in order. Furthermore, as I have already pointed out in my general report, we find ourselves, between the end of the punishment and the restoration to full civil status, in a situation which is impossible to define. In the normal case conditional release will come at the end of the prison term. Now, it is said that restoration to full civil status is not an ordinary conclusion of the punishment, but that it is a formal declaration according to which everything concerning the offence has entirely ended, a declaration which should occur some years after the end of the punishment. What will then be both the legal and the moral situation between the end of conditional release and the other more solemn end marked by the act of restoration to full civil status?

I can find no sense in it. Rather do I fear that social rehabilitation itself risks being affected if, after several years of good conduct, one still makes the former offender feel that even that last period was not completely normal, and that it is only when the restoration to full civil status is granted by the formal order of a judge that he has been completely restored to normal life.

The second argument which I wish to advance against restoration to full civil status is the following. Punishment is inflicted for a crime, but good conduct which an ex-offender later shows does not in itself deserve any reward. Such conduct should be regarded as normal, and social rehabilitation should also start from the idea that if a man has been guilty of an offence and has been punished for the act he has committed, it is entirely natural that he should behave well in the future. To grant him a reward would give him an entirely false moral idea.

I have to be satisfied with these very brief remarks on the question of restoration to full civil status, and I now want to say only a few more words on the second problem raised by the question submitted to the Section, namely the expunging of certain entries in the penal register. When using the word "expunging", we are not accurate for that matter, for both Mr. Molinario and Mr. Huss stressed the fact that the judge investigating a new offence should always receive a complete copy of the penal register. Therefore, there can be no question of a real statute of limitation on entries. One only imposes restrictions on the mention of old punishments when this mention is made for a purpose unconnected with the initial purpose of the penal register. It is only in this sense that one can properly speak of expunging, and it is a good idea to take measures to that effect. It goes without saying that one will examine very strictly all requests presented by other persons than by judicial authorities concerning the content of the penal register. The natural solution would, in a way, be that the register remain solely at the disposal of the courts. But, the fatal consequence might be, as happens for instance in certain Scandinavian countries, that one would come to keep other registers besides the judicial one, for if the latter were to adopt an absolutely exclusive attitude, every police organization would naturally be seen setting up its own archives. The situation would then be much worse than now, and we have to find a common ground. What I wanted to stress is the

fact that there is properly speaking no statute of limitation, since the register retains its full value for the courts.

I would finally like to add some words on the observation of Mr. Bates who has shifted the debate to a moral ground which I would like to be able to say were the decisive ground. I have also asked myself if the courts and the probation service should yield to the lack of understanding by the public, should resign themselves to the fact that society does not accept the offender because he has been in prison, without enquiring what his fault has been. For, it must well be recognized that we do nothing practically but submit to public opinion in that respect. I would be very happy if the moving words of Mr. Bates might give a spur to a new trend of public opinion, so that society might accept the ex-prisoner. All considerations regarding the more or less radical expungings to be accomplished in the penal register would then disappear of themselves. But, I must nevertheless ask myself, and this is a very open question, if in the present state of public opinion in all our countries the ex-prisoner should suffer from the fact that society has not yet such advanced ideas. I said in my general report too that, above all, the public must be educated. But, as long as this education has not yet borne fruit, can we really assume the task of persuading the prisoner to tell everything to his employer, from whom he hopes to get a job, by leading him to assume the likelihood that the employer would shake hands with him, congratulate him on his honesty and hire him? I could not conclude my remarks any better than by saying that we have arrived at one of those moments, as always happens in meetings of this kind, where the mind no longer clearly and surely grasps what is happening, but where one has the feeling and the conviction that there is something new and that we must go ahead. Mr. Bates has spoken of the courageous experiment made in America with respect to the education of the public and of its success. Therefore, we should all follow that course, and perhaps it will be possible to give rise to a trend which will run counter to the one which all reports have echoed, as well as the general report which also started from the idea that one should be on one's guard against public opinion from which the ex-offender often is likely to suffer. If such a tendency really could emerge, this would be a very important item to record on the credit side of our Section's discussion.

Because of the late hour, the Section decided to omit the translation, and the *Chairman** closed the discussion of the third question of the programme. He proposed that a committee be appointed to draft a resolution on this question, the members of which would be Messrs. Vrij, general rapporteur, Reckless and Huss, with the help of Mr. Mathieu of the Section's staff. The committee would present its conclusions at the beginning of the meeting Friday morning.

The Section approved this proposal.

The *Chairman** adjourned the meeting.

Morning Meeting of Friday, August 18th, 1950

The *Chairman** opened the meeting and announced that the Section would discuss the conclusions prepared by the drafting committee on the third question of the programme: *To what extent does the protection of society require the existence and publicity of a register of convicted persons ("casier judiciaire"), and how should both this register and the offender's restoration to full civil status be organized with a view to facilitating his social rehabilitation?*

Mr. *Vrij** (Netherlands), general rapporteur:

The drafting committee has tried to prepare the text of a new draft resolution as rapidly as possible. Unfortunately, some of the documents of that committee had been mislaid and therefore it had to resume work partly this very morning. Fortunately, it did so early enough so that the draft resolution is ready, at least in the French version. The English translation will be given in the course of the discussion, but the final version of the text in that language cannot be submitted to the congressists before the General Assembly this afternoon or tomorrow morning.

With respect to the different problems which the question submitted to the Section implies — too many problems according to what Mr. Bates himself said the day before yesterday — namely those of the penal register, rehabilitation and restoration to full civil status, the drafting committee has tried to find solutions which permit the

elimination of the differences of view-points which have emerged in the course of the general discussion, especially between the Anglo-Saxon countries, on the one hand, and those of old Europe on the other.

The draft resolution is composed of six paragraphs which I plan to read and comment on in turn, in submitting them to the consideration of the Section. Clause 1 reads as follows:

1. In the data about a defendant which appear to be useful to the sentencing judge at some phase of the penal procedure, information regarding his previous criminal record must be considered as indispensable in indictable offences at least. Information regarding his police record ought to be added, whenever this can be done without great inconvenience. All this information should be accumulated in a penal register according to a system involving the most effective centralization.

The first lines of this text aim to recognize the utility of the pre-sentence examination in general. But, our American colleagues have agreed to admit that the previous criminal record represents a special source of information which must, it seems, be considered as absolutely indispensable in most cases. It is therefore proper to give it a special status, different from that of other data, perhaps useful but not indispensable, which one finds recorded in pre-sentence reports.

The second sentence concerns the police record. You will remember that Mr. Reckless pointed out that in the United States these are always combined with the criminal record. On the other hand, Mr. Huss mentioned that there are cases in which an accumulation of the details of the police data may be dangerous, particularly when complaints have been lodged but not followed by conviction. The judge may then permit himself to be influenced by the fact that the individual has had contacts with the police, although these are no sign at all of reprehensible activity. The drafting committee consequently started from the idea that the mention of the police record must be considered as very useful, especially in view of American practice, but that the Congress would probably not be ready to state that it is as important as the transmission of information concerning previous convictions which *are* absolutely certain.

The third sentence concerns the organization of the collection of the data. There is no question here of simply re-introducing the penal register under a new name. It is natural that in France and other countries which have a similar system, the name of "penal register" would be retained. But we have seen that there exist in the world

several ways of registering penal convictions and perhaps even other information. Therefore, we had to find an expression broad enough to include the various manners of registering the criminal record. I draw your attention to the last words of the paragraph : "a system involving the most effective centralization". During the discussion it was pointed out that in France and in countries inspired by the French system, one arrived during the 19th century at what might be called a relative centralization of the penal register : all the data about the same person were centralized in a single place, but all the penal registers were not localized in a single place in the country. The ingenious idea of Bonneville de Marsangy consisted in organizing a register in the office of the clerk of every court in France and it is this procedure which has made this institution effective. Indeed, during the entire first half of the XIXth century, the provision requiring that copies of all blanks concerning the criminal history be sent to Paris had not permitted the organization of a useful central register. On the contrary, it seems that the American practice of the *Federal Bureau of Investigation* is based on wide centralization of information derived from all the states of the United States. The objection, however, remains — as I pointed out already during the general discussion — that such a system aims only at major crimes. Mr. Bates, in turn, stressed that there are many felonies and misdemeanours which according to us would deserve to be recorded in the penal register, and which in America do not appear in the register of the *Federal Bureau of Investigation* and which are therefore not included in the system of centralization as it has been organized. The formula retained by the draft resolution merely aims at taking no position in the debate on the organization of the penal register.

The *Chairman** called for discussion of clause 1 of the draft resolution which should undoubtedly be regarded as the most important of all.

*Chevalier Braas** (Belgium):

Mr. Vrij has very clearly expressed what he understands by a penal register, whatever may be the terminology used to designate this institution. It is a register of the previous record, a sort of personal case history, as well as a penal register properly speaking, in which one should include not only all court convictions but also

the police data which might later enlighten the courts when the individual concerned is brought, or again brought before them. I think that the assembly has been entirely unanimous, in the course of its previous meetings, in the opinion that this measure is necessary and in declaring that it was impossible that judges should decide, blindly and without definite data for forming a judgment, the fate of defendants in often very serious cases. We should not go into too many details in this respect. Besides, we could not do so, for, as Mr. Vrij rightly pointed out a moment ago, the regulation depends on the states. It is obvious that a centralization of the penal register is possible in Belgium, the Netherlands, the Grand Duchy of Luxemburg and Switzerland. It is hardly possible in very large states like the United States of America or Canada, for instance. There, it will be necessary to make internal arrangements so as to assure the effectiveness of the system.

I apologize for mentioning my own country, but the Belgian system has given till now full and entire satisfaction. As soon as a sentence, order or judgment has become final, the clerk of court does not forward the text, which would mean a loss of time, but an analytical extract to what is called the administration of the penal register, a group of administrative officials in the Ministry of Justice. Each time that a Royal prosecutor or an official of the prosecutor's office starts dealing with an accusation, he requests a report from the penal register in this central administration. The report contains indications on the civil status of the person concerned and his criminal record, and not only on the convictions but sometimes also on administrative measures, such as a dishonourable discharge from the army, military degradation or punishments which might have been imposed in that field. It is, however, forbidden to mention the measures taken by the juvenile judge against the person concerned before he reached 16 years of age, unless the individual in question is brought before another juvenile judge. I do not think that this system is perfect either, for like all systems it has its defects, but it can be mentioned and recommended — and I apologize for doing so, since it is an institution in my country — as a model of its kind. There have never been any frictions in its functioning. However, the Belgian legislation assigns only an administrative function to this penal register. When it is a question of imposing punishments for recidivism, the courts must demand that the copy or copies of the previous judgment or judgments be produced

in authentic form. The courts then act only on the basis of complete certainty.

The *Chairman**, considering the work which still faced the Section, thought it necessary to limit speeches to five minutes. Moreover, he asked speakers to state if they wanted to propose a formal amendment to the text submitted for the consideration of the assembly.

Mr. *O'Neill* (Northern Ireland):

Just one small point. With us, no information about the previous record of any prisoner, any accused, is given to the judge until after the prisoner has been convicted. The record is obtained from the police and I notice in the summary that it is the jury who might not be informed, but the judge may know. But in many cases, of course, there is no jury. The record is there, and after the jury or the judge has decided that the man is guilty, then information is given to him about any previous convictions. And, of course, in a small place like Northern Ireland, the records are complete. They are kept centrally and in each local area as well. It is the same in Great Britain.

Mr. *Reckless* (U.S.A.) pointed out that, as he had already said, this was also true for the United States and Canada.

Mr. *Molinario** (Argentina):

I want to indicate in a few words what system has been adopted in Argentina in this matter. In that country, the information meant for the judge was once furnished by the police, namely by the ordinary police in each province and the police of the national capital and the federal territories. Some years ago, however, there was set up what has been called the national register of recidivists. This terminology is, by the way, unfortunate, for all offenders and not only the recidivists are registered there. At present, therefore, the Argentine judges have two sources of information. First, the information furnished as previously by the police, who continue to do so, which is necessary since the national register has only functioned a few years and, consequently, does not contain data pertaining to the preceding period; and second, the data from the national register of recidivists. The register functions on the basis of a system

of fingerprints to which one resorts very commonly in Argentina, for instance for identification cards, etc. All these data are furnished to the judge at the moment he begins with the case. Even examining judges get them, before the accused has been found guilty. These data are also given to the public administration when there is question of appointing an employee or an official. They are not, however, at the disposal of the public which cannot secure certificates from the national register of recidivists. Private persons can, however, request a certificate of good conduct, issued by the police, which continues to possess its register which is organized absolutely independently of the national register of recidivists. I want to stress that the judges, from the very beginning of the investigation, that is well in advance of the verdict of guilt, receive all the data relative to the criminal and the police record of the defendant. It must, moreover, be recognized that these antecedents represent sometimes a somewhat cumbersome material for the work of the judge. But it is, nevertheless, very useful to him to possess these data from the very beginning of the criminal prosecution.

The *Chairman** stated that it would be very interesting to have a complete survey of all systems in force in the different countries but he felt obliged to insist that speakers confine themselves to the subject of the draft resolution and do not limit themselves to furnishing information on various legal systems.

Nobody else asked to speak and no objection was raised to the text proposed by the drafting committee. The *Chairman** consequently stated that it could be considered as unanimously adopted by the Section, and he warmly congratulated the general rapporteur on this success.

Mr. *Vrij* (Netherlands), general rapporteur:

Before dealing with clause 2 of the conclusions I would like to refer briefly to some of the remarks which have just been presented in order to show how it has been possible to come to an agreement on a text that might be unanimously adopted. Messrs. O'Neill and Molinario have demonstrated by their statements the fact that the various systems of penal procedure in force in the world fix differently the time when the information can be given to the judge. This point

has been examined in previous meetings. I only wish to mention the fact that the wording which has just been adopted aimed to cover the two opposing conceptions of penal procedure which have been advanced. It has been very interesting to hear on the one side Mr. O'Neill saying that the information should not be furnished to the judge too soon, and on the other side Mr. Molinario stressing the fact that in his country the examining judge himself gets this information. There is here a great difference in conceptions, but the one and the other solution are covered by the text of clause 1 of the draft resolution, which speaks of "data.... which appear to be useful to the sentencing judge at some phase of the penal procedure".

I want to express my gratitude to Mr. Braas for the acquiescence which he has manifested with regard to the draft presented by the committee. It is he who has perhaps opened the way toward the procedure which is partly described in clause 2 of the draft resolution submitted to the Section. The extract of the penal register has become such a well known element in the criminal procedure that one is justified in being afraid of unauthorized disclosures. In that respect, several observations presented, especially in the Scandinavian reports, have also in a very useful way drawn attention to the necessity for vigorous discretion. The drafting committee deleted some of the details which I had mentioned in the original draft of the resolution, but it kept the three ideas which form the substance of clause 2 of the conclusions, the proposed wording of which is as follows:

2. The copy of the *penal register* should not be read publicly in court. After sentence this copy should be returned to the authority in charge of the register. Any unauthorized disclosure of the contents of this register or extracts therefrom should be punished.

The *Chairman** called for discussion on this clause.

*Chevalier Braas** (Belgium):

I fully agree with Mr. Vrij concerning the necessity of observing the most complete discretion. The judge who would needlessly read aloud in court the documents regarding the previous record of the persons concerned would risk disciplinary action. The question is therefore extremely simple and I have never known of unauthorized disclosures of this kind. The extracts of the penal register remain in the files, in the archives of the court house. It does not seem to me

even necessary to take the trouble of returning them to the authority in charge of the register. One might simply destroy them, which would be much easier. Finally, discretion with respect to the transmission of the dossiers to the courts is assured in most of the legislations by the formal prohibition for courts, which are not involved in the case, to come and get information from the dossiers in the clerks' offices. I am, therefore, fully in agreement with the general rapporteur and all that I might perhaps wish would be a formal change with regard to the destruction or the disappearance of this copy rather than its being returned.

Mr. *Vrij** (Netherlands), general rapporteur:

Mr. Huss, who also knows the Belgian practice, has just drawn my attention to the fact that if the extract of the penal register is sent back to the central authority, the latter will be able to use it another time. A short time afterwards, perhaps, it is possible that another jurisdiction might request an extract concerning the same individual, and it would be very convenient to be able to use the same bulletin, after simply adding the notation of the judgment passed since it was first sent out previously. I wonder if Mr. Braas would, consequently, be ready not to modify the proposed wording.

*Chevalier Braas** (Belgium):

This is merely a question of form on which I do not insist at all. With respect to notorious offenders, the Belgian Central Administration, in Brussels, possesses typed copies of the penal register of individuals with regard to whom extracts are most often requested. These copies are completed in writing whenever a new conviction arrives and the type-written copy is simply put in an envelope when it is requested. The procedure is therefore extremely simple and we are quite agreed.

The *Chairman** stated that nobody else had asked to speak and that no objection had been formulated with regard to clause 2 of the draft resolution. The latter was consequently adopted and the Section could proceed to the discussion of clause 3.

Mr. *Vrij** (Netherlands), general rapporteur:

Clause 3 of the conclusions deals with the conflict between the

penal register and social rehabilitation which is probably the reason why the International Penal and Penitentiary Commission has submitted this question to the Congress. Here it is no longer a question, as I pointed out earlier, of a conflict between two techniques or two systems, but of a real moral problem. The text proposed to the Section reads as follows:

3. Inasmuch as it may be impossible for certain countries to abandon the communication of data from the penal register to public officials as well as to private persons and to the person concerned, this communication ought no more to mention the data considered to be affected by the passage of time. This communication should not be effected through the direct delivery of a document by the authority in charge of the register. It is the local or regional administrative authority which would issue a *social certificate* on the advice of a commission, composed of persons conversant with various aspects of social life. This certificate, while being based on the extract of the register and all other information, would take account, as the case may be, of the needs for the *moral and social rehabilitation* of the person concerned.

Everybody will recognize in the first part of the first sentence the influence of the remarks made at the beginning of the discussion by Mr. Braas, who wondered if it would not be possible to abolish completely the practice consisting in giving to other persons than the courts themselves information which is sometimes so fatal for the individual concerned. In writing my general report I felt obliged to yield to an insurmountable social reality on this point. Perhaps it would be fortunate to be able to forego such communications, but to adopt such a postulate would mean to go so much against the facts that one would necessarily meet defeat. Consequently, I hope that Mr. Braas and all those who quite rightly regret the practice of furnishing information drawn from the penal register to other persons than the courts can be satisfied with the formula retained at the beginning of clause 3 of the draft resolution.

After this preliminary proposition, the text states that "this communication ought no more to mention the data considered to be affected by the passage of time". Here, you will notice an echo of the remarkable speech which Mr. Molinario made in the course of the discussion. It seemed to him that the original draft contained a gap, for the important principle of the exclusion of information to be given from the penal register as time passed had not been specified there, a principle based on the fact that it becomes

more and more inopportune, unjust and needlessly harmful for the individual concerned to furnish this information to others than to the courts.

The second sentence concerns the organ which should give this information and in that respect the committee stood by what was postulated in the majority of the preparatory reports, namely that the use of the certificate of good conduct and moral character be approved, which transfers from the judge to another authority the heavy task of giving information drawn from the penal register. If the court alone should furnish the requested information, the reply which it would be able to give would be either negative and perhaps wrong, or too vague to have any real value. At any rate, this communication would be below the dignity of the courts and would not be at all satisfactory to him who asks for it, for the employer who wishes to hire an individual also wants other information. He expects the authority to which he turns to give him a total view of the individual and such a view is not drawn from penal data only but primarily from broad social data. The commission mentioned toward the end of the second sentence reflects the practice which several rapporteurs have regarded desirable and which has been established in several places, particularly in the large Dutch cities. The committee also was of the opinion that the traditional expression "certificate of good conduct and moral character" is not appropriate. Indeed, the words "moral character" evoke primarily the idea of sexual morality, although the document in question furnishes no information in this respect. It is, therefore, preferable to stress the general social character of this document and to speak of a "social certificate", as I did earlier in my presentation without any objection being raised.

The last sentence aims to call clearly to mind that this social certificate must not be based only on the data of the penal register. It is necessary that the local police furnish the information it has, and that the commission, which will have to evaluate the total impression made by the individual under consideration and decide what should be said in the information bulletin which will be given to the outside world, might have at its disposal not only the extract of the penal register but also, and perhaps primarily, all the data in the possession of the police. The text has naturally been framed with the idea that police data are not incorporated in the penal

register in all countries, otherwise they would automatically be included in the extract from the register. With regard to the mention made of moral and social rehabilitation, everybody knows the conflict existing between the penal register and social re-adaptation, and it seems hardly possible to say anything else than the fact that "the certificate would take account of the needs for the moral and social rehabilitation of the person concerned".

The *Chairman** stated that the Section had only very little time left and he, consequently, decided to limit the discussion to the presentation of formal objections against the propositions of the drafting committee.

Mr. *van Buuren* (Netherlands):

The proposed wording can give rise to a very great danger. One actually speaks of local authorities which should take into consideration, in addition to the register, "all other information". Now, if one provides for the possibility of such local information, one opens the door to taking account of the gossip of evil-minded neighbours. One introduces the possibility of malevolent declarations, made by personal enemies of the individual, for he can have personal enemies even in the local administration and the police, and it would be very dangerous to open, by too broad a wording, the door to the consideration of gossip. I formally propose to eliminate from the text the words "and all other information". If the general rapporteur would not be able to agree to this formula, I would present a subsidiary amendment, aiming to replace the words "and all other information" by the words "and possibly extracts from the police register". This proposition is, however, only secondary, for I would prefer simply the deletion of the words in question. Besides, I ask the Chairman to consult the assembly if there are six persons present who would be willing to give their support to such a motion to amend.

Mr. *de Jong** (Netherlands):

I have been struck by the fact that the first sentence speaks of the communication of data from the penal register to the person himself. We must realize that to furnish this information to the person is to give it to nearly everybody. Indeed, anybody who wants to employ the individual will ask him for the information which he himself can

procure. Consequently, it would be very useful to introduce a formal prohibition against communicating the data of the penal register to the person involved.

Such a radical measure is perhaps impossible, however. Under these circumstances, I would at least like to see stated that it is necessary to hear the social rehabilitation service before delivering a social certificate. One has a little too much the tendency to think only of the police, when one wants to furnish information on the past history of the person. It would, however, be very necessary also to have at hand for this purpose the data and especially the advice and the opinion of the rehabilitation service which has been dealing with the person after he served his punishment.

The *Chairman** pointed out that the rehabilitation service would actually form part of the commission proposed by the general rapporteur. The text spoke of a commission, composed of persons "conversant with various aspects of social life" and the members of the social rehabilitation services would naturally be among the first called upon to participate.

Mr. *de Jong** (Netherlands) stated that it was possible that this would happen, but he nevertheless would have wished to see it expressly mentioned, for the phrase "various aspects of social life" seemed particularly broad to him.

The *Chairman** stated that Mr. de Jong did not present an objection to the proposed text, but only suggested an addition to it, with the principle of which he agreed.

Mr. *de Jong** (Netherlands) confirmed that such was really the case.

Mr. *O'Neill* (Northern Ireland):

I am afraid we must object to the premises, to the sentence starting "Inasmuch....". It is my view, and the view, I think, of the Great Britain representatives, that it is most inadvisable to transmit any copies, expurgated or otherwise, to any private individuals. Any record of any criminal is a private document in the possession of the police and it is not communicated to anyone else. If certain individuals

wish to obtain information in regard to the employment of a certain individual, they may write to the Minister, and it is in his discretion to say whether or not that person is desirable or has a criminal record. But, copies of that record are never transmitted to any local authority and certainly not to any private individual, and therefore I think we must object *ab initio*.

Mr. *Molinario** (Argentina):

Let me, first, thank the general rapporteur and the drafting committee for taking account of the ideas which I presented in the course of an earlier meeting. Nevertheless, I want to propose another amendment designed to change the text submitted to the assembly on a special point. This text says that "this communication ought no more to mention the data considered to be affected by the passage of time". This provision concerns the data which will not be communicated to the administration nor to the public, and I think that the adopted expression is a little indefinite. I therefore propose that the following be substituted: "The communication ought no more to mention the data after a certain period has passed by. This period could be the legal period of the statute of limitation applied to the punishment in the countries which have this institution". I think that it would be advisable to refer concretely to the statute of limitation applied to the punishment, first because this is a legal term and therefore a fixed term, and especially because once the statute of limitation has lapsed society absolutely refuses to attach any consequence to the offence.

The *Chairman** gave the floor to the general rapporteur so that he might comment on the motions presented.

Mr. *Vrij** (Netherlands), general rapporteur, stated that the objection raised by Mr. O'Neill was the most radical of all.

The *Chairman** pointed out that Mr. O'Neill had not submitted a formal amendment and that therefore there was no reason to discuss his statement.

Mr. *Vrij** (Netherlands), general rapporteur:

I shall then limit myself to the other objections and will examine

them in the order they affect the text. With regard to the remark of Mr. Molinario, first of all, I think that it is not advisable to include details of a legal nature here. Adopting a point of view expressed in the great majority of the reports, the drafting committee thought it advisable to state the general principle governing this whole matter. But, I think it would be inopportune to make an express reference here to a very special institution such as that of the statute of limitation. At any rate, the text of the resolution is already rather long and I think that we could limit ourselves here to a general statement of the principle adopted, without entering into details.

On the other hand, Mr. van Buuren would like to delete the words "and all other information", or at least substitute for it another expression referring directly to the police registers. I think that the general expression "other information" concerns the data which will be furnished by the police, but that it has the advantage that it can cover others, too. In this respect, I agree fully with what Mr. de Jong has said, in whose opinion the rehabilitation service should play a very important rôle here. We might perhaps avoid all misunderstanding by stating that the social certificate would be based on the extracts of the register and "on other admissible information". The question of knowing what this information would be would then be left aside and this seems to be the best solution. Indeed, it seems really impossible to enter into so many details with regard to the introduction of the social certificate.

My reply to Mr. van Buuren has also permitted me to reply at the same time to Mr. de Jong. The mention of the rehabilitation service does not seem necessary and the Chairman has himself already given Mr. de Jong the best answer possible: it is obvious that the commission composed of "persons conversant with various aspects of social life", mentioned by the draft resolution, would primarily include representatives of the rehabilitation services.

Mr. *O'Neill* (Northern Ireland) submitted an amendment supported by six members of the Section and tending to replace the whole final part of the draft resolution by the following text:

> The penal register is a confidential document and should not be transmitted to any organization or private individual.

The *Chairman** stated that this proposition was much more

radical than the others and that it would have to be considered immediately.

Mr. *Vrij** (Netherlands), general rapporteur:

Mr. O'Neill's proposed amendment contains a negation pure and simple of the entire clause 3 of the draft resolution. I consequently think that the author of this motion should first of all vote against the adoption of clause 3. Once this clause has been rejected, should this happen, it would then be necessary to discuss Mr. O'Neill's proposition. Indeed, if one must abstain from giving information to any local authority, it is impossible to conceive of the institution of a social certificate and all of clause 3 is therefore challenged.

Mr. O'Neill stood by his motion to amend and the *Chairman** put it to a vote.

The amendment was rejected by a weak majority.

The *Chairman** then submitted for discussion Mr. van Buuren's motion to delete the words "and all other information", or secondarily to replace these words by "and possibly extracts from the police register".

Mr. *Vrij** (Netherlands), general rapporteur:

I already took position with respect to this motion some moments ago. I do not think that it would be advisable to enter into too many details or to restrict the scope of the text. Nevertheless, as I have pointed out already, I would like to meet Mr. van Buuren half-way by modifying the text in such a manner that it would say: "This certificate, while being based on the extract of the register and on other admissible information....". The question of knowing what is the information in question is therefore left open and everybody can interpret it in the spirit of our Congress and of all modern penal law. Everybody knows that the rehabilitation service will not be left out in this connection and the question of knowing to what extent the police information is here desirable cannot be specified in the manner which Mr. van Buuren would like.

The *Chairman** suggested that the officers of the Section edit

the final text of the resolution in the manner just suggested by Mr. Vrij and he proposed to Mr. van Buuren to withdraw his amendment.

Mr. *van Buuren* (Netherlands):

I cannot withdraw my motion, first of all because it has gained the support of other members of the Section, the Argentine delegation for example. On the other hand and especially, I cannot withdraw it for I think that the word "admissible" proposed by the general rapporteur in no way lessens the dangers which he has stressed and which prompted my motion. Consequently, I stick to my amendment in its subsidiary form.

The *Chairman** put Mr. van Buuren's motion to a vote and it was rejected by a majority vote.

The Chairman then called for discussion on Mr. Molinario's amendment, which had been supported by six members of the Section.

Mr. *Vrij** (Netherlands), general rapporteur:

My duty compels me to oppose the motion of Mr. Molinario categorically. I had hoped that the drafting committee had given Mr. Molinario entire satisfaction by speaking in the text of the fact that the communication would no longer mention the criminal record "considered to be affected by the passage of time". I am persuaded that it would be fatal if the erasures from the penal register were to be restricted only to those benefiting from the statute of limitation. I think that it is the whole concept of justice, which Mr. Molinario himself so eloquently defended at the beginning of the general discussion, which requires us to fix some rule when called upon to give information, namely the rule that it is advisable to examine the entire case and the impression which emerges from it, even if it should appear opportune not to mention the previous convictions any longer, even before the statute of limitation has lapsed. On the basis of these considerations, I must, on behalf of the committee, oppose the proposition to state that the effect of the passage of time would be precisely the one produced by the statute of limitation.

The *Chairman** asked Mr. Molinario if he insisted on his motion, in view of the explanations given by the general rapporteur.

Mr. *Molinario** (Argentina) said that he insisted and again pointed out that he did not have in mind the information furnished to the courts in case of a later offence, but merely the communications meant for public administrative agencies and private individuals.

*Chevalier Braas** (Belgium):

It is in this spirit that certain members of the Section have given their support to Mr. Molinario's motion. It is not a question of forbidding the communication of a conviction or of any data to the magistrate or the judge. It is solely a question of the data furnished to the public administrations and mentioned in the certificates of good conduct and moral character or in the social certificates.

The *Chairman** put Mr. Molinario's motion.

The votes of the Section were equally divided on this motion and the Chairman consequently stated that it must be considered as rejected. He, nevertheless, congratulated Mr. Molinario for the near success he had gained.

The *Chairman** read clauses 4 to 6 of the draft resolution which were worded as follows:

4. Means for the convicted person's *restoration to full civil status*, founded on a moral improvement, must tend towards individualization. Their advisability and structure require renewed study.
5. The penal register, the delivery of extracts and of social certificates as well as the restoration to full civil status ought to be regulated by the legislator.
6. Uniform standards for the organization of the penal register should form the subject of a world convention to be followed by regulations concerning the exchange of extracts and of other information.

Nobody had any objections against these propositions and the *Chairman** stated that they could consequently be considered adopted by the Section [1]).

Mr. Vrij was designated rapporteur for the Section in the General Assembly.

1) See the whole text of the resolution adopted by the Section in the Proceedings, General Assembly, pp. 466–67 infra.

*Chevalier Braas** (Belgium) thanked Mr. Vrij on behalf of the assembly for his remarkable report.

The *Chairman** thanked the members of the Section for the unremitting attention they had displayed and the courteous manner in which the debates had been carried on. He told the assembly how pleased he had been to be the Chairman of the Section, and declared the work of Section III completed and the meeting adjourned.

Section IV

Chairman: Mr. ANDREAS AULIE (Norway)

Secretaries: Mr. DE CNYF (Belgium)
Mr. LEJINS (U.S.A.)
Miss LIGNAC (Netherlands)

Afternoon Meeting of Monday, August 14th, 1950

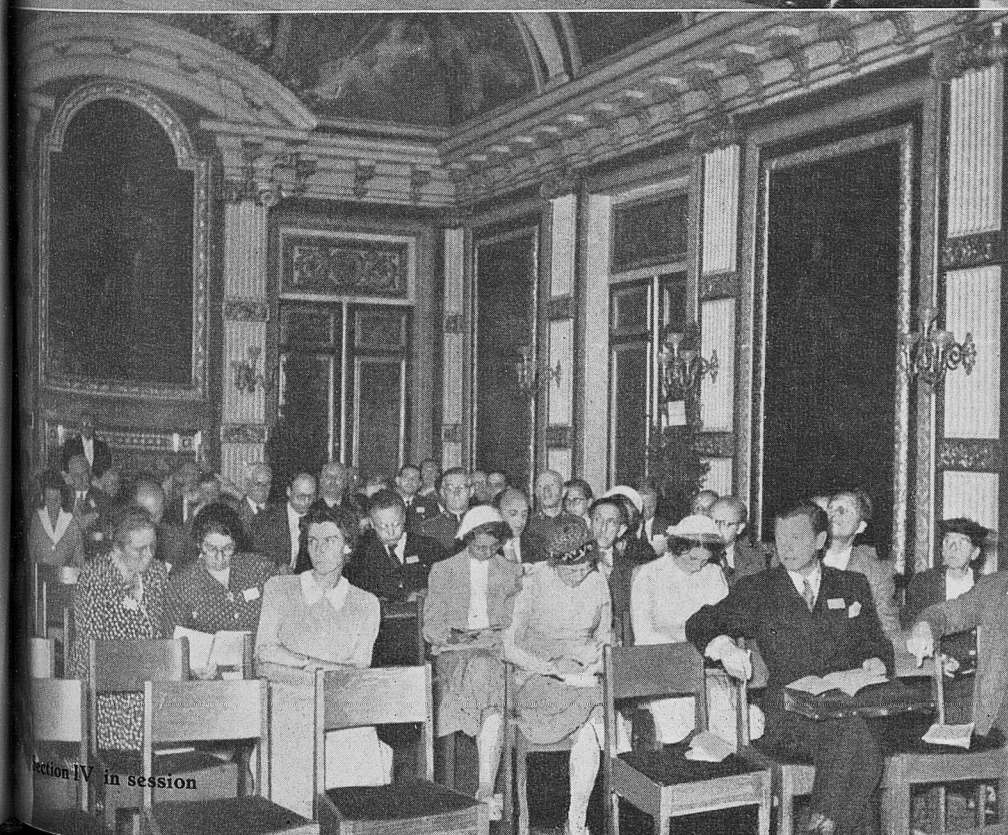
The *Chairman* opened the meeting and greeted the congressists who were ready to take part in the work of Section IV. He stated that the questions which it had to deal with went to the very heart of criminal policy. It might be that current solutions were related to different ideas, schools of thought or experiences, so that it would not be easy to come to a unanimous agreement on resolutions. But that would not be absolutely necessary : any opinion, even if it were in opposition to another, could, if expressed in an appropriate manner, be useful for the development of thought.

The Chairman then made some announcements of a general nature on the organization of the work of the Section and proposed that Mr. Bradley be designated as special rapporteur of the Section in the General Assembly, according to article 10, fourth paragraph, of the Regulations of the Congress.

This proposition was adopted by acclamation.

The Chairman then passed to the discussion of the first question of the programme of the Section:

Section IV in session



Section IV in session

What developments have there been in the penal treatment of juvenile offenders (Reformatory, Borstal Institution, "Prison école", etc.)?

Mr. *Bradley* (United Kingdom), general rapporteur [1]):

I will do my best to keep down to the ten minutes, but it may be a little too brief.

I do not know whether you received your copies of my general report in time to read it before this meeting, but if not I am going to be courageous enough to assume that you will read it afterwards, because it is important that we shall have general discussion and not long speeches. I have received our Chairman's permission to break away from what I believe is common practice and not read the rapporteur's report to you in full, which you either have read or perhaps may read later. Our Chairman has given me permission to read selections of my report, such selections as may possibly promote useful and valuable discussion. And may I, Mr. Chairman, say in explanation of my inadequate report that I chose deliberately the form of this report because I thought that the rapporteur's duty was to do what his name implies : to report, not to write an essay on the ideas which he himself might hold or which he might represent as being the ideas of his own country, but to report as faithfully as possible what other countries have said in their reports. For that reason, and partly because I did not know that all reports were going to be printed and circularized, I summarized the reports which I received from the eight different countries. [2]) And studying those reports very carefully, I collected a certain number of questions — questions of principle, questions of policy in dealing with young delinquents or minors — as the reports seemed to suggest them, and set them out in the form of questions at the end of this report. And now, with your permission, I will read selections only from this report. I will then read the questions that the national reports suggested, and then I will have the courage to suggest that those questions might be reduced to three of four main problems, to which we might address our thoughts.

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[1]) General report, see volume VI, pages 8 ff.

[2]) See list of rapporteurs, loc.cit., p. 8, footnote.

The report starts:

The progress accomplished in the penal treatment of juvenile offenders is described in the following reports of recent developments in various countries. For brevity and clarity the reports have been summarized in the form of notes. They provide ample material to suggest the consideration of principles of treatment and points of policy, some of which are enumerated in question form at the end of this statement.

And then I let myself go on a piece of generalization:

It may be added that those who plan and work for juvenile delinquents must be men and women of faith and hope, remembering that, as the Scottish poet Burns says, "The deep laid schemes of mice and men gang aft aglay." The reaction of an adolescent to an accepted line of treatment is one of the imponderables in a baffling world.

Then follow the annotated summaries of the reports from the eight countries who sent in reports. Actually a report did also come in from Holland, but unfortunately it arrived too late for me to include it in my general report. I am going to leave you, in your own good time, to study those summaries as you see fit. Now, they suggested to me certain questions on which, Mr. Chairman, I think you will agree that we should base our discussion.

The above summaries indicate that since the idea began to gain ground that enlightened re-education was not only more human but also more appropriate than pure punishment for wayward boys and girls, some courageous experiments have been made. It is difficult to draw any clear or positive conclusions from the reports, but the following questions suggest themselves as meriting the consideration of the Congress.

There are eight summarized groups of questions:

The Court Sentence. Should Courts pass a specific sentence, or should they award training, leaving the Executive, after examination, to decide place and nature of training as permitted by law?

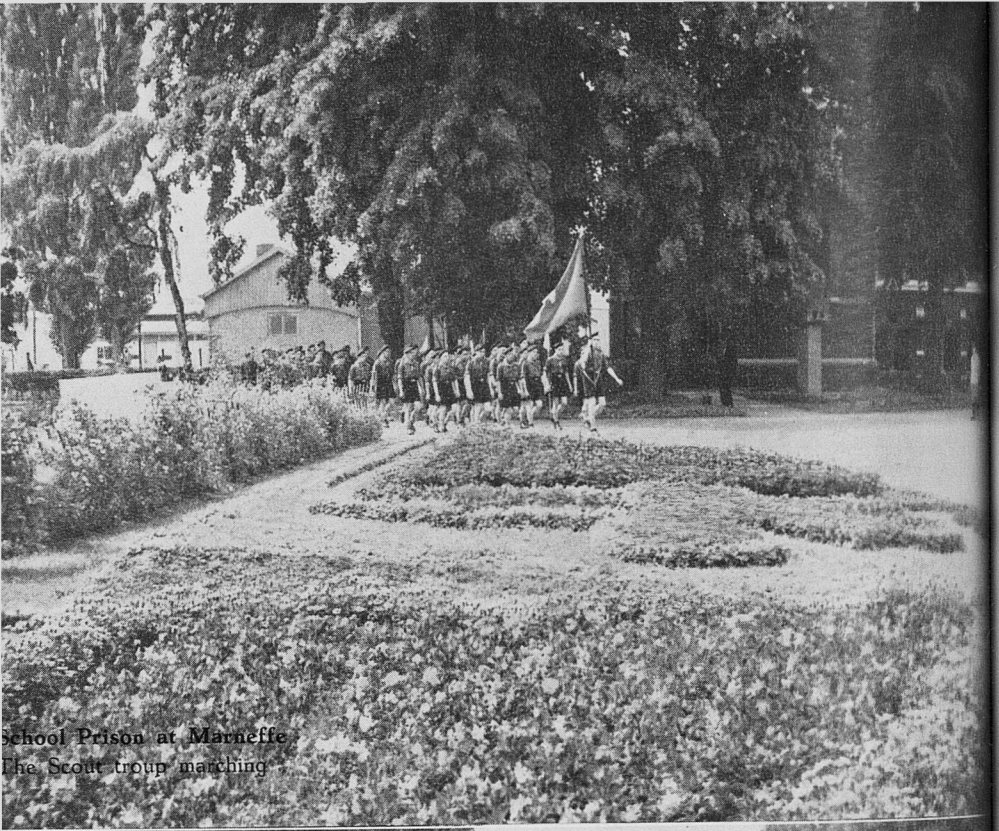
Classification. How important is classification? If accepted as important, does it connote many and small establishments? Should mature adolescents be mixed with immature? Should adults and adolescents be trained together? Should there be any co-education?

Buildings. Have we gone far enough[1]) with open institutions? Is security incompatible with training and re-education? Should juveniles and adolescents sleep in dormitories or single rooms? What size should institutions be?

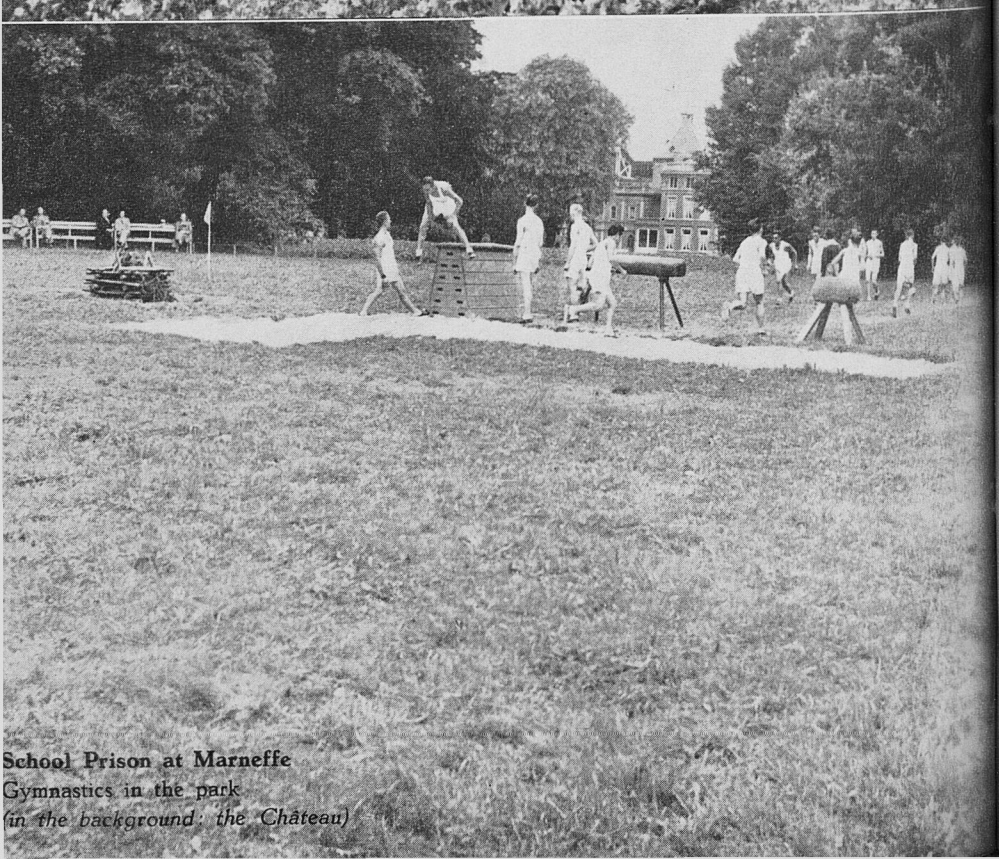
1) Original report says: "too far".

Juvenile Institution at Zutfen: Recreation

Juvenile Institution at Zutfen: Athletics



School Prison at Marneffe
The Scout troup marching



School Prison at Marneffe
Gymnastics in the park
(in the background: the Château)

Vocational Training. Since so few work at the trades they have learned, is vocational training wasted on juveniles and adolescents? If so, what should they work at? Should establishments be in the country or near industrial towns?

Period of Training. Should sentences be indeterminate? Does the unknown date of discharge make for restlessness and only artificially good behaviour?

Staff. Qualifications? Should they have special training? If so, what? Is there a danger of employing specialists who study cases, rather than men and women who, because they love God, will love the young people in their care? Are we too scientific? Or not scientific enough?

After-Care. Have we systems of compulsory licence or supervision after release? Who should do the supervising? Is disposal on release well arranged?

Education. Should education be related to work and vocational training? The problem of the advanced student and the illiterate. Teachers.

That is the summary of the report as I thought it best to submit and as I thought it best, with our Chairman's permission to present it to you this afternoon. But it did appear to me, when discussing it with our Chairman that we would obviously not have time to discuss a long list of questions such as I have enumerated there. I therefore beg to suggest that we might profitably limit ourselves to our main issues which might find their echo in four resolutions, something along these lines. And, may I explain, Mr. Chairman, that in no sense am I putting these forward as resolutions at this stage – clearly that would be premature – but I am putting them forward as suggested lines on which we might limit and clarify our discussions. Of the many important aspects of our problem the following seem to me perhaps of foremost importance:

1. Classification of minors according to character and record is important, in order that the good may help the not-too-bad, and that the bad shall not contaminate the good.
2. Institutions should be small. Where they must be big, they should be subdivided into small units.
3. The most important factor in reforming minors is the staff. These should be carefully chosen and carefully trained.
4. After-care is a vital part of treatment. Success will be lessened in proportion as after-care and supervision are neglected.

I hope, Mr. Chairman, that these few introductory remarks have suggested some lines which we might follow in addressing ourselves to our vital and precious problem.

(Applause)

The *Chairman*:

I have the pleasure of thanking you, Mr. Bradley, for your remarkably clear and instructive summary. The questions you raise as to the best methods to be adopted in the treatment of juvenile offenders will be of great value, I think, when we are going to discuss the resolutions to be drafted. The answer to the questions before us will have to state facts as to the development of certain methods until now. We will have to distinguish between mere experiments that are going on and progress which can actually be registered. Mr. Bradley's suggestion that we should discuss his four points seems to me to be a very good and expedient procedure. We might perhaps first decide if we should treat the questions in the order proposed by Mr. Bradley. Are there any objections?

Mr. *Eriksson* (Sweden):

The question is this : "What developments have there been in the penal treatment of juvenile offenders?" I think there must be at least some time for general remarks.

The *Chairman*:

May I ask if the general rapporteur thinks it wise to have general remarks before we attack the questions?

Mr. *Bradley* (United Kingdom):

Yes, Mr. Chairman, I agree.

Mr. *Gunzburg** [1]) (Belgium):

I agree fully with Mr. Eriksson on that point. Before entering into the details of the very interesting questions raised by Mr. Bradley, it is nevertheless necessary to be aware of the fact that the question, which is before the Congress and which has been treated by most of the special rapporteurs, is very clearly defined. This question has been accompanied, in the programme set up by the International Penal and Penitentiary Commission, by a commentary in which this very interesting last paragraph is found : "While a great deal remains to be done, there is no doubt that prosperous ways have been opened up. The moment seems favourable for describing progress accomplished

1) An asterisk after a title or name signifies that the remarks have been translated from the French.

in this respect in various countries." This is a very optimistic view of things. Now, if you have read the special reports prepared on this question, you must have been struck by that of Mr. Teeters which raises a cry of alarm for America. It says that the institutions established in that country, from where the idea of education instead of repression for youth came, have nearly failed. Speaking of the commentary to the question made by the International Penal and Penitentiary Commission, Mr. Teeters declares : "The writer is concerned with the Reformatory and its success. There is nothing in the studies made in the United States to justify that enthusiastic statement." And he adds a few lines farther on : "The only incisive study made of the Reformatory in the United States is that by Drs. Sheldon and Eleanor Glueck and their findings are very discouraging." I think that Mrs. and Mr. Glueck are probably ready to confirm this judgment. There are also other reports which say that there is dissatisfaction with what has been done in this field, and that the practical results obtained have shattered many hopes. Such is the case especially in England, where a revolution in such matters has just been made.

On the other hand, we have read reports of some countries in which we are told of rather favourable new experiments. I apologize for mentioning my country in the first place, but the Belgian report on Hoogstraten and Marneffe shows that we have taken very different roads and that the results obtained seem satisfactory, so far as they can be judged at this moment. The number of relapses is indeed not high. There is another country in which even more positive experiments have been made: it is Sweden. I read the Swedish report on the question under discussion with very great pleasure and very great joy, for it has encouraged me very much. The eight questions that Mr. Bradley has raised, and which have raised another eighty for that matter, present a means by which the study of the problem can be started. But, I wonder if before examining them in a necessarily hasty manner, we should not ask ourselves why the results obtained in certain places seem to be bad and why they are good elsewhere. Personally I think, and quite tentatively so, that this is essentially because we have not sufficiently dissociated education from repression, and have not understood that, first the child, and then the adolescent whom we are dealing with here are beings whose particular personality must be studied – beings for whom the infraction, the offence is an episode – and the diagnosis of which must consequently be made before passing

to treatment. If, in spite of the new trends, repression is, nevertheless, used in order to cater to public opinion, as is done in America and in England, one cannot hope to arrive at complete results. Is this the essential reason for the failures recorded or should they be sought elsewhere? Perhaps psychiatry may clear up this point for us. But in this connection I would suggest that we listen to the considered opinion of an American, a Britisher and a Swede, so that the Section will know how they explain that in certain cases there are so many relapses — such failure that new forms of treatment are sought — whereas in other countries people are, on the contrary, satisfied with the results obtained or continue, at least, to base their hope on methods used so far.

The *Chairman*:

There are now two distinguished speakers who want a discussion on the general principle as regards the treatment of juvenile offenders, and I wonder if there are any objections to that form of procedure.

Mr. *Upright* (United Kingdom):

I am sure that we could have a very interesting conversation, if the procedure suggested by our friend were followed and a long conversation were to take place upon the conditions in different nations and countries, but I do not think we should get any further. We have before us eight preparatory papers which some of us have studied and, therefore, we already know a little about the condition of things in those different countries. Those eight papers were boiled down by Mr. Bradley and presented to us in his report, and it does seem to me that the time for general remarks as to the conditions in different countries should be reduced to the utmost in order to give us a chance to get forward to the discussion of these very important questions which Mr. Bradley has now reduced to four. I think that they are essential to any practical conclusions that we may reach, and I would like to see them dealt with as soon as possible.

The *Chairman*:

Because we are very short of time, I should like to know, before we make any decisions, how many persons want to make general remarks before going on to the specific questions. I want to say that each speaker will only have a few minutes, because to-morrow we must

deal with the second question. I see that there is only one gentleman who wants to speak on the general aspects, and I think it would be a good thing to take advantage of his comments now before we go on to the questions.

Mr. *Eriksson* (Sweden):

I will not be too long but I am glad of this opportunity to say that the official commentary on the question we are now discussing, not the one made by Mr. Bradley, states among other things that "while a great deal remains to be done there is no doubt that prosperous ways have been opened up." I doubt the latter part, not the first part, of that statement. In my opinion, a statement of this type underlines progress too much. Of course progress has been made in most countries. A good deal of interest and efforts and money has been invested in the treatment of juvenile offenders. That is true. However, I think that there is not only "a great deal" that remains to be done. I think that a very great deal remains. Furthermore, I think it is a simple and clear duty for an assembly of this kind to stress the actual need for more work and, let me say, more intelligently planned work in this particular field of penology. It should be pointed out that there has been in the past a considerable lack of planning, especially concerning the institutional work. Science has had much more to contribute than has actually been made use of. A real study of the results of institutional work has not been carried out, with the exception, of course, of the studies of Mrs. and Mr. Glueck and a few others. Money has been wasted on institutions without corresponding results. Isn't it quite obvious that better results very often could have been obtained with the tax-payer's money? In my opinion, a thorough study of the situation in most countries surely would lead to such a statement, and why could not an international congress be straightforward for once?

It is a task of this Congress to point out remedies. I think these should be : 1. A more intensive study of the young delinquent before, during, and after treatment which, of course, includes follow-up studies; 2. Scientifically conducted experiments with methods of institutional and non-institutional treatment, as Professor Gunzburg pointed out; 3. International exchange of experiences and viewpoints, giving every country the opportunity to profit by the successes and failures of other countries, which leads us to the

necessity of having another type of international co-operation than this type of congress is giving us, Mr. Chairman – not one, or two, or up to ten minutes to discuss the points presented in Mr. Bradley's general report, but a couple of days.

The *Chairman*:

I am quite sure that the general rapporteur will consider the remarks made by Mr. Eriksson and see if they fit into the framework of a reply, if we give a direct answer to the question of: "What developments have there been in the penal treatment of juvenile offenders?". Now, I suggest that we take up the first question raised by Mr. Bradley, that of classification.

Mr. *Llewellin* (United Kingdom):

I speak from the point of view of a practical man who has recently retired after being for twenty-seven years housemaster or governor, actually in Borstals with Borstal lads. I am quite certain from that experience that classification according to character and background is of supreme importance. It is more important than classification by age and much more important than classification by intelligence or according to work. I know only too well what a tremendous lot of harm two or three lads of really bad character can do in an institution. You may say that you can get them removed to another one, but a great deal of harm is done before that has happened. I submit, then, that classification by character is of the utmost importance. You may say that in some countries the numbers are so small that it will mean that the institutions will have to be too small: and this, Mr. Chairman, leads to the next question, if you will allow me – I shall keep to two minutes. I do not think a Borstal can be too small. I have been an advocate – and, I may say, at some sacrifice – of small Borstals all the time of my service. I know that in my own country the authorities are aware of that and agree with it. You will have noticed, if you have read Professor Teeters' report, that he does give as one of the causes of not so much success as might have been, the size of the reformatories in the United States, and he does recommend that no reformatory or Borstal should have more than a hundred inmates in it. I entirely agree with that; in fact, I would like to see them smaller still. For some types of lad I would like to see them as small as twenty and make them a kind

of family Borstal, especially for those lads who have spent their whole life in orphanages or schools and have never had a home life at all. They would then be given what they have missed, a home life in a very, very small Borstal.

Mr. *Rose* (United Kingdom):

I should just like to add a word or two to what Mr. Llewellin said. I have been concerned with the same type of institution and though my interest has been on a scientific rather than on a practical level, I have been impressed by the great importance of classification. Although an attempt has been made to classify offenders by their character and personality, or to try and discover what is the relationship between a more superficial typology, such as a classification by personality characteristics, and the deeper laid maladjustments that do exist and must be dealt with, I think it is probably fair to say that, to a large extent, treatment is only dealing with the more superficial aspects of what in point of fact are often very difficult problems. That is, I might submit, a reason why we are not quite so successful as we should like to be. It is really, I think, that we have underestimated the difficulties of dealing with delinquents and all sorts of maladjusted types. I should like to know myself what sorts of characters, what sorts of personalities can best be dealt with by various types of treatment. I should like to see a number of experiments in classification, in various methods of classifying delinquents by their personality, etc., each accompanied by a follow-up study up to the present. Although I do not know what their present work is, Mrs. and Mr. Glueck have not really gone very far into this particular field. They have been mainly (I think I am right in saying mainly) concerned with the more sociological factors although I think they have another work coming out. I think also that this is something that can be done as small experiments, before you start a big follow-up. And, this is very important for countries such as mine in which there is no money to play with for various experiments. I think it is quite possible to attempt various types of classifications and collect statistics in the course of ordinary everyday operations, aided to some extent by outside research people, and I think we should try to conduct this kind of experiment in order to discover what sorts of factors we should be looking for, what kind of classification we should be making when

we eventually come to do, if we ever come to do, a large follow-up study.

The *Chairman*:

Some of the questions we are dealing with now are headlined in other Sections, so I would suggest that we might restrict the discussion somewhat and go on to other points.

Mrs. *Glueck* (U.S.A.):

I had no intention of saying a word to-day, but I am impelled to do so because of the kind remarks of Professor Gunzburg, Mr. Ericksson, and Mr. Rose. I would like to say that when we report a large failure rate in the United States from two or three little studies which Professor Glueck and I have made, we do not mean in any sense to speak for the whole of our country. I would simply like to report that there are many experiments going on, that America is a very dynamic country, a very earnest country, and that much important work is being carried on in many institutions, agencies and juvenile courts. What we do not know, however, is how effective the efforts are. And, of course, since I myself have already devoted twenty-five years to research and know how little comes out of twenty-five years of work, I would just like to suggest, in agreement with Mr. Eriksson, that we need to spend much time, much money, and much patience on the analysis of the results of all kinds of experiments that are going on all over the world.

Now, in connection with what Mr. Rose has said, I would like to report that Professor Glueck and I have just finished a ten-year study into the causes of juvenile delinquency. In that work we have, we think – to some extent at least – succeeded in analyzing this deep-seated character structure of delinquents, which Mr. Rose has mentioned and about which perhaps not too much has been known. I think you will agree that most of the studies that have been carried on have reported, on a rather superficial level, on the behaviour and character structure of offenders. I am, unfortunately, not at liberty to share this work with you beyond telling you that it will be published in about two months. Our publishers, the Commonwealth Fund of New York, and our university, Harvard University, although they knew that we were coming to this Congress, asked us not to present any findings. But, I would like

very briefly to refer to the contents of this study – you will find a copy of the table of contents in your mail-box to-day, for our publishers just sent us five hundred copies with a request that they be distributed to you. Now, this is a study into the causes of juvenile delinquency; it is called "Unraveling Juvenile Delinquency". It has taken ten years to carry it out and a staff of about seventeen or eighteen experts and has cost over a quarter of a million dollars. I mention that to show you how expensive this kind of research is. We hope that the results will warrant the time and the expense.

Now then, what is this study? It is a comparison of five hundred seriously delinquent boys, real juvenile offenders, about whose delinquency none of you would have any question at all. They have been compared in turn with five hundred truly non-delinquent boys, likewise boys about whose non-delinquency you would have no question. That does not mean that they have not committed some little offences like stealing a toy or five cents from mother's pocket at the age of six or seven, but they certainly are not juvenile delinquents in the true sense. Now, these two sets of children have been matched by age, age for age, and by nationality – that is important in our country because, as you know, we have so very many ethnic backgrounds. They have also been matched by intelligence and by general socio-economic background. In other words, both groups have been reared in what we in America call delinquency areas; one group has become delinquent and the other group has not. The question is: Why? We have subjected these thousand boys to very intensive study. What have we done? First of all we have given them quite a thorough physical examination. They have been examined medically. They have been examined anthropologically; that is, we have made an analysis of their physical type. Here in Europe you do a great deal of work of that kind, but in our country the biological approach is not very popular; however, we have made the study and there were very important findings as a result of it. Now, in addition to that we have studied these boys psychiatrically; they have been studied psychologically, by means of various kinds of intelligence tests, and, most important, they have all been given the Rorschach test. In addition, very intensive sociological study of the family and personal background has been made, all in all covering over four hundred factors in the lives of these children. Then we subjected these findings to analysis – delinquents versus non-delinquents – in

order to find all of the differences between these two closely matched groups. We have gleaned many, many clues to the causes of juvenile delinquency. I would only like to say that many of the factors which we have all thought for so many years to be crime causative have proven not to be so in the study; however, many of the factors that we have all thought crime causative have been proven to be so. In addition, a number of factors have emerged which perhaps none of us have thought of as crime causative or as having anything to do with the case and which we find have a great deal to do with it.

Now, what does all this mean in terms of our discussions here to-day? It means that when we have materials like this available to us, we may be able to apply them in our courts, our institutions, our probation departments, our parole systems, in order more effectively to classify and to treat these children. I am sorry that I cannot say anything beyond that. You will probably be interested just in the table of contents of this work, and you will have it available. We hope that when another congress rolls around, perhaps in another year, we will be at liberty to discuss these findings and to see how we can make use of them constructively in the work which all of us are doing in many places in Europe, America, Africa, India, etc. Thank you very much.

The *Chairman* passed to the discussion of item 2 of the suggestion of the general rapporteur concerning the size of institutions.

The Section indicated its agreement with the views expressed by Mr. Bradley, according to which institutions should be small or subdivided into small units if they had to be large.

The *Chairman* passed to the discussion of item 3 of the suggestions of the general rapporteur regarding the question of staff.

Mr. *Clipson* (United Kingdom):

I want to say a brief word because I feel that this goes right to the root of our troubles. A great deal of the difficulties that have arisen in different countries, I am quite sure, can be attributed, as they can in the case of Great Britain, to the fact that we have moved

away from our beginnings and perhaps have lost sight largely of the valuable contribution made by the voluntary societies. It was after all – and I say without any apologies that I am a parson – it was after all the Church that first directed the interest of the public to these great problems, and the Church, or shall I say the Churches, have played no mean part through the years in the contribution that has been made. I have read the reports, almost all of them, but apart from what I have read in the reports I can only speak of my own limited sphere, but I do know that of which I speak. I am sure of my facts. It is from two angles that the dangers come. In the first place, there is the danger of accepting the academic and overlooking the value of the practical. I am always wary if I have an applicant for a post who comes with a handful of certificates. I have a wholesome horror of experts, I do not in any way underrate the value of the work that has been put in to acquire the certificate, but no certificates can compensate for the lack of practical knowledge. Now, there is one danger : we are apt to accept the man, the woman because of their scholastic attainments. It is not enough. It is valuable, but of itself certainly it is not enough. On the other hand, there is a danger because we are in most countries now stepping up remuneration – rightly so. Now, in the early days when this work was sponsored almost entirely by voluntary societies, chiefly representing the various churches, of necessity we had little money, very little money; and the men and women who came into this work, you could be quite sure, had a sense of vocation. They loved the work and they gave all they had in their hearts to it, and with large success. With the different countries stepping up the remuneration, as they take over the responsibility, bit by bit, there is an influx of applicants, not qualified in any sense but whose eye is upon the money. Now, we shall get over that. We are going through a stage of transition, and in the ordinary course of events we shall get past that difficulty. But at present it is there and it is a grave difficulty.

Now, that work to which I have referred, by the voluntary societies, was on a religious basis, and the people who embarked upon it were inspired by spiritual motives. Do not let us forget that. Otherwise it will be a long enough repeated story of failure. If you are dealing with right and wrong, remember that underneath right and wrong you have got good and evil, and that is the basic trouble,

Mr. Bradley referred to God. We cannot leave God out of our reckonings in this all-important work. It is a question basically of good and evil. And I do appreciate fully the work of the psychologists; I read as much as I can of their findings, but do not let us forget, my friends, that the greatest and most comprehensive manual of psychology ever published is the Bible, amply illustrated.

Reference has been made to the number of failures, and our country was mentioned among others. Humbly and with a sense of true humiliation one is bound to admit, there is not the percentage of success that one would like to see, but speaking again of my own little field, if I may do so, it gives us great encouragement and great joy to see boys, and it is not at all unusual — they are not children, boys between seventeen and twenty-one, that is the group with which we deal — to see lads often, as they are coming towards the end of the six months — they have been committed to our care by the courts for six months — go back of their own free will to the magistrates who sent them and ask if they can have a further six months and go to the full limit of twelve months which is permissible in our country: that in itself, I think, speaks for the value of the angle from which we approach this question — that the lads themselves, as they are coming to the moment of freedom, go back to the court of their own volition and ask, please may we have, may I have a further six months of residence in this hostel or this home, as the case may be, and that, Sir, as far as I can see, needs no further argument.

It was agreed that the suggestions of Mr. Bradley would be distributed in written form to the members of the Section in the morning when the discussion would be resumed; the *Chairman* then adjourned the meeting.

Morning Meeting of Tuesday, August 15th, 1950

The *Chairman* opened the meeting and passed to the discussion of item 4 of the propositions submitted to the Section by the general rapporteur, the text of which had been distributed.

Mrs. *Lampard* (United Kingdom):

I have worked as a probation officer in England, and I would

like to say a little about the importance of after-care. In England probation officers sometimes do some after-care work. I think everyone is agreed that family life is a very important thing to-day. At times it is not possible to keep children and young people in their homes. This means that they must be removed from the ordinary world and given training inside an institution. However good these institutions may be — and they can provide many things which an ordinary home cannot provide — they of necessity cut off the child and the young person from the outside world, where he must ultimately take his place as an ordinary citizen. The aim of these institutions is now to provide a training which is as near as possible to ordinary home life, but it is of course difficult, and when the training is finished and the boy or girl leaves the institution the most important thing is to help him to fit again into the life of the outside world. This is difficult because he is often not perhaps a normal, well-adjusted person, and has of course originally failed to take his place in the ordinary world. It is here, I think, that after-care is of such vital importance. It is now that we must help the child or young person once again to fit in with the customs of the world outside.

I think after-care should begin at once when the child goes to the institution, and the after-care officer should help the home and the family of the child and young person to prepare to receive him and at the same time, when he comes out, to help him, not only to get work but — what is perhaps more difficult — to adjust himself once again to living with his family. This is really the secret of our institution work — that we must help them again afterwards.

Mr.*Clipson* (United Kingdom):

I wish to raise a point which has given me much to think about, although it can be considered as of minor importance. From the official point of view the staff of the institution have no responsibilities toward the children from the moment the latter leave the institution that has sheltered them for a certain time. Although it would not be desirable to render their present burden heavier, I think that if the authorities were to give the staff in some way a possibility to continue to exercise a kind of supervision, to continue to give them a certain assistance, this could be extremely useful. Just as the soldier who leaves the army at the end of active service is automatically put into the

reserves for a certain number of months, it would be fortunate if the children were given the same status of reservists in order to make it possible for us to give them help.

Although we are always greatly interested in every individual, the day he leaves our home or hostel we have finished officially, and there is nothing we can press even though it may be for the good of the boy or the home, or both. But if it did follow automatically that for a matter of a few months we still had the right, and it was our obligation, to follow up this individual, we feel that would be helpful.

Mr. *Rose* (United Kingdom):

I just want to say one word about the organization of an after-care system which, I think, is particularly important. It seems to me that the most important thing is that after-care – which in a way is rather a misnomer, for it really perhaps should be called care – should start at the time that the boy goes out. It is the usual practice, certainly in my own country, not to notify the after-care officer until the boy is just about to leave the institution, and this seems to me to be a mistake, because so often the boy comes back to a home which is substantially unchanged from what it was when he first left it. It seems most important, too, that there should be continual reporting, both from the institution to the after-care officer and from the after-care officer to the institution during the time that the boy is actually away from home, so that the home and the institution would be co-operating in improving conditions, insofar as it is possible. The parents should understand what the institution is doing, and the institution should understand what the parents' problems are, so that when the boy comes out he will have a reasonably good start in after-care.

Mr. *Eriksson* (Sweden):

I would just like to tell you, with reference to what Mr. Clipson said, that in Sweden we have adopted such a system as you are advocating now, because in my country after-care belongs to the school, for example the approved school. So, if you think it is a good system that after-care should be supervised, so to say, by the governor of the approved school, we can tell you from our experience in Sweden that it is a good system. You may remember what I said yesterday : we must have much more international co-operation, for we can learn from each other.

Mr. *Gunzburg** (Belgium):

I would not want to make my speech of yesterday again, but I had hoped to find a preamble in the resolution which Mr. Bradley was to submit to us this morning, and since I do not find any, I take the liberty to submit one myself which will certainly also meet the desire of our excellent colleague, Mr. Eriksson. I believe that after the explanations I made yesterday, it is useless to give a commentary, and I shall simply read the recommendation which I propose:

The Congress, considering that the morphological, bio-psychological and social characteristics of juvenile delinquents should be studied before the determination of efficient measures of re-education and re-adjustment, expresses the wish that an international exchange of all available information concerning these elements should be organized. In any case, the following principles should be observed: .... (then, the principles which Mr. Bradley has submitted to us would follow, more or less.).

The *Chairman*:

I should like to remark that the sheet that has been distributed only contains a summary of the subjects for the discussion. I know that Mr. Bradley has drafted a resolution, which he is going to read to the audience, but I thought that we should first finish with the questions before us.

Mr. *Clipson* (United Kingdom):

I cannot leave the speech of Mr. Eriksson pass without making a correction, since I have given a wrong impression, I am afraid, of the after-care as established, on the lines Mr. Eriksson suggested, in regard to the British approved schools and Borstals. My particular interest is in approved probation homes and hostels, and it does not apply to other institutions.

Mr. *Hamer* (United Kingdom):

I speak as headmaster of an approved school and would like to give you some information as to how after-care is done. Whether it is successful or not I cannot say, except that it does work out pretty well, but improvements can be made. All after-care really starts as soon as a boy is committed. It is done in the first place in the classifying school; contacts are made there with the home. As soon as the boy arrives in the approved school to which he is being allocated, contact is made immediately with the home again. Contact

is also made with the welfare officer. We have a system of welfare officers covering the country – there are gaps in the system due to the cost of the scheme – and we do make contact with the welfare officers who reside in the district from which the boy has come. The welfare officer is asked to make contact with the home immediately. The parents are invited by the school to visit the school and we keep in touch with them there. When we conceive that there are prospects of a boy being released on licence, we again make contact with our welfare officer. His job is to go and visit the home again – he has probably visited it several times once the boy has been in the school – and make preparation for the boy to come home on licence, if he is going home. It may be that he is going to a hostel or lodgings and will not be going home; it is the responsibility of the welfare officer to make those contacts again. When we have no welfare officer, we have local friends who do the work for us.

Then, for three years at least, after the boy has left the school, the managers of the school are still responsible for that boy's welfare. Our after-care officers submit reports. According to the needs of the particular boy they may be submitted monthly; when the boy is heading for a breakdown they may be submitted weekly; they may be submitted quarterly or, if the boy is doing well, once about every twelve months – then we can almost dispense with after-care. But, we keep in very close touch with the boy. In addition to the welfare officer and local friends, the school themselves are sending their teachers, their instructors, the men who have actually handled the boy, to visit the boy at his home, as well.

So, we keep up this after-care really from before the boy even is admitted to the approved school; at the moment that there are classifying schools the first contact is made there, and it carries right through. The actual periods vary according to the age of the boy. For example, if he leaves the approved school at nineteen, we are only responsible for after-care up to twenty-one. If he leaves a junior school or an intermediate school at fifteen or sixteen, we are responsible for the term of his licence and also for three years beyond that. I would like to make this clear: it is a system that has many defects and we are very much aware of them, but there is very close liaison between the school and the home,

from the day the boy is admitted and for three years beyond.

A similar system works with the Borstal Institutions too, but there are other people here more competent to speak on that than I am.

Miss *Huynen** (Belgium):

I would simply like to present three very brief remarks in order to express the wish that if this debate is to be terminated by a resolution, this resolution should be sufficiently explicit. It would seem to me useless to say that after-care is important, for we have been convinced of that for a long time, just as we have of the other propositions mentioned as basis for the discussions. In support of what the speakers have just said, I would simply like us to arrive at the conclusion that what is essential is the continuity of the treatment and that, consequently, the after-care should belong to the same authority or be performed under the responsibility of the same authority which has carried on the treatment; that is, if it is a correctional school, after-care should be instituted in connection with, and under the direction of, the school.

A second point which I should like to stress, is a particular characteristic of the after-care with respect to minor offenders. In a certain number of countries – and this is the case for Belgium – the jurisdiction over a minor delinquent stops, in principle, at the age of majority, twenty-one; it is a kind of guillotine that drops. This is extremely important for the psychology of after-care; many minors say to themselves : Well, it is simply a question of being patient and to hold out during the years or months which separate us from our majority age, and then we can do everything that they have so far forbidden us to do. I should wish therefore that, by some formula or other, we indicate that it is desirable that the duration of this after-care be quite flexible and not automatically limited by the age of majority. To-day, when the ordinary punishments for adults are developing towards indetermination, it is rather paradoxical to note that the measure applied to minors stops at the age of majority as if it had been chopped off by a knife.

My third remark has been suggested to me by some examples: namely that when supervision or after-care is used, it must be done with a lot of common sense. Almost daily I see cases where young minor delinquents are sent back to the institution for so-called bad

conduct, which is bad conduct only because these minor delinquents are expected to lead a life which is perhaps not at all led by those who have not been delinquents. One should be rather reasonable in these demands and not require that an individual who has been subjected to re-education should become perfect from one day to the next.

The *Chairman* thought that clause 4 had been sufficiently discussed and, with the consent of the Section, he gave the floor to the general rapporteur so that he might present the draft of his resolution.

Mr. *Bradley* (United Kingdom):

Before I read the resolution which I am about to present to you — a resolution which, Mr. Chairman, you may prefer to take in the form of an amendment, in the light of Professor Gunzburg's own previous motion — I would like just to make one or two remarks about the points or problems which occurred to me in thinking out this resolution.

First of all, obviously, a resolution on a question must be related to the question. You will recognize — and Mr. Eriksson and others pointed it out yesterday — that our question is indeed a very clear and factual question. We are asked to discuss what developments there have been in the penal treatment of juvenile offenders (Reformatory, Borstal institution, etc.), and we could have limited our discussions to recording what, in fact, the developments there have been and left it at that. But inevitably, and in my view quite rightly, we refuse to be merely looking into the past and have opened our discussion to lines and ideas on what we should do in the future. Therefore, the resolution has to cover both the actual answer required to the question — what has been done — and also what we have discussed as to what may or should be done in the future.

A resolution on a question such as this must also inevitably be in very general terms. Here we are a collection of enthusiasts, I think I may say, from many different countries and backgrounds, all with our own particular local and national problems, many of which are not common to all of us. The trouble about general terms, however, is that sometimes they are rather ineffective, and I have tried, therefore, to frame the resolution in such a way that we should proffer

something to the General Assembly which is worthwhile, something which we feel should be said.

And lastly, by no means least, the resolution should obviously be as reasonably brief as possible.

I propose the following resolution :

This Section notes with satisfaction the developments in the penal treatment of juvenile offenders and the evidence that re-education is replacing repression and punishment.

The Section recommends that scientific enquiry should be pursued into the causes of juvenile delinquency and the results of treatment. The Section recognizes the contribution which is made by the psychologists and the psychiatrists working in co-operation with those who have gained valuable experience in the field.

The Section stresses the continuing need for classification into homogeneous groups, for small institutions, for intelligent after-care, and particularly for the employment of the right men and women to carry out the work of training and reform.

Mr. *Gunzburg** (Belgium):

I want to compliment Mr. Bradley on the extent to which he has been willing to take account of the observations made in the discussion yesterday and to-day. I think I can withdraw the resolution which I proposed this morning and simply add three words to Mr. Bradley's when he speaks of "psychologists and psychiatrists". We must remember that in England and America a great number of scientists are covered by those terms which we in Europe do not include. I would, therefore, like to enlarge upon this point of view by specifying that the help of scientists working in biology, morphology, endocrinology — all sciences now auxiliary to criminology — is equally necessary. At the proper place (I do not have Mr. Bradley's text before me) I therefore propose the insertion of this passage : "The experiences, the scientific data of all those who, for the benefit of offenders in general and of juvenile delinquents in particular, bring the results of the biological, morphological, anthropological and physiological sciences...." [in addition to psychology and psychiatry].

As to the rest, I completely approve the resolution of Mr. Bradley, with which I agree.

Mr. *Lejins* (U.S.A.):

I would like to speak on two points.

First of all, I would like to add to what Professor Gunzburg suggested as to the amplification of the scientific disciplines dealing with the causes of juvenile delinquency : from the American point of view sociology should certainly be included, because in the United States the discipline that deals primarily with the questions of crime and juvenile delinquency is sociology, notwithstanding the fact that other disciplines contribute considerably too.

Secondly, I would like to suggest that, as long as one part of Mr. Bradley's resolution seems to have been inspired by the statements of Professor Gunzburg yesterday, perhaps we could formulate something which mentions that this resolution includes also the points raised by Professor Gunzburg.

Mrs. *Glueck* (U.S.A.):

I am thoroughly delighted with the resolution and the additions to it which have just been proposed. It seems to me that it quite fulfills the general purposes of this meeting. I just want to add one very minor suggestion to the sum total of the suggestions of additions that have been made thus far : that is that, in view of the fact that we are not committing ourselves to discuss in any great detail any of the suggestions that have been proposed, we add this phrase:

> The Section also recognizes that the proper implementation of these suggestions [that is, the four points that we have been considering] will be continually modified as time proceeds with increasing knowledge of the causes and the effective treatment of juvenile offenders.

In other words, it seems to me that it is important for us to say that, after all, we do know a good deal about the details of these various programmes that we have been discussing here, but that we do not feel that in the present state of our knowledge it is wise to make any very detailed suggestions; that we recognize that in our various countries our procedure will change, even our points of view will change, as our knowledge increases of the basic factors of delinquency and as we learn more about what constitutes the factors of treatment.

Mr. *Clerc** (Switzerland):

I simply want a minor modification at the beginning of the motion

to be voted upon. Allusion is made to the progress which has been noted. Now, yesterday in the debate, we heard from the British and the American side, with a very great honesty – an honesty which we would perhaps not always be capable of – that one had not reached the aim which one had in mind in the beginning. On the other hand, the report of Mr. Lindberg of Sweden also notes difficulties. Therefore, I shall propose – it is a question of form and of honesty – to soften the vigour of this declaration by saying that *some* progress has been observed. Let us not go beyond that because then we would be at variance with the declarations we read in the journal and which reflect what Mr. Gunzburg himself said yesterday.

Mr. *Eriksson* (Sweden):

I did not think there was such a big difference between Mr. Bradley and myself as there seems to be. I think, for instance, that we should not beam too brightly about progress. What developments have there been? I think that, as Mr. Churchill once said, there is only the beginning of a beginning, nothing more. I am not proud of it, and I think that it is the task of this Congress to stress that we are not satisfied with developments and that much more effort must be expended. This is very serious. I did not find one word in the proposed resolution about the necessity of international co-operation. Do you not think that is necessary? I think it is.

The *Chairman*:

As far as I can see, the various amendments could quite easily be put into the draft resolution, and when we have finished the discussion I should think it would be quite possible for the general rapporteur, in collaboration with the officers of the Section, to draft a revised text.

Mr. *Bradley* (United Kingdom), general rapporteur:

I will certainly try to incorporate the suggestions which have been made and which should be incorporated. I take it, Mr. Chairman, that it would be our wish that we should finish our discussion on the resolution at another session.

I must confess that I do not find myself altogether in agreement with Mrs. Glueck's suggested amendment. I think a lot has been said in the resolution – which, as I explained, must be reasonably brief and

precise – to indicate that we do feel the need for continued scientific research, and I think the implication is understood that obviously, as our research progresses, our procedures may change. I should have thought that it was unnecessary, with all respect, to incorporate Mrs. Glueck's amendment in the resolution.

As far as Mr. Eriksson's remarks are concerned, I too deplore the fact that we have not gone farther, and I have a sort of feeling that in fifty or a hundred years those who are in our places also will deplore the fact they have not gone farther. But, I do think we ought to recall that progress has been made. I have got a photograph in my office of two little boys standing between great big prison warders. The boys may be about nine and eleven years old. The date of the photograph is not much before 1900. So, I think that we should recall that progress has been made. But, I do take Mr. Eriksson's point when he said that we should not beam too brightly. I will try to modify the resolution to meet his point but also to retain the desirability of recording that progress has been made and that we are glad of it.

I think that the points made by Professor Gunzburg and by Professor Lejins about the inclusion of the sociological reference are technical ones – a matter of terminology, of interpretation of terms – which we should obviously try to incorporate.

The *Chairman,* in agreement with the general rapporteur, postponed the discussion of the first question until the latter could present a modified text of the draft resolution during the afternoon, and passed on to the second question of the programme of the Section:

Should the protection of neglected and morally abandoned children be secured by a judicial authority or by a non-judicial body? Should the courts for delinquent children and juveniles be maintained?

Mr. *Clerc** (Switzerland), general rapporteur [1]):

It is not without some uneasiness that I assume the task of general rapporteur, for I believe that I am about the only one here who is not a specialist on questions touching juvenile delinquency. I was told that one of the general rapporteurs should be Swiss and that, as the father of a large family, I undoubtedly possessed qualities necessary

1) General report, see volume VI, pages 125 ff.

to solve the problem before us. The argument has not convinced me, and I count above all on your kindness; in return I promise to accept with good grace the criticisms that you will soon be making.

I must also apologize for having knowingly and deliberately infringed on article 10 of the Congress Regulations which obliged me to summarize the twelve preparatory reports [1]) in my general report. I knew that these preparatory reports would be distributed before the Congress and that you would be able to gain a more correct idea of them than I could have given in a general report which had to be concise.

Third and last preliminary observation. At first sight, we would have two very different questions to debate, namely, (1) if it is advisable to submit to the same judicial or administrative body the delinquent minors, on the one hand, and the neglected and morally abandoned children, on the other; and (2) if it is advisable to abolish juvenile courts in order to replace them by administrative organs. The reading of the commentary leads us to think that it is essentially this second question which is on the agenda. It is this second question which all the reports mainly deal with, and I have the impression that we could very easily come to an agreement on the solution to be given to it. Under these conditions, and to speed the discussion, I take the liberty of asking our Chairman to allow me to present a brief report on this second question, and of proposing that the discussion be then opened on the question : courts or administrative organs. Once this point has been debated, I would then present my views on the first question which could then be the subject of special debate. In other words, I propose that the discussion of the questions be reversed.

The Assembly agreed with this procedure.

Mr. *Clerc**:

The general report is in your hands. Some will not have had the time to read it, and that is why I call its conclusions to your mind:

In 1948, at the Congress on Mental Health in London, a professor, not of law but of medicine, Mr. Heuyer, proposed to abolish juvenile courts and to entrust their functions to administrative bodies on the model of what is done, according to Mr. Heuyer, in the Scandinavian

1) See list of rapporteurs, loc cit., note

countries. In support of his proposition, he claimed that most juvenile delinquents were after all victims of heredity, social environment, pauperism, victims whom one ought to care for, re-educate and not punish. The judge would not be the right person to do this work of salvage, all the less because he applies a formalistic procedure apt to injure the child deeply. The Mental Health Congress adopted this resolution, and the matter made a sensation. The Belgian delegation to the IPPC proposed putting the question on the agenda of this Congress, because the reform proposed by Mr. Heuyer appeared to be so audacious and seductive.

In reality, the Mental Health Congress did not examine the motion of Mr. Heuyer very closely. The motion was adopted without discussion, as is so often done in congresses. I assume that Mr. Heuyer presented his ideas, and then everybody applauded and said : This is the motion which has been adopted. This, unfortunately, is sometimes a technique in congresses which we must avoid here. We may, and we should, regret that the Congress on Mental Health did not discuss this question thoroughly, and I believe that we should be happy that we have taken up the problem for discussion again.

In my report, I have shown that the transfer of the jurisdiction of the juvenile courts to an administrative organ would raise insurmountable difficulties in several states. Here I shall only summarize the arguments which I have presented. (I do not want to enter into a purely legal discussion – incidentally, one might ask why this question which is purely one of legal technique is on the agenda of our Congress). Among these insurmountable difficulties, there is first of all the principle of separation of powers which is written into several constitutions. Elsewhere it is affirmed that everything that might endanger individual liberty or the right of parents over their children must be subject to judicial control. Finally, in several states one is suspicious of the administrative power, for it is dominated by political considerations to which the judge is less exposed.

Mr. Heuyer has the Scandinavian institutions in mind, but I must say that the picture which he draws of them is not absolutely true to life. I have tried to show that those famous boards of child care are in reality veritable administrative tribunals which are not at all integrated in the administrative hierarchy, and I have shown that these boards of child care provide, in fact, exactly the same guarantees as the juvenile courts which we know in Switzerland. I must also add

that in Sweden there is now talk of introducing a judge into these administrative organs : Mr. Schlyter has told me so. Therefore, you notice two things : on the one hand, in order to adopt the motion of Mr. Heuyer it would be necessary to disregard fundamental legal principles of public policy and, on the other hand, the picture which he presents of the Scandinavian institutions is not entirely consistent with reality.

We find ourselves in the following situation : in the case of a great number of countries the reform proposed by M. Heuyer runs counter to public policy, and in Scandinavia, it seems that the formula proposed by Mr. Heuyer is losing a little ground. That is all that is needed to suggest that you do not confirm the decision taken by the Mental Health Congress in London, namely take sides for or against, for the system of juvenile courts or for the Scandinavian system. However, I differ from Mr. Heuyer on one point. I do not believe that the reform which he desires could be obtained by a simple transfer of judicial power to administration. I think, however, that he is right when he demands a specialization of the juvenile judge, a law adapted to the personality of the minors, and institutions equipped to do re-educational work. In other words, I agree with the motives which have prompted Mr. Heuyer's proposal, but I am not in agreement with the means which he wants to utilize in order to arrive at the reform which he desires.

That is why I propose to our Section not to subscribe to the resolution of the Mental Health Congress. But, in return, we could indicate more adequate, and especially more general means for realizing the objectives which Mr. Heuyer tried to attain, by voting the four propositions which you will find at the end of my report. In reading them, some of you will find that they are typical congress resolutions because they are terribly general. I admit that willingly, but my idea was to support the trend which Mr. Heuyer's motion in fact presupposes, but condemn somehow the means which he proposes for arriving at that end.

One could, in the course of the discussion, touch on another aspect of the problem, namely the division of labour between the judicial power and administration with respect to the treatment of minors. The problem has been approached especially by the American rapporteur, Miss Lenroot. In my opinion, it is a question of purely domestic law which is not for us to decide and which one could only

decide after a very thorough study of the judicial and administrative system of each country. That is why I have not gone into the matter on this particular point.

Such are the explanations which I wanted to present on the first point under discussion; in the main I can only refer to my report.

The *Chairman* thanked the general rapporteur for his instructive speech, which would form the basis for an undoubtedly interesting discussion.

The four points, to which the general rapporteur referred, read as follows:

(1) The disposal of juvenile delinquents should be confided to organs composed of persons having experience with juridical, medical and educational matters; if this is impossible, the competent authority should reach no decision except after having consulted experts in medico-pedagogical questions.

(2) Substantive, as well as procedural law, applicable to delinquent minors cannot be copied from norms applicable to adults but should be specially formulated in terms of the needs of the minor, of his personality, and of the necessity for not endangering his adaptation to social life.

(3) The special law applicable to minors should guarantee to parents the impartial scrutiny of their rights with regard to the education of their child, and should protect the minor against every arbitrary infringement of his personal liberty.

(4) For the execution of the measures taken against a delinquent minor, it is necessary to have special establishments where the care he needs will be given by persons specially qualified to do so.

The discussion was then adjourned until the afternoon meeting.

Afternoon Meeting of Tuesday, August 15th, 1950

The meeting was declared open.

The *Chairman* invited the general rapporteur of the first question, Mr. Bradley, to read his amended draft resolution on the question: *What developments have there been in the penal treatment of juvenile offenders (Reformatory, Borstal Institution, "Prison-école" etc.)?*

Mr. *Bradley* (United Kingdom):

I have attempted to include in the resolution those points which the speakers wished to see included. A resolution is inevitably a compromise, and I hope that those speakers who feel that the points which they pressed have not been taken far enough will recognize the limitations of a general resolution. The amended resolution which I propose, therefore runs as follows:

The Congress notes the developments in the penal treatment of juvenile offenders and the evidence that, although progress is slow, re-education is replacing repression and punishment.

The Congress recommends that scientific inquiry should be keenly continued into the causes of juvenile delinquency and into the methods of classification and treatment and into the results. Meanwhile, on present knowledge, the Congress forbears to dogmatize. It recognizes the contribution which is made by the sociologists, the anthropologists, the psychologists and the psychiatrists working in co-operation with those who have gained valuable experience in the field.

The Congress stresses the continuing need for classification into homogeneous groups, for small establishments, for intelligent after-care, and particularly for the employment of the right men and women to carry out the work of training and reform.

Nobody had any remarks to make regarding the resolution, and the Chairman called for a vote.

The resolution was unanimously adopted.

The *Chairman* proceeded to the second question of the programme of which it had been decided to take up the second part first : *Should the courts for delinquent children and juveniles be maintained?* Since the general rapporteur, Mr. Clerc, had commented on it during the preceding meeting, the *Chairman* called for discussion.

Mr. *van de Werk** (Netherlands):

I am happy to inform the audience that the same question was discussed at the Congress of the International Association of Juvenile Court Judges at Liege in July 1950. This Congress adopted a series of recommendations which, on the whole, state that the juvenile delinquent shall no longer be regarded, in principle, as a guilty person who must be punished but as an individual in process of development who must be protected and reformed. Now that the assembly will

discuss the question of the retention of juvenile courts, I believe it to be useful to outline some of the recommendations of the International Association of Juvenile Court Judges.

The first section of the congress of the Association recommended among others that the guardian of the child be a judicial or administrative "specialized authority" making decisions with the traditional guarantees of judicial independence. The recommendations of another section were as follows: Taking parental power away in a serious measure, it must be envisaged from a double point of view, that of safeguards to be given to adults and that of ensuring that the child is socially re-adapted, thanks to the best possible affective relationships. It is necessary on the other hand, that each nation try to find a system which permits parents of children who are morally, physically or mentally handicapped to procure the aid they are seeking, and voluntarily, without resorting to judicial procedure through the intervention of purely philanthropic social services. But one cannot forget that there exists an essential principle, namely that legal responsibilities should always be assumed by a judicial authority. Recourse to a judicial authority will always be necessary, for instance, when the parents remain indifferent. The judge appears as the agent of society in order to give the best possible orientation to the education of the child. He will have very wide powers, especially in civil matters, but will intervene only when a litigation has to be decided and if it has not been possible to intervene in other ways. The extension of the power of juvenile jurisdictions is conditioned by a modification of the conception of judicial action, which must have an educational and social goal. The jurisdiction must be specialized and resort to the co-operation of auxiliary services.

I am myself a judge and believe that Professor Clerc is right, when he states in his general report that it is impossible to establish rules for all countries. There are so many questions of domestic legislation and organization in each case. But, I want to state that the independent judge must have the last word. I agree entirely with principle No. 3 formulated by Mr. Clerc : "The special law applicable to minors should guarantee to parents the impartial scrutiny of their rights with regard to the education of their child and should protect the minor against every arbitrary infringement of his personal liberty". That is why it seems to me that we should retain the principle that it is only an independent judge who can take the final decisions.

Mr. *van der Zijl** (Netherlands):

I would like to say that my opinion is based on thirty-four years of experience in the field of neglected and so-called criminal youth, for I have been director of an observation home and at the same time a member of the parole board during twenty-one years. In the beginning I fully supported the institution of courts for children, but little by little I have been brought to another point of view. In 1933 I had occasion to become well aware of this question, having been invited with three other persons to take the job of adviser for the society Pro Juventute which deals with minors who are or will be in contact with juvenile judges. Among others I had to reply to the following questions: 1) Are you of the opinion that, for pedagogical reasons, the penal responsibility of a child under a certain age should be excluded? 2) Are you of the opinion that, for pedagogical reasons, the organization of the trial should meet certain requirements, and which ones? The principal point, therefore, in this matter was to know if, in the opinion of these experts, the penal code for children should undergo modifications. The conclusion was, and still is, that courts for juveniles of any age should, in principle, be abolished.

In all reports submitted to the present Congress, both by defenders and opponents, one can see that all actually see the main and most important aim as being the re-education of minors. Therefore it is intolerable that the State itself does injury to this education, even in spite of the best intentions. An undisturbed education can only be achieved when the State intervenes in a quite different manner. So far, I have never had evidence that the judicial way is the one and only way for re-education. The reports, especially for instance those of Mr. Harbek of Norway and Mr. Haarløv of Denmark, have greatly strengthened my opinion. There are others among the rapporteurs who are of the opinion that concern for the law should first of all prevail; that, in other words, the criminal should be punished, even though this punishment should be effected through educational measures. According to these rapporteurs, the decision should be exclusively reserved for jurists because they are felt to be the only persons who have an objective opinion which would satisfy our sentiment of justice.

A certain number of rapporteurs accept the non-intervention of the criminal judge up to a certain age limit, but not beyond it. Even

among the rapporteurs who are opposed to the abolition of the court, there are some who well realize the damage which the criminal trial does to a child. Some among those moreover admit that much of what they regard as necessary for education is beyond the intelligence of the minors. I raise this question : Can one, from a psychological point of view, deny the maxim that the abandoned and so-called criminal youth belong in a single category, namely that of abandoned youth, even if, here and there, there may be differences in degree? It follows that no difference in principle should be made as to measures.

Furthermore, I would like to raise the question : How often are not the social and economic circumstances the partial cause of criminal acts? How does it happen that the number of children becoming criminals is much lower when they come from a well-to-do environment? It is because these children receive pocket-money, they have sufficient food, they have amusements and have no reason to long for what the poor covet. And in cases where children of better situated families nevertheless become criminal, the parents are very often able to send them somewhere else for re-education, and in this way they rightly avoid injury to these children for the rest of their life. Indeed, each time the sentiment of justice is lost, it is an indictment against the criminal prosecution of those who are the children of a less privileged social life and who are less educated, and for this society is after all responsible.

I make this proposal : The psychologically unjust differentiation between abandoned and so-called delinquent youth must be abolished. Thus, the law should only think in terms of abandoned youth which, in the interest of society and the children themselves, must be educated. All measures to be taken with respect to minors must fall under the Department of Instruction and Education or the Department of Social Affairs, and no longer under the Department of Justice. A board, composed of a psychiatrist, a psychologist, a teacher, a social worker and others, would conduct the whole investigation and decide upon the measures to be taken. I agree with the principle that parental power should not be infringed upon in any unjust and arbitrary manner, and I am entirely in favour of a possibility of appeal. At fixed intervals this board will decide if the measure should be continued, or if it must be changed or terminated. An arrangement of this kind would be valid for all minors. Only in certain very special cases concerning serious crimes committed by

minors should it be possible to deviate from this solution and to have recourse to the judge, as well as in those cases where the investigation of the personality of a minor from eighteen to twenty-one years of age shows it to be desirable that he be treated like an adult. The board must have at its disposal sworn and trained officials who will have the task of making this investigation. There should be a rule, then, that the police should no longer do it. The denial of a certificate of good moral conduct should no longer be permitted if the training has succeeded. Thus, one would put an end to the regrettable situation that a reformed adult cannot apply for certain positions in the government or in a private organization, because of an offence committed during childhood or adolescence.

I am convinced that there will again be an evolution of public opinion. I ask you to vote for a proposition to abolish the penal code for minors in principle; the State would certainly be protected by the proposed modifications no less attentively than at present. My reply to the question raised is, therefore, the following: The protection of morally and materially abandoned children must be in the hands of a non-judicial organ. Courts for delinquent children and adolescents should not be retained. Henceforth the law should only deal with abandoned minors. Jurists, being magicians in the matter of formulas, are certainly able to device the necessary formulas, if they wish to do so.

The *Chairman*:

I understand that Mr. van der Zijl wants to propose a resolution. In this case I would ask him to hand in a written draft to be voted on at a later stage in the proceedings. May I remind speakers not to exceed the ten minutes allowed each one by the Regulations.

Mr. *Ancel** (France):

I should like – by the way, very rapidly – to signify my complete agreement, in principle, with the proposition of Mr. Clerc, when he concludes in favour of retaining the juvenile courts. I would, however, like to make an observation which very slightly qualifies this agreement, complete though it be. This is the observation :

One might be tempted to say – and one is generally tempted to say – that, with respect to the judgment of questions concerning minors, there are two systems of legislation – that which resorts to judicial

organs, the juvenile courts, and that which, on the contrary, resorts to non-judicial organs. In this connection one always cites, as an example, the boards of child care of the Northern countries. This contrast is no doubt largely correct, but it is proper to point out that, in the evolution of penal law and of modern judicial institutions, it constantly tends to become less. It is becoming less because nowhere does one propose to leave the handling of the question of minors entirely to the ordinary courts. It is no longer held that the minor should by law be brought before the court where adults are judged for felonies or misdemeanours. Everbody admits that the judicial organ must be a specialized one, and one admits moreover – this is the second stage of the evolution – that this specialization tends to the establisment of a jurisdiction of an essentially paternal character, of at least much more of a preventive or curative than a repressive character, a jurisdiction which must have in mind what is necessary for the child and not what would be necessary for the needs of repression.

Then, by a new evolution, one sees in most modern countries that the juvenile courts are undergoing modification and, after being separated from the ordinary courts reserved for adults, taking on special characteristics, the most notable of which is probably that in their most modern form perhaps, these juvenile jurisdictions are finally composed of two elements in juxtaposition : a professional element represented by a judge who is generally the chairman, and a non-professional element represented by persons competent in all questions regarding minors, and among whom there will be either a psychiatrist, an educator, or a person – and generally a woman, by the way – familiar with the problems peculiar to childhood. So well is this done that this system, which, by and large and with different variations, is applied, if I am not mistaken, in England as well as in France since the French ordinance of February 2nd, 1945, comes singularly close to the system of the Northern countries. It is a system in which the juvenile court, though being a court, has lost that character of a repressive court, before which everybody may properly hesitate.

One can ask oneself if in reality the problem cannot be envisaged differently than as an alternative between a judicial and a non-judicial organ, if there is not room for the constitution of an organ of a judicial character and, above all – it is here that I agree

entirely with Mr. Clerc – of a judicial spirit, but which will have that training and that specialization which is necessary for all those who claim to deal with the problems of delinquent children or of morally and materially deserted children. And then, if such is the case, we should note – and this is my conclusion – that here we are once more in the presence of the phenomenon of the convergence of institutions which modern penal law so frequently shows. Punishments and security measures tend to become assimilated – you were told so this very morning – and the problem of juvenile delinquency is being absorbed in the much vaster problem of the protection of morally endangered juveniles. Now, in the same way, the old contrast between the judicial and the non-judicial organs, with regard to jurisdiction over minors, tends to disappear so as to permit a mixed organ to arise which to a large extent will be able to combine, we at least hope so, the advantages of the traditional judicial organ and of that specialized organ, informed on scientific problems, which must be used in order to save the endangered child.

Mr. *Meacham* (U.S.A.):

I should like also to say that the choice does not lie only between an independent court, having sole jurisdiction over minor offenders with respect to legal matters and social remedies to be applied in their cases, and a non-judicial social agency, such as the distinguished gentleman from France has already pointed out. There is an alternative. We may retain the independent juvenile court to speak the last word with respect to legal matters affecting the rights of defendants and their families, and we may have, as in the Scandinavian countries and in the United States, an administrative agency concerned solely with the treatment problems in the case. In the United States, several of our States have established such an agency in the Youth Authority. The juvenile court has original jurisdiction in the case. If the offence is serious enough to indicate commitment, the offender is committed to the Youth Authority, which may use all the broad resources of the State in treating the offender. It may go beyond the juvenile court which can only provide probation, detention, or training in a State Industrial School. It may apply training or treatment in any number of institutions in the State. If detention or training in an institution is unnecessary the offender may be released under the supervision of a welfare official. In other words,

there is here a combination of a judicial and a non-judicial agency which is a promising growth. I am persuaded that in the United States there is a growing dissatisfaction with the independent juvenile court; secluded, parochial, narrow in its treatment programmes, it is in growing disfavour. It has not been able to marshal public support behind it for a broad treatment of the juvenile offender. Our Youth Authorities, on the other hand, are growing in popularity. We still see, in many jurisdictions in the United States, every reason why the judge should have the first and the last word in legal matters. But, we see no reason why he should have the last word with respect to the treatment of the case from the social standpoint.

Mr. *Ross* (United Kingdom):

In introducing his admirable paper, Mr. Clerc made a strong plea for flexibility. The translator put it nicely as "keeping the law supple", and my main purpose in speaking is to remind the assembly of the need for flexibility in this matter. I think that the choice of the tribunal – a judicial court or a social welfare tribunal – is very much a matter in which each country must follow its own genius. In Great Britain, we have had juvenile courts, since 1908, dealing with persons under the age of seventeen.

Another point is one of terminology. Mr. Ancel and others referred to abandoned children. Well, in Britain we have no problem of abandoned children. The only abandoned child we know is one whose parents have gone off and left him behind, and he is at large only for a few days, that is, unless he has reached years of independence. I believe there are some countries that have something of a problem of children at large. But I take "abandoned children" to mean what we in Britain call children in need of care and protection. Those children we treat – I think right there you may not agree – in the same way as children who are delinquents. We are not ashamed of that because we think our method of treating the delinquents – or at least our aim; I put it no higher than that – is to treat delinquents in the way in which we would be prepared to treat children who are not delinquents, that is, according to the need of the child.

The main reason, in Great Britain, for attaching importance to the judicial authority, I think, is our passionate attachment to what is called "the liberty of the subject", which, of course, is equally well recognized

in other countries. I think British opinion would not be prepared, at least for some long time, to find a child guilty of any offence other than through due process of law. I think we would not be prepared to take any child away from his home in opposition to the wishes of his parent or guardian without the act of a court. This was raised on the Children Bill which passed through Parliament in 1948. The Curtis Committee, who considered the problem of homeless children in Britain – not delinquent children – were very much against giving power to local authorities to assume parental rights in respect of children in this case, and their view is reflected in the Children Act where there is ample protection for parents to recover their children from the care of the local authority, if the local authority have assumed parental rights.

However, I did not come here to tell you what is happening in Britain, except in this very broad way, but to make a plea for flexibility and to suggest that it might be wise to address ourselves in the end not to the exact form of a tribunal, whether legal or other tribunal, but to what it is we want to achieve. I think we are agreed that we want to reach a situation where it is the judge who does decide the fate of a child, or of the parents if it is a matter of removing the child from his parents. In Britain there are lay judges, a thing with which many of you will not agree. I think about ninety-five per cent of the people who are convicted of offences are dealt with finally by lay magistrates. That is the system in the juvenile courts. There may be a case – I dare say there is an arguable case – for special magistrates, paid magistrates for juveniles, but that is not the situation in Britain at the present time. A juvenile court consists of three lay justices, chosen from a specially selected juvenile panel, being people who are, or should be, well-qualified to deal with juveniles.

The *Chairman* asked who still wanted to participate in the discussion which he considered extremely interesting and important.

Mr. *Pinatel** (France):

The question, indeed, is an extremely important one. When I address the meeting here, it is because there is in France a whole movement, a trend, which, in spite of the recent reform of the juvenile jurisdictions and mainly the institution of the children's judge, now demands that all judicial character be stripped from the procedure

concerning delinquent juveniles and that administrative organs be constituted to decide on all questions concerning, on the one hand, juvenile delinquents and, on the other, the morally endangered and the deficient children. At the Mental Health Congress in London, in 1948, an eminent French specialist, Professor Heuyer, took the initiative of making a motion with respect to the constitution of these administrative organs. I have asked to speak because I wanted to make some additional clarifications which might help to throw light on the stand taken by Mr. Heuyer in London, because he himself has several times publicly spoken about it and has made comments which very clearly define his position. I believe that he took a stand, which many have considered as extreme, because in practice judicial institutions for juveniles do not seem to have gotten rid of all their repressive, police, even penitentiary characteristics. It is because one has observed that the appearance before these courts caused emotional reactions in the child which later were extremely detrimental to his re-education and his social rehabilitation that this movement has taken this position – which is obviously an extreme position.

I think I can say that the representatives of this movement have since then been retreating a little. Indeed, the benefits of the specialized jurisdiction of the juvenile court judge have been recognized; in Paris, especially, the organization of the children's court has made it possible to obtain very satisfactory results. Elsewhere the movement has run against an obstacle of a legal order. It has been thought inconceivable that, in a matter concerning individual liberty, a power should be given to a purely administrative organ even for questions concerning morally endangered children; for all such questions one could not infringe upon the parental power without the intervention of a judicial authority. Then, little by little, the protagonists of this movement have been trying to substitute another idea for the idea of an administrative organ. A court is necessary, but, they say, not obligatorily one composed of judges; in French law there are courts composed of people not belonging to the magistracy, for instance the commercial tribunals which are composed of people who are elected by their peers. A court, therefore, but there should be no professional judges on it.

I believe that, having gone that far, we are close to an agreement and that it will be possible to arrive at a compromise formula. For, what is this really all about? When one examines the question of

juvenile delinquents and of deficient and morally endangered children, one sees that, in the majority of the cases, there is a problem of prevention. I can affirm that in eighty per cent of the cases of juvenile delinquency one could have avoided it if preventive measures had been taken in time. Therefore, I think that, at the administrative level properly speaking there is a very great job to do, a job of prevention. In this work the judicial authority must not intervene, that would be a mistake. This is purely administrative work which must be done in agreement with the families and the tutelary administration. But, when this preventive work has failed, when there is an offence or when one is faced with a decision as important as that of depriving someone of parental power, it is inconceivable that this should be done by any but a regular judicial authority – composed of specialized judges to be sure but a regular judicial authority – which has the power to decide.

Mr. *Wegner* (Western Germany):

When I venture to take of your time to say a word in favour of a judicial authority I do so only because I am persuaded that the rule of law, the very foundation of our inherited State and law, is in danger from some tendencies that are held in good faith by many of you. Please do not forget that the situation has completely changed since the work of these congresses began. When the work started in the last century it became obvious that the rule of law – sacred as it may itself be – was not sufficient, and then – and even before, in the time of John Howard and Elizabeth Fry – Christian charity came in, educational and social work came in. That even juvenile courts, even the rule of law – the foundation of our classical State – which must not be scorned – are not sufficient is perfectly true, but they are absolutely necessary in the midst of a new development and movement which is very dangerous. A friend of mine, believing in the new movement and modern development, Heinrich Webler, twenty years or more ago published a little pamphlet entitled "Against the Juvenile Courts", and in good faith he demanded that other authorities than judicial ones ought to deal with juveniles and that they alone ought to deal with them. But all good lawyers, who with a kind heart had worked for juveniles too, protested against what was dangerous in the modern movement. In fact, we are in the midst of a revolution. Sociology,

social work, all such things are no longer what charity, Christian charity and ecclesiastical work – which, by the way, must always be mentioned, as a clergyman rightly remarked yesterday – were; this social and educational work can no longer be compared with them. A new bureaucracy, a very powerful body of social workers has developed, an administration which very soon may become only too powerful. And so, as much as we may favour educational and social work, we must not forget that in what we discuss now we touch the very foundation of law and the State. As the rapporteur has rightly remarked, it is not only a question of social and educational work, sociology and such things, it is a question of constitutional law. We must be very careful that in the very good work begun during the last century we do not make a very dangerous mistake now. In the last century we realized that the rule of law, the lawyer's work, the jurist's work was not sufficient, but we must speak up now, we jurists, and say to this century that the rule of law, the lawyer's work, the sacred law, though not sufficient is most necessary.

Miss *Craven* (United Kingdom):

I would like to support, first of all, the main claim of the last speaker that we must maintain the rule of law, that without it we should have no guarantee of liberty, and that it is important that the child and his parents should have liberty. But, I do not think that law, in order to be maintained, must obtrude from the very first moment that the difficulty arises with the child. I think the law and the judiciary may be maintained in the background as a bulwark of liberty and yet allow a very great deal to be done in preventive work with neglected children and with the delinquent child who is not too seriously delinquent. It may be mainly preventive work; the non-judicial authority gets the chance of doing this preventive work without the harm that I think does come to the child through being publicly dealt with. I know that in England we do not allow the public into the juvenile court and we do not print names, do not make it all public, but nevertheless appearance in the juvenile court is a thing which brings shame and grief to the family of the child. We have all been juvenile delinquents – I believe everyone of us knows that – and we should try to look at it from the point of view of the juvenile delinquent or his parents who come

with him. The one thing that helps to make a hardened criminal is the creation of resentment which comes from having been humiliated. A second thing is that a judicial court, coming into operation at the very first moment, is limited in its methods of treatment in a way that a less formal administrative body is not; the latter can have a greater variety of treatment, as mentioned by a former speaker, if we want as much variety of treatment as possible in dealing with young offenders in the earliest stages.

And then, the problem of the young offender is not the problem of the child – it is the problem of the child in his family. Therefore, I think there is something to be said for those who criticize the juvenile court because it puts the child in the centre as the offender and then afterwards begins to use social services, scientific investigations in order to deal sensibly with the child. The real problem is the problem of the family, not of the child. And, therefore, I would like to suggest that those of us who do care passionately for liberty and the rule of law may yet try to work out a compromise whereby we shall have that informality, variety and care for the reputation of the child by dealing with the family as a whole, by trying to get the consent of the parents and the child to the measures that seem necessary, and only call in the law – in the form, I should suggest, of a family court – when the parents will not agree and where there is a lack of co-operation, a definite refusal of co-operation. Then I think we might get both liberty and the care for the reputation and the feelings of the child and his parents.

The *Chairman*:

There are still some speakers on the list but I suppose that it is better to postpone further discussion on this topic until to-morrow. We might perhaps, in the meantime, ask the general rapporteur if he is prepared to draft a resolution for the next meeting. As far as I can see, all speakers but one do not want to give a preference to any one specific system. If Mr. van der Zijl wants to make a proposal, I would again ask him to present a formal draft resolution to-morrow.

Mr. *Clerc** (Switzerland), general rapporteur:

If the debate is to continue to-morrow, I shall speak last; there has been much talk about this problem, even too much. Let me

make this point. In my conclusions I have proposed not to take sides in favour of the one or the other of the two systems, for reasons which I stated at length in a report which almost nobody has read. I stick to this position which is to express no preference for one of the two systems. This allows me to reply to the two first speakers who are Dutch.

To the first, Mr. van de Werk, I shall reply that I have not said that I am a partisan of children's courts. Very probably if I were in Scandinavia I would be in favour of the Scandinavian system for I would then understand the structure of the system; elsewhere I would be squarely for the court formula. We cannot decide it. This is a question of domestic law. For a resolution we must try to find principles to which everybody can subscribe, and since we have not reached that point on this question, we should not do it. One should not believe that a congress must necessarily pass resolutions; we should do serious work. We notice here that one can have in one country or another very good reasons for taking the one or the other system, and we should certainly not indulge in imposing directives without taking into account the particularities of a country or its traditions.

I shall say to Mr. van der Zijl that, in any case, I cannot follow him in the matter of entrusting administrative organs with jurisdictional powers regarding minors. He tells us — and we have heard it very clearly — that the judge intimidates the young offender and that this may give rise to complexes; Mr. Heuyer, too, has said that. May I tell you that the fear of the cop is sometimes the beginning of wisdom, and if one were to give an administrative organ the charge of taking care of minors, we would be in presence of the same, but reverse, complexes.

Here I apologize for resorting to literary recollections. Two years ago there appeared a small novel by Hervé Bazin who told the story of the son of an examining magistrate, a son who has turned out badly. He has simply burglarized his father's property; when leaving the house in the stolen car he has an accident and is identified as the burglar. You may imagine his father's stupefaction. Then the problem arises : How to save my son's reputation. If one admits that he is responsible, he goes before the court, this means prison, the penal register, the disgrace of the family. There is another solution : It consists in declaring him irresponsible and putting him

into a mental hospital. Well, this is the solution adopted. But the individual who is as sane as you and I does not understand life in the lunatic asylum. Then tests are immediately taken; one says : This is an individual who tries to escape, who is very dangerous. He is put in other sections, and finally he spends his whole life in this asylum and completely loses his combativeness. After a new offence the following problem arises : What shall I do? Am I to say that I am responsible, be sentenced by a judge who will perhaps give me six or eight months in prison — but I know that I shall get out of the institution — or shall I put myself into the hands of the administration and then there is no more hope — I shall get out when the doctors have had enough....

I beg your pardon for being a little vehement and abrupt, but I would like to see that the juvenile courts are not always accused as if they were bogies. There are admirable and devoted men in these courts, and one could sometimes take an example from them. With respect to an administration, which is generally rather distant, one does not see who is responsible. I do not believe that it gives more guarantees than the judicial power. Therefore, let us not necessarily change.

This is what I wanted to say to the sole opponent of the proposition which I have made. I shall say one more thing to Mr. van der Zijl, who has simply proposed to abolish the penal code with respect to minors, if I understood him well. This is a question which has not been put on the agenda of the Congress and which would deserve a very thorough scrutiny. Certain countries, like Switzerland, have a special section for minors in the penal code; they have examined this very closely, and one could, obviously, not accept a recommendation declaring that this special section, which one has attempted to set up with the best of intentions, can be struck out. Moreover, I believe that if we vote on questions which are not on the programme we risk doing the same as the Mental Health Congress. One should examine the questions very carefully before trying to solve them.

I want to say here that I agree with what Mr. Ancel has said in a different form. It is above all a question of the composition of the courts. I shall not dwell on that; besides, in the general report I have expressed some opinions on this point, which are rather close to his. Neither shall I dwell much on the statement of Mr. Meacham

who looked for a solution to combine the judicial and the administrative : this is again a question of local tradition, and I do not believe that we have any reason for passing a resolution to that effect.

I now come to Mr. Ross. I shall only say one single thing, namely that I wonder why I ever started speaking after having listened to him, for he has in some way replied, in advance and much better than I would have done it, to all that the other previous speakers have said, and I want to express my admiration for, and my entire agreement with what he has said.

Regarding Mr. Pinatel – I believe that he had to go to another Section – I shall simply take the liberty of telling him that the ideas of Mr. Heuyer seem to be losing out in France. I have just been told that the decree concerning juvenile delinquents has been re-examined recently, and that no one in France has thought of adopting Mr. Heuyer's ideas; it seems that Mr. Heuyer himself, in a lecture at the Law School, has had the courage to say, "Erravi". Well, when Mr. Heuyer himself retreats, let us not express a preference which obviously might be wrongly understood.

I do not believe that I have anything else to add in this connection. I apologize for using here the admirable motto of the Netherlands : "Je maintiendrai" my conclusion, which is not to take a stand on the question.

(Applause)

The *Chairman* adjourned the discussion till the meeting of the following afternoon.

The meeting was adjourned.

Afternoon Meeting of Wednesday, August 16th, 1950

The *Chairman* opened the meeting, and before continuing the discussion of the second question of the programme he gave the floor to Mr. Bradley who wished to make a statement on procedure.

Mr. *Bradley* (United Kingdom), general rapporteur:

Having been elected the day before yesterday as liaison officer between the Section and the General Assembly, I think that it would be much more appropriate that each general rapporteur should be the liaison officer for his own specific question. I suggest therefore, that Mr. Clerc and Mr. Vassalli, respectively, be the rapporteurs to the General Assembly on the two remaining questions of the Section's programme.

The *Chairman* referred to the excellent manner in which Mr. Bradley had reported this morning to the General Assembly on the first question and felt that it might be expedient that the general rapporteur who had dealt with each specific question should be the liaison officer on that question.

There were no objections to this procedure proposed by Mr. Bradley and it was approved.

The *Chairman* stated that the second half of the second question: *Should the Courts for delinquent children and juveniles be maintained?* seemed to have been dealt with sufficiently yesterday, and that the discussion at that time had already touched upon the other part of the question : *Should the protection of neglected and morally abandoned children be secured by a judicial authority or by a non-judicial body?* He understood that the general rapporteur had already prepared a draft resolution and he asked Mr. Clerc to read it and explain it to the assembly.

Mr. *Clerc** (Switzerland), general rapporteur:

I must first apologize for my vehemence yesterday evening. (Laughter.) I have the impression that due to the fact that I did not write down my speech, I have perhaps been much nastier towards certain speakers than I had intended to be. The night brings counsel. I suppose you have spent it reading the general report. I, in turn, have tried to draft a resolution which would make no concessions but would take over the good ideas which have been presented here. I shall read the draft resolution with its preamble which I propose that you adopt, and I shall take the liberty to explain it :

Convened to examine the wish expressed in 1948 by the Mental Health Congress in London, in favour of abandoning the system of courts for delinquent children and of replacing it by a system of administrative authorities along the lines of the "councils for the protection of youth" in Scandinavia,

The XIIth International Penal and Penitentiary Congress holds that:

1. There is no decisive reason to give a preference to the one or the other of the two systems involved; besides, a choice in this respect depends on the legislation of each state;
2. Whatever be the system in any particular state, the following principles should be observed:
   (a) The handling of juvenile delinquents shall be entrusted to an authority composed of people who are experts in legal, medical and educational matters, or, if this is impossible, the authority shall, before pronouncing a judgment, seek the advice of experts in medico-educational matters;
   (b) The law concerning juvenile delinquents, both in respect to subject matter and its form, must not be patterned after the norms applied to adults, but shall especially take into consideration the needs of juvenile delinquents, their personality, as well as the importance of not endangering their adjustment in later life;
   (c) The special laws applying to juvenile delinquents shall guarantee to parents an impartial examination of their rights concerning the education of their child and shall protect the minor against any arbitrary infringement of his individual rights;
   (d) In order to apply the measures to be taken with reference to juvenile delinquents, it is necessary to have special institutions, where the juvenile delinquents may be under the care of people especially trained for this purpose;
3. As the present Congress is not in possession of the necessary data in order to propose a solution of this problem of co-ordination between the judicial and the administrative authorities, the problem of dividing work between the judicial and the administrative authorities concerning the supervision of the treatment prescribed for the juvenile delinquent should be made the subject of a special study by the International Penal and Penitentiary Commission;

In point 4, I anticipate the question which I will have to enlarge upon in a moment quite briefly.

4. The same wish is expressed concerning the question of whether neglected and abandoned children shall be referred to authorities having jurisdiction in matters of juvenile delinquency.

And now to the commentary.

I have no observation to make on the preamble.

With respect to point 1, I have the impression that nearly all of us are agreed.

As for point 2, you have already been able to read it in the general report. There are here four points which I have taken up

because they were the four points developed by Dr. Heuyer in support of his proposition. I must say personally that this entire point 2 could very well be eliminated. In my opinion these are such commonplaces that I wonder up to what point a congress need state the obvious; I have proposed it simply so that you might discuss it.

There is a general question of terminology. I have used the term "delinquent minors" because at home, in Switzerland, that is the accepted term; elsewhere the term "child" or "adolescent" is used and in other places still the term "young delinquent". We should obviously tune our fiddle so far as the French terminology is concerned; perhaps Judge Delmas, who possesses the accuracy of the Frenchman and Miss Huynen, who represents the Belgian tradition, will help me to settle this question of terminology so that we might, so to speak, sing the same tune.

I should like to observe, with respect to paragraph a), that I took the liberty to speak of "people who are experts in legal, medical and educational matters." In writing that, I was a little worried because yesterday it was proposed to add other adjectives biological, sociological, etc. I have adopted the expressions which are generally used in our countries, by taking the expression "medico-educational" as including all those sciences, without wanting to anathematize any of them, but for reasons, I should say of elegance, I have limited myself to the use of only three adjectives; I believe that is sufficient.

Under paragraph a) I have adopted, in a way, the idea which Mr. Ancel developed yesterday: that the organ who had to judge minors should be composed of persons competent in all questions which touch upon the procedure concerning minors: legal, medical and social questions. This is perhaps not always possible for reasons of judicial organization, and that is why in such a case I have postulated the advice of experts who should at least be consulted on such questions.

With respect to paragraph b), I believe that Mr. van der Zijl may be able to support this proposition. Yesterday, he proposed, in a way, to eliminate everything touching minors from the penal codes. I replied to him that in certain legislations a special chapter had been put into the penal code, that the problem had been considered as in the case of the Swiss penal code. At any rate, I agree with him that this part of the legislation on minors should be re-examinated and

comprehended in the sense which he indicated. If this should be put in the penal code or elsewhere is perhaps a question of mere form, but I want to say that I approve of the substance of his propositions, and hope that in paragraph b) he will somehow see an acknowledgment of everything which is legitimate in his proposal. I want to say this even though I am a lawyer, because on this point lawyers agree with people who are not, for it is a question of common sense.

With respect to paragraph a), I should be very happy if it could be deleted. I adopted it, I repeat, in order to reply to all of Mr. Heuyer's arguments. I have been conscientious, but conscientiousness must have limits, and if we strike out commonplaces, I shall be the first to agree.

I arrive at point 3). This morning I had a talk with Miss Huynen who pointed out to me that the problem which Miss Craven raised yesterday is, of course, very important, the problem of the co-ordination of courts and administration in the execution of measures. In certain countries, the judge is truly specialized and it is he who actually decides who follows the treatment and who even handles after-care. Elsewhere, responsibilities have to be divided in a different manner. It is in fact the problem of the intervention of the judge in the execution. Is it justified in the particular case, yes or no? This is a problem, I believe, which we should deal with separately. We do not have sufficient data to decide it, and it was not directly envisaged in the question submitted to the Section. Under these circumstances, I have told you that I am reluctant to vote for improvised recommendations. I believe that, in order to indicate clearly that the problem raised by Miss Craven is in some way the crucial one, we should make it the subject of a recommendation to the International Penal and Penitentiary Commission saying that we wish to see this problem studied thoroughly. I do not want to put it off to the next International Congress in five years; one might perhaps dispose of it quickly. The International Penal and Penitentiary Commission could do so in connection with the enquiries which it has started with respect to juvenile delinquency.

On point 4, I must make the same observation. According to Mr. Heuyer's idea, if an administrative organ were given the job of handling delinquent minors, it would then be quite natural to entrust the same administrative organ with the morally or materially neglected children. Now, as soon as we adopt the position not to

choose between the two systems the first part of the question submitted to us seems to drop out. I am all the more satisfied, by the way, to have it drop out, for various reasons.

First, we should agree on the very concept of morally and materially neglected children. We have heard what Mr. Ross said in this connection yesterday, namely that this problem did not arise in England. I could say the same for Switzerland, because we have civil code provisions which are actually perfectly clear. Therefore, this very definition of morally and materially neglected children might already constitute a first obstacle, if we should want to push the problem farther ahead. By the way, I want to say – this is a second point – that the idea of submitting these two categories of minors to the same authority can be perfectly defended. It has been done. If you have read the Portuguese report by Mr. Lopez, you have somehow seen such an authority in charge of minors, an authority which has jurisdiction in questions of minors, just as the commercial tribunal has jurisdiction in commercial matters. In Switzerland we have a tutelary authority which, in many cantons, is in charge of the two categories of minors: when it deals with the morally and materially neglected children it is an administrative authority, and when it deals with delinquent minors it is a judicial authority. Therefore, this tutelary authority is a veritable Jack-of-all-trades functioning in both instances. I do not want to recommend this solution; it must be examined, and, there is a third point furthermore, which keeps me from going farther along this road, namely the fact that there are legislative provisions in this matter. I just referred especially to the provisions of certain civil codes, apart from the social legislation which may have dealt with these questions. At any rate, I do not have the impression that we could pass resolutions on this problem, not only because it does not seem to arise any longer, if we decide not to choose between the judicial and the administrative system with respect to minor delinquents, but also because we would need additional information. That is why I also propose a complementary recommendation asking that this problem be taken up again by the International Penal and Penitentiary Commission.

(Applause)

The *Chairman*:

Thank you, Mr. Clerc. I think it will not be possible to vote at

once on this proposal which contains several items; the Section might like to see it in writing before making a final decision. In any case, I think we should have an opportunity to discuss the points of the proposed resolution, the text of which should be printed in the Bulletin. We shall, therefore, have to postpone voting until Friday.

The Section decided to postpone both the discussion and the voting until the Friday meeting.

The *Chairman*:
Mr. Ross wants to suggest a correction.

Mr. *Ross* (United Kingdom):
I thought I ought to correct the record right away as regards a statement that Mr. Clerc attributed to me in stating that I said yesterday that the problem of neglected children was not a serious one in Britain. This is more or less a difficulty of terminology. I am sorry to say that it is not so. It is a problem to which we are giving a great deal of attention at the present time, because we are always anxious to reach the stage where the family can be repaired and the children remain with their family rather than removing the children. What I said was that abandoned children was not a problem in Britain, and by that I meant children who are deserted physically by parents who disappear. But neglected children, in greater or less degree, is a problem in Great Britain, and one that we have resolved to solve as far as we can.

The Section proceeded to the examination of the third question of its programme :

Should not some of the methods developed in the treatment of young offenders be extended to the treatment of adults?

Mr. *Vassalli** (Italy), general rapporteur [1]):
The situation of your general rapporteur with regard to the third question is not very different from that of Mr. Clerc, in that I am not a specialist in the matter either, unless the fact that I have three children were to be considered as giving me some of this special knowledge. I have a certain disadvantage and a certain advantage in presenting this report. The disadvantage comes from the fact that I cannot express myself in my maternal language like the two other general rapporteurs, and I want to apologize for my imperfect knowledge of French.

The advantage, on the other hand, is due to the fact that the subjects we have to treat in my report and the subsequent discussion have a character which goes far beyond the field of the law and the treatment of young delinquents, and includes the entire field — this can be said without fear of exaggeration — of penal and penitentiary law, the prevention of crime and the treatment of offenders. Mr. Struycken, the Minister of Justice of the Netherlands, said it very well in his opening speech to the Congress : Question 3 of Section IV exceeds the limits of this Section and touches on many other questions raised at this Congress, in some way on all problems of criminal law and procedure. This fact explains to you why I have had to touch on so many problems in my report, and always in a manner which might appear slightly superficial, if one did not remember that to go more deeply into some of these problems would have stretched the report beyond permissible limits.

This also explains to you the great variety in the content of the special reports on question 3 [1]), among which there are some that treat only the penitentiary problem (Messrs. Borgsmidt—Hansen, Thurén and Gautschi), while others deal with problems of the criminal responsibility of adults and other problems of substantive criminal law (for instance, Mr. Pompe); others deal only with the question of the pre-sentence investigation (for instance, Mr. Pinatel), while still others take up a little of everything, like the report from my own country, or deal with large questions of principle — punishment or re-education for adults as well as for minors — as is the case of the English and American reports. A quite special place among the reports is occupied by that of Mr. Gunzburg, who organizes the whole subject matter of this question in a complete and original fashion, which has been very valuable to me in the preparation of my general report.

Since, in view of the brevity of these introductory remarks of mine and in order that our discussion may be successful in the limited

1) General report, see volume VI, pages 271 ff.

1) See list of rapporteurs, loc.cit., note.

time at our disposal, I am forced to assume that you have all read the general report – even if this is not absolutely true – I shall restrict myself here to indicating the points of contact with the questions submitted to other Sections of the Congress and on which important resolutions may have been adopted during the first two days of the Congress, and to reading to you again the conclusions of my report, complementing them with data which I have received in the meanwhile or which result from the conclusions of other Sections of the Congress.

The first question of Section I is so close to ours that Mr. Pinatel felt that he should make a single report on the two questions. He has noted that in certain countries, as in France, one is at the same stage, so far as the treatment of adult offenders is concerned, that one was some decades ago in the case of minors, and he has added that the experience gained in this field has shown that the study of the young delinquent is the keystone of all subsequent treatment. Thus, the French rapporteur draws the conclusion that it is suitable to institute the examination of the accused in order to assist the judge in the choice of a measure – a punishment or a social defence measure – appropriate to the needs of the individual offender. Mr. Gunzburg, too, expresses himself in favour of the pre-sentence examination and of the personal case history of adults, with a view to prevention. In my general report, I also arrived at the same conclusions, in spite of much doubt and perplexity which came to my mind when thinking of certain procedural problems. I have just heard that, after important debates where these very doubts were expressed by several delegates, Section I is, this very afternoon, being asked to approve the text of a resolution, in which the pre-sentence examination of the personality of the accused, whether it is a question of applying a punishment or a social defence or security measure to him, is recommended in a general way, leaving to each country the task to regulate the matter in accord with its own ideas, legal and procedural requirements, and above all with safeguards for the freedom and the dignity of the person himself. Thus, I believe that on the question of the pre-sentence examination we could merely refer to the conclusions of Section I.

Neither is the second question of Section I unrelated to our discussion, if we consider the importance and the extent which the medical examination and the classification of the individual have in

nearly all countries in the treatment of delinquent children, and the propriety of extending some of its applications to the treatment of adult offenders. The General Assembly of the Congress adopted this morning the resolution on this question which is found in to-day's Bulletin.

Here, then, are several questions which it is perhaps unnecessary for us to take up again in this Section.

Neither are the questions on the programme of Section II unrelated to the one we must examine, except perhaps the third one concerning prison labour. Even the question of the treatment of habitual offenders, which it would be advisable for us to pass over, is not devoid of points of contact with our own, if one considers that it is precisely for habitual offenders, just as for minors, that several countries have instituted a uniform treatment, not based on the co-existence of retributive punishments, in the traditional sense, and of educational or re-educational measures, but on a single measure appropriate to the individual as such.

In Section III, the problem of finding substitutes for short term punishments brings us to the problems of judicial pardon and probation which are treated in the Italian, Belgian and English special reports on our question, as well as in part I of my general report. And, the problems of conditional release bring us close to this same question, if one has in mind that in France – if I am not mistaken – supervised freedom, for instance, is prescribed for minors only but that, and justly so I think, its extension to adults is being demanded.

Finally, with respect to our own Section IV, it is obvious that the conclusions which we have adopted on the first question are an indispensable basis for our discussion, and that the solution which will be adopted on the second question is not entirely outside of the scope of this report. In this respect, I should apologize for having said in my printed report that I had not found in the special reports received enough proposals on the question of courts and investigators; some are found instead in the reports on the second question.

I now come to the conclusions of the general report, not as propositions that I might make or would like to make to you, but perhaps as a basis, if you agree, for limiting the subject of our debates.

I should like to begin with the question touched upon in the beginning of my report and to which conclusion 7, at the end is related. Should we, I ask, first of all say something on the age division between

young and adult offenders? Is it necessary to establish certain principles or certain age limits valid for all countries? I have not been able to insert in my printed report – I had prepared it, but it was too long – a table showing the extreme variety, which you all know, of these age limits in various countries. One could take the limit of eighteen or that of twenty-one years. Should we in some way outline this question in our Section or is it completely outside our function? You are the ones who should reply to that, since many questions which we shall treat in connection with the extension of these treatment measures to adults are related to this age limit.

A question which must certainly be examined is that which is dealt with especially in the Belgian report of Mr. Gunzburg, namely the power to extend to the field of young adult offenders certain, or even all, measures which are now in force for juvenile delinquents. Should we also affirm that the treatment envisaged for minors must not stop even if during the treatment, the minor reaches the age which makes him an adult from the point of view of criminal law? I refer to yesterday's statement of Miss Huynen. Perhaps there is a problem here which we might pay some attention to in our discussion, on the basis of point 7 of my conclusions which reads as follows:

(7) Generally speaking, a special legislative régime should be introduced for adolescents, either by raising the age of criminal minority to 21 years, at least with respect to certain consequences, by creating an adolescent court analogous to those now found in many countries only for those under 16 or 18 years of age; or by extending to the ages of 25 years the application of certain benefits in the penal law now limited to minors.
Young adults, up to age 30, should be placed under a special penitentiary régime, especially if they are first offenders, in order to apply a concentrated prevention of future criminality of persons in that age, which presents specially hazardous and delicate problems of personality formation.

After the question of age limits, I should like to come to conclusions 1 and 2 in order to see if a discussion is still necessary here, since the same problem has already been voted upon in another Section. In conclusion one I said :

(1) The study of the personality of the offender has, or at least can have, as great importance for the penal and penitentiary treatment of adult offenders as it has for the penal and penitentiary treatment of minors. Therefore, we should try to introduce in penal legislation and penal and penitentiary procedure for adults all those measures and agencies which, while hitherto

confined to the field of treatment of juvenile delinquency, are, or appear to be, necessary or appropriate for such personality study, in order that the proper guidance for the treatment of the offender may be derived from such study.

This is a very vague statement of principle. Should we follow this road, which the very question has traced? There are perhaps some among us who think that it is not even worth the trouble to take this road, that minors are completely different and separated from adults, that they are better individuals; and that these same institutions, which have been designed for them cannot be applied to others. It is, therefore, necessary to raise a question of principle. Personally I believe that, except as to the problem of the age limits, we should, nevertheless, follow this road.

(2) This general principle, furthermore, indicates the need for instituting a preliminary study of the offender prior to sentence and, consequently, the institution of a personal case history file. Partly in view of the scope of penal legislation in many countries such a study should, of course, be limited to those accused of the more serious crimes or crimes committed in such a manner as to reveal a possibly abnormal personality and perhaps one dangerous to society. It should also be made in case of recidivism and in other cases, when advisable in view of the particular character of a country's legislation.

All this may seem very vague, but if we look at the conclusions of the first question of Section I, we notice that vague conclusions are supported because no others could be adopted. It was necessary to affirm this principle, this advisability of a pre-sentence examination and even of a personal case history, but at this point many problems arose concerning political offences and petty offences, and even procedural problems proper to the different countries. One wanted to take all that into acount by a mere affirmation of the principle of the advisability of such a pre-sentence examination, while leaving to the different countries the task of defining that examination. Therefore, I believe that we could agree with the conclusions of Section I, as I have already said.

The examination should be made by specialized personel but at the instance and under the direction of the judge. In this connection, there is need for specialized training of the judge in criminological and sociological subjects.

This affirmation of specialization is perhaps also a little vague

and general, but I do not believe that one might arrive – at least there are no proposals in this direction in the special reports – at having, even for adults, courts, composed of experts in psychology, psychiatry, etc., in addition to the judges, as we had them in Switzerland and in Italy for juvenile delinquents. However, there might be some suggestions in that direction and this may be a question for debate. If not, I would propose to be content with affirming the necessity, as has already been done several times, of the specialization of the criminal judge in all the disciplines presupposed as necessary for determining criminal responsibility, or at least the treatment, of the offender.

(3) It is proper to extend to adults all those benefits of strictly penal character now provided by different legislations in the case of offences committed by minors, such as judicial pardon and analogous devices for withholding the imposition of punishment, and the power of the judge, even on generic grounds, to reduce greatly the punishment prescribed by law.

This is something which is perhaps not very understandable to certain systems such as the Anglo-Saxon one, but in other systems we have treatment measures quite in the traditional penal sense, let us say, in the sense of a retributive punishment, which are reserved only for juvenile delinquents. Should they not be extended to adults; for instance, the judicial pardon which we have in Italy, the French supervised freedom, even probation in the countries where it is not yet applicable to adults. In this field, perhaps, no difference should be made between juvenile delinquents and adults. However, in my country for instance, with respect to judicial pardon, while some lawyers favour this extension, there are others who always say : The adults are something completely different; this favour presupposes people who are not mature; one cannot accept the idea of an individual pardon for an adult whom we recognize as mature and responsible. This question should be discussed. My own opinion is that no substantial difference should be made; in connection with this favour it is also a problem of the age limits to be fixed between juvenile and adult offenders.

Conclusion 4 is directly connected with conclusion 3 :

(4) In view of the chance of re-educating the offender by other than penitentiary means, we suggest the widest and greatest possible use of probation and, therefore, the institution of appropriate agencies.

Then come all the questions of punishment, penitentiary treatment arising in conclusion 5 which is naturally connected with conclusion 1 and especially with the great fundamental problem : punishment for adults or re-education alone for adults, as we speak of education for the juvenile delinquents.

(5) Even in the case of adults, punitive imprisonment (which no rapporteur seems to reject, at least in principle) should have a re-educational purpose and tend toward the social recovery of the offender.
The privation of personal freedom should, as much as possible and to the extent compatible with the exigences of the penitentiary organization be the sole afflictive element of punitive imprisonment.
The individualization of punishment should be striven for by all means through a progressive system culminating in conditional release. Labour general and vocational education, gymnastics and some sport, concerts, etc. should be instruments of such re-education.

(There is much said about this in the Danish, Swedish and Swiss reports, which I mentioned in the beginning.)

Experiments with special institutions for post-penitentiary treatment, with community living, can also be usefully made in the case of adults. Social and moral post-penitentiary welfare work should be developed in the highest degree and in all its forms.

And conclusion 6 – for countries which recognize the sometimes very strong distinction between punishments and security measures (there are many who do not have it or do not conceive of it).

(6) Personal security measures, in or outside institutions, are positive acquisitions of modern criminal law and are now indispensable in the treatment of adults, too. However, experience shows that their greatest usefulness and their most rational application occur in cases in which one can avoid the imposition of a punishment and instead subject the person from the beginning to a uniform treatment, based solely on the criteria of social defence and social recovery. Such uniform treatment appears indispensable for the insane and the partially insane. But, many of the students of this matter doubt the possibility of applying it to offenders who are only psychopaths, moral deviates, etc. Furthermore, we must keep in mind that in many juridical systems not even the reponsible minor is exempt from punishment, though following that punishment he may be subjected to a security measure in the form of commitment to a reformatory.

(This is the case, for instance, in Italy.)

The traditional guarantees of criminal procedure should be maintained also

in the imposition of security measures so that the case may not be dealt with according to the principles of administrative procedure.

(There is naturally a danger of such an extension; it arises also with respect to the second question.)

The safeguarding of the individual rights of the person who has done something defined in law as a crime should be complete even when a system of social defence or security measures is involved.

I must say that I have not found in any of the special reports the statement that it is necessary to abolish punishment. There are systems of which it can be said that they have completely abandoned punishment for juvenile delinquents. It must always be recognized that here are questions which are perhaps in part only terminological ones, but sometimes not merely terminological, and that in several countries one no longer thinks of punishment in a retributive sense; such distinction is not felt, does not exist, between punishment and security or social defence measures. At any rate, one must ask oneself this question : Do we agree not to speak any more of punishment with respect to minors? In the present state of existing legislations one cannot even answer this question affirmatively. My country, for instance, retains punishment for minors, even if this punishment can be replaced by a purely re-educational treatment, or even if this treatment must follow upon the completion of the punishment. There are systems which have not abandoned the idea of punishment for juvenile delinquents. But, if one admits that this system should be completely abandoned, is it also necessary to adopt, in the case of adults, this repudiation of punishment in the traditional sense? This is a problem which would carry us much too far in this Section into the question which is the basis for this whole discussion. I believe, nevertheless, that we can draw from our special reports the few conclusions which I have indicated.

(Applause)

The *Chairman*:

Thank you very much, Professor Vassalli, for your excellent introduction to this vast field of problems which we have to explore. The discussion is now open.

Mr. *Lejins* (U.S.A.):

I have asked for the floor right after Professor Vassalli spoke because I would like to say a few words about what he called the

"question de principe", the basic question of whether we agree in general with the proposition that in the treatment of adults we should adopt various methods that have been lately introduced in the handling of juveniles. I agree on the whole with the position that Professor Vassalli has taken. What I would like to do is to add the point of view of a sociologist. And while, of course, I cannot speak for all American sociologists, I have the feeling that quite a few of them would agree with the point that I will make here.

I think that in this whole discussion, and also in the discussion of yesterday on the second question of our Section, we are dealing with one general situation : an old institution and a new function. By the old institution I mean the criminal court, and by the new function I mean crime control through correction, through the removal of the causes of crime. All that is referred to here on the Continent as *"mesures de défense sociale"*. The criminal court grew out of a period that lasted for several thousand years of crime control exclusively through punishment. The criminal law announced the forbidden types of behaviour, the person who broke these rules of behaviour had to be identified, the rule he had broken — these rules of behaviour — had to be identified, the rule he had broken had to be established, the amount of punishment had to be prescribed. Quite naturally, all these functions fall within the domain of the lawyer, and therefore, the criminal code was dominated by the lawyer and was a legal institution.

Now, since about one hundred and fifty years in the juvenile field, and since about seventy or eighty years — perhaps since Lombroso's work on criminality — in the adult field, a new function has been proposed, which I have already mentioned : the removal of the causes of crime, correctional work rather than crime control as a function of the law. Somehow we are here to incorporate this new function into the old institution. That is what has been the main theme of all the discussions in the last seventy years in the adult field, as I said, and somewhat longer in the juvenile field, and that is what we really discussed yesterday when talking about the second question, and what we really are discussing to-day, or rather what, in my opinion, is back of the question that we are deciding to-day. I think this general view has the following bearing on what we are discussing.

In the field of juvenile delinquency, of the control of juvenile

misbehaviour, the introduction of this new function has met with less resistance than in the adult field. Why this is so is a different question; maybe we are not so concerned with the seriousness of the offences of juveniles, maybe we do not feel that what they are doing is so important and serious, maybe we believe or see that correctional measures are more applicable to them. But, do not let us forget that hundred and fifty years ago even the notion of the juvenile delinquent was not in existence and that there was no different treatment in principle for the juvenile delinquent; he was only a young criminal. And during these hundred and fifty years all these new methods and treatments have been introduced, and, as I just said, in the field of juvenile delinquency that new function met with less resistance and penetrated first.

My proposition, therefore, would be to base our agreement on the question, as put to the Congress, on the basis that since the juvenile field has moved faster in the right direction in general, it is only natural to assume that we should look to the juvenile field for suggestions for future treatment in the adult field. I think that this position is sound in general, and at the same time I do not think it entails the danger that we will apply to adults measures which are applicable to juveniles. That reservation can always be safely kept in mind. But, there are some specifically juvenile measures which in spite of this general situation would not be applicable to adults, and therefore a detailed analysis of each particular measure will be necessary.

This is what I propose as the general, sociological background for our acceptance of this question. When speaking of the criminal court as an old institution, I did not mean that it is an institution of the past, for although I am a sociologist I am also a lawyer and even taught criminal law for several years.

Mr. *Gunzburg** (Belgium):

I apologize in advance for taking the floor, since I could not have had a better interpreter than Professor Vassalli who has kindly said, in too generous terms, that he had taken some ideas for his general report from my little report. But, I must not only congratulate him on his complete and systematic report which we have been able to read in advance, and which has made it possible for us to form a very complete idea of the various questions which have been

suggested. I have taken the floor in order to illustrate by some examples the necessity, the possibility, the advisability and the urgency of replying affirmatively to the question raised by the International Penal and Penitentiary Commission. What were we asked? We were asked — we who pretend to be competent because we have had ourselves made delegates to a Congress as important as this Hague Congress — if our experience gives us the conviction that there is something good in what has been done for fifty, sixty years in the matter of penal re-educational and re-adaptative measures with respect to delinquent children, and if some of this can be adopted with respect to adolescents and perhaps even with respect to adults. This is the question which has been put to us.

All civilisation rests on childhood, and if sociologists as well as criminologists have been able to decide to make some experiments with children, it is because we have probably all thought that here there was a plastic substance and that it was perhaps less dangerous to make some experiments that aimed at applying a little more kindness, less severity and if need be, less justice. This is what we have done. I recall a saying of my great teacher Enrico Ferri which has, by the way, become a historical saying since it has been repeated rather often : Crime has been studied sufficiently, now we must study the criminal. Since then, the criminal has been studied too much and it is time to study Man, and if we study Man, well, the study might start with what in Man represents the future : the child. Each one of us must bring the contribution of his country, and that is why I took the liberty of mentioning in my report some experiments which we have made in Belgium. I know that Belgium is not a country of theorists. For a hundred years, we have always been a country of achievements in penitentiary matters, in matters of security measures. Adolphe Prins was inspector-general of prisons and at the same time a professor of penal law, and my young and brilliant colleague whom you are applauding at this Congress, Paul Cornil, is a university professor, it is true, but he is above all the former director-general of prisons and now Secretary-General of the Ministry of Justice and it is to him and his collaborators that we probably owe the initiative in two quite recent practical achievements.

The one is an achievement which some of you will see next week, in the field of the re-education of youths and adolescents. I hope that many of you will have the opportunity to see Marneffe and

Hoogstraten. The names are known to you since you are penologists. There you will see that a completely new, perhaps half illegal, régime is successfull applied. We have had the chance and the courage to apply an educational régime to men over fifteen and even over eighteen years of age, and you have seen in the report of my excellent colleague Director Matton that scouting is the basis of penitentiary treatment. The results are good.

Our second achievement is mainly due to my excellent friend Professor Bekaert, general prosecutor at the Ghent Court of Appeals, who has been attached to the Ministry in order to deal with all kinds of questions of administrative policy. Some years ago, with his consent, an initiative was taken to establish a probation system for offenders who had long since passed the age where they could be classified as juvenile delinquents in accord with the Carton de Wiart Act of May 15th, 1912. Young offenders, and even older ones, have been freed although a serious charge rested on them. You have perhaps read in our periodicals the reports on some hundred and fifty cases of probation completely applied following the example of what we have for a long time done with children, a moral crutch being of course given to the offender who is otherwise left in complete liberty.

These are the achievements. I think that these two examples are effective examples from our country of what, in imitation of what we are doing for children, can be done for adults, and they should stimulate us to follow the advice of the general rapporteur, who, as far as possible and in certain matters supports such an extension. I shall not go so far as Mr. Teeters who says that the penal law for adults should be completely eliminated and replaced by the measures used for children and adolescents; I believe that we must remain realistic and that we should not go beyond what can be properly got from a still badly informed public opinion, but in certain matters we should utilize what we already have. As Professor Vassalli advises us, I think we shall do an excellent thing by making recommendations in which we once more state that every time it is possible, both for adolescents and for adults, it is necessary, before sentencing them, to have a personal dossier, a personal case history, in order to study the character and the causes of the felony or the misdemeanour, so as to take re-educational measures, to the extent to which this man, although he is a criminal, is not yet an adult and is, therefore, in a certain sense still re-educable.

The *Chairman* postponed the completion of the discussion of the third question to the Friday meeting. He announced that Mr. Clerc's draft resolution on the second question would be published in the Bulletin. In order to save time, at the suggestion of Mr. Bradley, Mr. Vassalli was also asked to prepare a draft resolution on the third question.

The meeting was adjourned.

Morning Meeting of Friday, August 18th, 1950

The *Chairman* opened the meeting and, with the consent of the audience, in view of the limited time of which the Section disposed for finishing the agenda, limited the length of each statement on the two draft resolutions to five minutes.

The *Chairman* then passed on to the printed draft resolution on the second question : *Should the protection of neglected and morally abandoned children be secured by a judicial authority or by a non-judicial body? Should the Courts for delinquent children and juveniles be maintained?*

Convened to examine the wish expressed in 1948 by the Mental Health Congress in London, in favour of abandoning the system of courts for delinquent children and of replacing it by a system of administrative authorities, along the lines of the "councils for the protection of youth" in Scandinavia,

The XIIth International Penal and Penitentiary Congress holds that:

1. It cannot propose the adoption of the Scandinavian system or of the system of juvenile courts; besides, a choice in this respect depends on the legislation of each State.
2. Whatever be the system in any particular State, the following principles should be observed:
   (a) The handling of juvenile delinquents shall be entrusted to an authority composed of people who are experts in legal, medical and educational matters, or, if this is impossible, the authority shall, before pronouncing a judgment, seek the advice of experts in medico-educational matters;
   (b) The law concerning juvenile delinquents, both in respect to subject matter and its form, must not be patterned after the norms applied to adults, but shall especially take into consideration the needs of juvenile delinquents, their personality, as well as the importance of not endangering their adjustment in later life;

(c) The special laws applying to juvenile delinquents shall guarantee to parents an impartial examination of their rights concerning the education of their child and shall protect the minor against any arbitrary infringement of his individual rights;

(d) In order to apply the measures to be taken with reference to juvenile delinquents, it is necessary to have special institutions, where the juvenile delinquents may be under the care of people especially trained for this purpose;

3. As the present Congress is not in possession of the necessary data in order to propose a solution of this problem of co-ordination between the judicial and the administrative authorities, the problem of dividing work between the judicial and the administrative authorities concerning the supervision of the treatment prescribed for the juvenile delinquent should be made the subject of a special study by the International Penal and Penitentiary Commission;

4. The same wish is expressed concerning the question of whether neglected and abandoned children shall be referred to authorities having jurisdiction in matters of juvenile delinquency.

The *Chairman* should like to make a small remark concerning point 1 of the English text which did not seem entirely clear to him. He would like to propose the following sentence:

1. It cannot express a definite preference for the Scandinavian system or for the system of juvenile courts; besides, a choice in this respect depends on the legislation of each State.

The *Chairman* then called for discussion on the draft resolution.

Mr. *van der Zijl** (Netherlands):

I would like to read two quotations representing the opinion of the Danish and Norwegian rapporteurs whom I have already mentioned before.

Mr. Haarløv informs the Congress that Denmark has resolved the question dealt with; according to the summary of his report, "the opinion is that a non-judicial authority should deal with delinquent children under a certain age and that the courts should handle certain older minors. Minors under fifteen years are not criminally responsible. One may even abstain from prosecuting those above this age. If the offence is insignificant, the prosecuting authority may, in fact, file the case. The same may happen regarding the children between fifteen and eighteen years under the condition that the child

welfare authorities take up the case. If the accused is between eighteen and twenty-one years of age, one can under certain circumstances treat him in the same way. This is why penal measures are inflicted on a very small number of minors under eighteen years of age".

With respect to the report by Mr. Harbek, Norway, it appears from the summary that "Norwegian penal legislation affirms that there is an absolute presumption of lack of discernment in delinquent children under fourteen years of age. Since the Norwegian law of June 6th, 1896, took effect, neglected children of eighteen years of age and less are placed under the authority of a municipal Child Welfare Council until they are of age. Such a Council consists of the district judge, a clergyman, a physician and four other members. The decisions of the Council may be annulled by the court if they are considered to be at variance with the law. Moreover, the Ministry can confirm or annul the decision, but cannot modify it. The fifty-odd years of experience have proved the adequacy of these provisions. It can also be stated that it has been very good to leave all regulations concerning juvenile delinquents outside the Penal Code and the Criminal Procedure Act. It is quite right that the juvenile delinquents are not under the jurisdiction of the ordinary criminal judge, and Mr. Harbek would even dare to propose the age limit for delinquent minors be raised from eighteen to twenty-one years."

When the penal legislation regarding children defined as delinquent took form, it sprang from the penal legislation governing adults. The concepts of "criminal" and of "criminality" were then completely different from now. They were nearly exclusively legal but not psychological concepts. Now, as appears, by the way, from the discussions in the Section, the conception has become completely different. Indeed, the term "criminality" has especially a psychological, psychiatric, pedagogical and social character. The result is that, in my opinion and that of others, as shown by the quotations I have just read, the investigation, the entire hearing leading to the decision, will be made by experts in the treatment, the examination and the disposition of minors. That is why I think that the decision must be put into the hands of a board composed of a psychologist, a psychiatrist, an educator and a sociologist. The scientific training of the jurist includes none of these fields. I do not want to attack anybody, having too much respect and too much

sympathy for the judges with whom I have been working, but I want to attack the institution only, the principle : a jurist can more or less orient himself in the fields in question, but he will be somewhat limited because these sciences are always growing. Therefore, Mr. Chairman, I would like to make the following motion :

The Section is of the opinion that the protection of morally and materially abandoned and neglected children should more and more be made an organ of non-judicial character. The psychological, psychiatric and educational sciences have shown that minors legally called delinquents have the same psychological and social constitution as minors called abandoned or neglected. The Section is of the opinion that courts which have to judge children and adolescents called delinquents should more and more yield to, and be replaced by, a non-judicial organ, but one composed of psychiatrists, psychologists, educators and sociologists. This organ will then be an organ for all minors now called abandoned or neglected. Parents shall have the right to appeal. The appellate organ shall be a board composed in a similar manner, or it shall be a civil judge.

The *Chairman* asked Mr. van der Zijl if he meant to present his proposal as an amendment to Mr. Clerc's draft resolution or as a substitute motion.

Mr. *van der Zijl** meant his motion to be a substitute.

The *Chairman* referring to his own remark made previously on the English text of point 1, stated that this was not an amendment proposed by the chair, but a question of English translation. The text he had proposed had perhaps not been entirely adequate, and it was a question if it could not be worded as follows :

1. It cannot express a preference neither for the Scandinavian system nor for the system of juvenile courts; a choice in this respect depends on the legislation of each State.

Mr. *Gunzburg* * (Belgium):

I too had been struck not only by the difference between the French text read to us during the preceding meeting and the present text, but also by the negative form, and I would like to propose a positive form. It is not correct that we cannot express a preference. We have preferences. I believe the Scandinavians have a preference for their system and the Anglo-Saxons, the Belgians and the French a preference for theirs, because each system is truly in keeping with

a different national psychology. That is why this morning I wrote down a somewhat more positive formulation.

The institution of an administrative organ (the Scandinavian system) or the retention of courts composed of specialized judges (the Anglo-American, Franco-Belgian, Dutch systems, etc.) mainly depends on political structure and national psychology and should, therefore, remain within the province of the domestic legislation of each country.

Mr. *Comblen** (Belgium):

I have been particularly happy to hear the statement of Mr. van der Zijl on his very natural preference for the system of boards of child care, an administrative régime which he contrasts with the judicial régime which we and certain other nations have. I am here to bring you, in a general manner, and not only with respect to points 1 and 2 of the conclusions proposed to you, the support of the International Association of Juvenile Court Judges which adopted similar conclusions at a congress held last July. In this respect, without wanting to read them in their entirety, I can say that the Association desires that the guardian of the child be a specialized judicial or administrative authority deciding in conformity with the traditional guarantees of the independence of the judicial power. Here then you note that the Association took no position either for or against, but simply wanted, in an extremely liberal manner, that the object should be attained and that object is the traditional guarantees of independence of the judicial power. The resolution which I shall summarize states: A minimum of formalism, but respect for the rights of the defence, of individual liberty and of the family, rapid procedure; endeavour to know and understand the child. In this connection, and without wanting to go into the detail of the precise terminology of the text which you are discussing at the moment, I can say that, in principle, all the decisions and propositions which you are submitting are in conformity with the spirit in which the third International Congress of Juvenile Court Judges, which has just terminated its debates, has worked and as secretary-general of that organization I think I am qualified to express my ideas here.

I shall only ask that – here I apologize if I am anticipating matters – in point 2, paragraph (c), the word "to juvenile *delinquents*" be changed. This derogatory word should be avoided as far as possible. There certainly are delinquent children, but this expression

should be limited to a more and more restricted category of minors, and we should preferably use the expression of "unadapted" or "wayward" minors, in preference to "delinquent" minors. A great many other points would call for detailed observations, but I shall take part in the discussion presently if it is necessary.

Mr. *Clerc** (Switzerland), general rapporteur:

I should like to explain this question of style which has been raised. The text of point 1 which is printed does not correspond to that which I had read in the preceding meeting. When I submitted my original text to Mr. Schlyter, he pointed out to me that neither the Scandinavian system nor the system of the juvenile courts were absolutely perfect and that this should perhaps be said. If one takes the precaution to look also at the preamble which contrasts the two systems, one understands very well that one can recommend neither the one nor the other as such. I believe this is a question of pure form.

With respect to the amendment of Mr. Gunzburg, I say quite amiably that I would at any rate want a very brief formulation. We have, I believe, the most gigantic draft resolution of the Congress.

With respect to the third point which has just been raised by the Belgian judge, Mr. Comblen, who arrived this morning, I should like to refer to our previous deliberations. I had stated that this question of terminology could be discussed, that perhaps the French text could be put into its final form by Frenchmen, but that I had adopted these expressions saying that the juvenile delinquents are those who are handed over to the authority because they have committed an act contrary to the penal law. We certainly have to call them that; I call a spade a spade. I have used this expression because it is the traditional one. If we are going to take the formula which Mr. Comblen has proposed, I must tell him that in the legislation of my country these are the individuals who have not committed an offence and who are subject to a tutelary authority. I am obliged to adopt the traditional term so that one knows more or less what one is talking about. I admit that a new term should perhaps be agreed upon, but then one should define it.

These are my three remarks and the origin of this modification of point I, which is after all not so negative : it means simply that we cannot take sides for the one or the other system in the present state of the problem.

Mr. *Ancel** (France):

I should like to make two brief observations.

The first concerns the point which has already been the subject of discussion a moment ago with respect to the choice between the Scandinavian system and the system of juvenile courts. I believe that it is the very essence of wisdom that the Congress should not propose a choise between these two systems, for it is quite evident – as the resolution states, and is right in stating it – that the choice belongs to the domestic legislation of each State. On this point, consequently, I agree entirely with the proposition made, and also with the spirit of the proposition of Mr. Gunzburg.

Then, I should like to make a second observation and propose an amendment to point 2, by the way a very brief amendment and which, I think, will be accepted by the general rapporteur. I should wish to add a word under paragraph (a) by saying : ". . . .of people who are experts in legal, medical, *social* and educational matters. . . ." The word "social" is in my opinion – I am not the only one to think so – of great importance in this matter.

Mr. *Gunzburg** (Belgium) proposed to make the word "people" under (a) more specific by saying "men and women".

Mr. *Schlyter** (Sweden):

It is not entirely accurate, as Mr. Gunzburg does in his draft amendment, to call the Scandinavian system an administrative system. In Norwegian treatises on procedure the boards of child care are called special tribunals. A judge always participates in the decision concerning a privation of liberty. In Sweden, one can lodge an appeal with the administrative Supreme Court. We have not discussed the question of a choice between the two systems thoroughly enough to make a choice. I therefore prefer the Chairman's wording.

Mr. *Lejins* (U.S.A.):

I feel that this very specific reference in point 1 to a "Scandinavian system" and a "system of juvenile courts" is too specific, because we have no exact definition of what the Scandinavian system is, whether one could include for instance the United States under the Scandinavian system. As a matter of fact, I feel we could not,

because there is no one system in the United States. Again, the system of juvenile courts will vary from country to country. I feel that, in its resolution, this Section should not go into precise definitions because we have not done the work to make such definitions in an exact manner. A general reference would be preferable.

Furthermore, I would like to see incorporated in the text the suggestion made by Professor Gunzburg, namely an amplification of the statement "depends on the legislation of each State" by what he mentioned also: "the political structure and national psychology". So, I would like to suggest the following text for point 1:

The Section does not feel that it should express a preference for any specific judicial or administrative system of handling juvenile delinquency, but rather recognizes that the choice in this respect depends on the respective legislation of each country and its general political and social structure.

The *Chairman**:

I suppose it may be possible now to avoid voting on the various amendments proposed if all here who are not in favour of choosing a specific system agree.

Mrs. *Glueck* (U.S.A.):

I just want to make one addition to the suggestion that has been made by Mr. Lejins and which I think is implied in our Chairman's most recent statement, and that is this: that the Section also feels that there need *be no basic difference in the philosophy of handling young offenders* under the two points of view which have been presented and discussed here, which reflect differences in the administrative procedures rather than in the actual treatment procedures, the goals of which are after all the re-education of offenders. In other words, regardless of how we may feel in our various countries about how to proceed from an administrative point of view in the handling of this problem, in the final analysis we are concerned with the re-education of offenders.

The *Chairman:*

I think we could put that in the suggestion made by Mr. Lejins, and I shall ask him to read that text including the point made by Mrs. Glueck.

Mr. *Lejins* (U.S.A.):

There is a little bit of misunderstanding. I am not ready on such short notice to read a text including Mrs. Glueck's amendment. I fully agree with it and think it could be added as a commentary to the resolution; but I would like to read the resolution with a change suggested by Professor Clerc which, as he pointed out to me, would better include the idea also of Professor Gunzburg, with which he also agrees. I read it once more with that change:

The Section does not feel that it should express a preference for any specific judicial or administrative system of handling juvenile delinquents, but rather recognizes that the choice in this respect depends on the respective legislation of each country, its customs and its general political and social structure.

Miss *Huynen** (Belgium):

I should like to make a little remark on the French text of point 1, which has just been read to us. In the English text, I fully agree with the formula "handling of juvenile delinquents". I do not agree with the French formula *"traitement des jeunes délinquants"*. What one should say in my opinion, is "jugement". There is a very great difference between "jugement" and "traitement", the one word implying the evaluation of a sum total of facts which constitute a legal situation, the other implying the choice of a treatment, namely the process of re-education. I believe that in point 1 we have in mind the evaluation of this sum total of facts of a legal order, and consequently, the French text should not say "traitement". I would prefer that one say "jugement", unless there is an even broader term.

The *Chairman* asked the audience if it would vote on the last version of point 1 without voting on each amendment.

There was no objection. The text was adopted.

Mr. *Clerc** (Switzerland), general rapporteur, asked if the text was definitively adopted or if one could not set up a small editing committee in order to arrive at a completely smooth formulation.

The *Chairman,* with the consent of the audience, recognized the prerogatives of the editing committee.

The other points of the proposed resolution were taken up.

Miss *Huynen** (Belgium):

With respect to point 2, I know that it is also Mr. Clerc's opinion that paragraph (d) which is entirely unrelated to the subject of the discussion could be dropped.

With respect to point 3, I would propose the addition of a word: "....concerning *the selection* and the supervision of the treatment....".

Mr. *Bradley* (United Kingdom):

I have listened, as we all have, with great interest to the many points which have been made this morning in regard to building up a very important resolution, and I think we should remind ourselves that, as we did with our first resolution, it is very important that the resolution should be in general, but not ineffective, terms and that it should be reasonably brief because long resolutions are not patiently read. As the discussion has gone on I have presumed to attempt to summarize the various points which have been made – with which, I sense, the Section is in general agreement – in a comprehensive resolution which, Mr. Chairman, I would ask you permission to read. Before I do that, may I say that much of what I suggest is already in Professor Clerc's excellent draft, and I would ask you, as I read my proposed comprehensive resolution, to look at that printed draft.

I find that I have written down something different from what Mr. Lejins proposed, but I do not press my wording any more than his. I entirely agree that we should leave out the preamble about the Scandinavian system and be more general than that. This is my text:

In considering question IV/2, while recognizing the different national psychologies and practices, the Section finds itself unable to make a general recommendation that juvenile courts should be abolished. In reaching this conclusion, the Section was actuated by the following considerations:

1. The function of the courts in interpreting and administering the law must be upheld.
2. The line between the respective functions of the courts and the administration should be clearly maintained.
3. In order that the courts and the administration may work together for what is best for the minor, the Section makes the following recommendations:
   a) (see under 2 a of Professor Clerc's draft) The judicial authority shall, before pronouncing a judgment, seek the advice of experts in medico-educational matters.
   b) (see under b) The law concerning minors shall especially take into consideration their needs, their personality, as well as the importance of not endangering their adjustment in later life.
   c) (see under c) The special laws applying to minors shall guarantee, etc.
   d) (see under d) In order to apply the measures to be taken it is necessary to have special institutions where the minors may be under the care of people specially trained for the purpose.
   e) (see under 3) The problem of dividing work between the judicial and the administrative authorities, concerning the supervision of the treatment prescribed for the minors, should be made the subject of a special study in each State and by the International Penal and Penitentiary Commission.
   f) (I found point 4 a little difficult to understand but I have interpreted it as follows:) The above principles apply as to dealings with neglected and abandoned children.

The *Chairman*:

I think we are now up against a difficult question of procedure. We have, so far as I can see, for the time being three proposals for a resolution, one by Professor Clerc, another by Mr. van der Zijl and a third by Mr. Bradley. I think the first and the third are heading in the same direction. I must ask Mr. Bradley if he is willing to accept point 1 which the Section has already approved.

Mr. *Bradley* (United Kingdom) accepted it.

The *Chairman*:

In order to save time I will now ask the Section if it wishes to accept the rest of the resolution as proposed by Mr. Bradley. In that case all those who made the different amendments would have to withdraw them. If not, we will have to vote on the three proposals.

Mr. *Gunzburg** (Belgium):

I believe that it is rather difficult, although we are probably in agreement on the content of the proposals of Mr. Bradley, to accept them *in toto*, since we have already studied the proposal of Mr. Clerc with its various amendments. But I believe with the Chairman that the proposal of Mr. van der Zijl goes much farther and along another line, and I wonder if it is not in keeping with custom to

take a vote first on the proposal which goes the farthest, the abolition of juvenile courts as proposed by Mr. van der Zijl; if this proposal is adopted, it is evident that the ideas of Mr. Clerc, Bradley and some others will have to suffer still another shock. If, on the contrary, the proposal of Mr. van der Zijl is defeated, as I suspect from an appraisal of opinion, then I shall come back to the proposal which has been made before, namely to constitute a small editing committee of these members, which would examine the proposals of Mr. Clerc, as amended, and the proposals Mr. Bradley made, and which would probably produce a good wording of these two great proposals, including amendments dealt with.

The *Chairman:*

I am afraid we shall have no time left for constituting such a drafting committee. We have only an hour left now and we have to finish our discussion. I think that, since the proposals made for different amendments have not been withdrawn, we must vote on the various alternatives. I think it would be expedient now, as proposed by Mr. Gunzburg, to vote first on the proposal made by Mr. van der Zijl.

Mr. *Clerc** (Switzerland):

For procedural reasons, I would propose that we vote first on the draft of the rapporteur and that of Mr. van der Zijl; this being done, if the rapporteur's draft prevails, one should decide if Mr. Bradley's or my draft shall be taken as the guide-line. After taking sides in this manner, one could perhaps set up a small editing committee. This is the only means of getting out of this hole with respect to the amendments which have been proposed regarding my draft by Mr. Ancel and Miss Huynen. I want to say that I perfectly agree with these additions; I agree also to delete paragraph (d); I proposed that myself when I explained how it had come to be included.

Mr. van der Zijl's motion was put to a vote and rejected.

Then, the question arose whether a choice in principle between Mr. Clerc's and Mr. Bradley's drafts should be voted or if an editing committee should be set up first in order to arrive at a single draft.

It was decided to recess for ten minutes in order to permit Messrs. Clerc and Bradley to co-ordinate their texts.

When the meeting was resumed, Mr. Clerc*, general rapporteur, stated that he agreed with Mr. Bradley in principle, but not on the form. Since Mr. Bradley's proposals had been submitted only at the end of the discussion, it had not been possible to produce the text in ten minutes. Since both of them had a horror of compromise and wanted to avoid patchwork, it would have been impossible for them to guarantee that a text prepared in ten minutes would really express what they wanted to propose. In order to do a serious job, they therefore agreed to propose that the assembly decide between their drafts. Depending upon which text would be preferred, its author would function as the rapporteur in the General Assembly.

The *Chairman* put Mr. Bradley's draft to the vote.

The draft was rejected by 18 votes for and 19 against.

The *Chairman* asked Mr. Clerc to introduce in his text the proposed amendments with which he had declared himself in agreement. In the meanwhile the discussion was continued on the third question: *Should not some of the methods developed in the treatment of young offenders be extended to the treatment of adults?*

The Chairman called attention to the fact that at the previous meeting it had been decided to have a draft resolution prepared by the general rapporteur.

Mr. *Vassalli** (Italy), general rapporteur, proposed the following conclusions which had been distributed:

The Congress agrees that both fields, that of the control of adult crime and that of the control of juvenile delinquency, are involved in the gradual change from crime and delinquency control through punishment to control through correction. For varying reasons much more progress in that direction has been made in the juvenile field, and it is therefore advantageous to look to that field for suggestions and leads for further developments in adult crime control.

The Congress considers that many adults are capable of response to the kind of training and conditions which in several countries are applied only to juveniles. Because a young man or woman is legally an adult, it should not

mean that he or she must be condemned to a form of imprisonment which is shorn of all chances for education, culture and reformation.

More specifically, the Congress suggests that the experiences acquired in the field of juvenile delinquency, with regard to preparation of case histories, probation and parole and judicial pardon, should be utilized also in the adult field.

These are not my own conclusions. The members who took part in the discussion – which for lack of time could not be more exhaustive – have kindly helped to draft this text, especially Messrs. Lejins, Bradley and Gunzburg whose ideas have been incorporated. It is a statement of a very general character, a statement of principle. I believe that we cannot go farther than that, and that we can go that far at least. One can go that far because the most widespread opinion – even if one has not been able, truly speaking to discuss the question in this Section – is that one can "nevertheless" give an affirmative answer to the question put by the International Penal and Penitentiary Commission. One cannot go farther, either because the time is lacking to have all the discussion which would be necessary or because these questions have already been dealt with in other Sections in connection with the particular topics which were raised there: the problem of probation or of judicial pardon, the problem of the personal case history, etc.

I therefore believe that, for several reasons of principle, expedience and practical necessity, we must limit ourselves to a text which accepts the principle and gives some examples. One could even dispense with the examples listed in the last paragraph of the draft.

The *Chairman* asked if there were any remarks on the text.

Mr. *Comblen** (Belgium):

I know that you have very little time at your disposal, but I should perhaps like to propose that the motion be a little broader and open up a somewhat new horizon in the work which will be continued after the Congress. What I have in mind here is the extension of the activity of the social judge, namely the social services which are obviously his collaborators or even his immediate co-operators. I propose that in all countries one should provide for the complete development of the activity of a social judge in cases concerning adults, just as these services have started to function in a satisfactory manner

with respect to minors. This aim will be reached by legislative provisions and then it will be possible to develop the social service within the framework of the legislations in force in the various countries; I think that from this very moment one might succeed in doing a great deal in this direction. In the judicial world one is generally little aware of the entirely new character of the social judge. What I should wish is that no half measures be taken in this field, and that one should not add to the examining magistrate's job in penal matters the very different job of the social investigation of cases.

The *Chairman* pointed out that there was no time to take up that matter.

Mr. *Comblen** (Belgium) continued:

I think that the children's judge is, in his field, a social examining judge, and I should like that for adults also a social examining judge be created who would be a kind of counterpart to the penal examining judge who is found in most nations.

The *Chairman* doubted that it would be possible to take Mr. Comblen's idea into consideration since the time limit allotted to each speaker had been exceeded in his case and since he had not formulated an amendment.

In view of the urgent need to proceed to a vote he thought that all those who believed that the problem had not been sufficiently discussed and who for that reason could not agree with the resolution should vote against it. He assumed that the majority of the Section wanted the question put.

Mr. *Comblen** (Belgium) presented the following amendment, adding in the last paragraph after "case histories" the words: "and the social investigation of cases referred to a specialized social judge other than the penal examining judge".

Mrs. *Glueck* (U.S.A.):

I think that although the proposition of Mr. Comblen is a very interesting one this is not the time to begin to discuss it. There is another Section of this Congress, Section I, which has been spending several days in considering the whole matter of the pre-sentence

examination of the offender. I think that the recommendation that has been made is much too specific at this point, though certainly acceptable in general, at least as far as I am concerned, and that it might be valuable to omit the last paragraph, as Mr. Vassalli himself has suggested, and leave this a very general statement. If some country wants a social judge and thinks that he can make a suitable pre-sentence examination, that will be alright. But I am not at all sure, for instance, that in every country there is, first of all, such a thing as a social judge, and secondly, that even if there were, he could make a suitable pre-sentence examination. Therefore I would like to suggest the omission of the entire last paragraph, which tends to make detailed suggestions which the Section is not prepared to do. I would also like to comment that one very excellent illustration of the adaptation of methods of individualization of the treatment of adults is in the Federal Prison System of the United States of America. From everything I have read and heard there is nothing more advanced than that in the adult field in the world to-day.

The *Chairman* proceeded to the vote on the amendment of Mr. Comblen. It was rejected by a great majority, with two votes in its favour.

Then the Chairman announced that he would call for a vote on Mrs. Glueck's proposition to delete the entire last paragraph of the draft resolution.

Mr. *Vassalli**, general rapporteur:

I would like to give a clarification on this point. I said that the resolution was very vague and that there would perhaps be members who would not even want to put in the last paragraph. I myself am not of that opinion. I merely mentioned that possibility, and Mrs. Glueck has now in fact made such a motion. But, personally, I am of the opinion that we would then perhaps go a little too far in this direction and that it would be better to do nothing about it.

Mrs. *Glueck* withdrew her motion.

It was proposed to substitute at the end of the second paragraph of the draft resolution the word "training" for the word "culture".

The text thus amended was put to a vote. It was adopted by a great majority.

The second question was taken up again : *Should the protection of neglected and morally abandoned children be secured by a judicial authority or by a non-judicial body? Should the Courts for delinquent children and juveniles be maintained?*

Mr. Clerc* (Switzerland), general rapporteur, noted that a single text had not been arrived at, and that he had discussed the matter with Mr. Lejins. He proposed the following text for point 1 of the resolution:

1. At present it does not feel that it should express a prefence for any specific judicial or administrative system of handling juvenile delinquency; the structure of the respective institutions must depend on the legal order and customs of the country concerned.

The word "traditions" (French text) seemed to him general enough to replace the word "philosophy" which did not fit well into the French text.

With respect to point 2, Mr. Clerc agreed with Mr. Ancel on the necessity of introducing under paragraph a) the word "social" after "legal".

He agreed to delete paragraph d) of point 2.

With respect to point 3, he proposed to adopt the modification proposed by Miss Huynen by adding the words *"the selection and* the supervision. . . ."

Mr. *Lejins* gave an English translation of the amended text.

Mrs. *Glueck* (U.S.A.):

I cannot go back to America feeling uncertain about any of these resolutions. It seems to me that it is necessary for us to affirm the fact that there is no basic difference in the philosophy behind these two conceptions that we are discussing, that our goals are the same – the re-education of young offenders – and that no matter what the

judicial or administrative procedures are, we are all looking towards the same goal. It seems to me that it is very important to state that, so that our friends all over the United States and Europe and in other parts of the world will not have the impression that they must eventually make a choice between the one approach or the other. In the United States, for example, we are using both approaches : we have Youth Correction Authority, a structure whereby the judge really makes the finding of guilt, and then a group of experts guide the treatment. In most of our States, however, we have the opposite, a judge determining the treatment, so that I do not think that we should be called upon here to indicate in any way that even eventually we have to make a choice between one method or the other.

Mr. *Lejins* (U.S.A.):

Mrs. Glueck, would you agree with the following formulation of your point:

The Congress holds that while the basic philosophy of the two is very much the same, at present there is no sufficient basis for expressing one's preference specifically for a judicial or an administrative system in handling juvenile delinquency; hence the structure of the institutions must depend on the legal order and customs of the country concerned."

Mrs. *Glueck*:

I admit that the sentence formulated by Mr. Lejins is entirely satisfactory, but I would like to add just a line or two which would state that this does not imply that we are not in agreement on the general basic philosophy concerning the treatment of juvenile delinquency.

Mr. *Clerc** stated that it would be difficult to translate the word "philosophy" in Mrs. Glueck's amendment in another way than by "inspiration". In order to avoid misunderstandings he pointed out that he had demonstrated in his general report that it was a question of mere procedure. He was also ready to add in the French text that there was "*aucune* raison" – a word which had been deleted – to prefer one of the systems, so as to make clear that there was not even a "philosophical" reason which might make us opposed to anything.

On the other hand, Mr. Clerc thought that in the report to the General Assembly the judicious statement of Mrs. Glueck could well be referred to.

The *Chairman* asked the Section if it was ready to vote on the text.

The vote was taken and the resolution was adopted in the following form :

Convened to examine the wish expressed in 1948 by the Mental Health Congress in London, in favour of abandoning the system of Courts for delinquent children and of replacing it by a system of administrative authorities, along the lines of the "councils for the protection of youth" in Scandinavia,

The XIIth International Penal and Penitentiary Congress holds that:

1. At present it does not feel that it should express a preference for any specific judicial or administrative system of handling juvenile delinquency; the basic philosophy of the two is very much the same; and the structure of the respective institutions must depend on the legal order and customs of the country concerned.
2. Whatever be the system in any particular State, the following principles should be observed:
   a) The handling of juvenile delinquents shall be entrusted to an authority composed of people who are experts in legal, social, medical and educational matters, or, if this is impossible, the authority shall, before pronouncing a judgment, seek the advice of experts in medico-educational matters;
   b) The law concerning juvenile delinquents, both in respect to subject matter and its form, must not be patterned after the norms applied to adults, but shall especially take into consideration the needs of juvenile delinquents, their personality, as well as the importance of not endangering their adjustment in later life;
   c) The special laws applying to juvenile delinquents shall guarantee to parents an impartial examination of their rights concerning the education of their child and shall protect the minor against any arbitrary infringement of his individual rights.
3. As the present Congress is not in possession of the necessary data in order to propose a solution of the problem of co-ordination between the judicial and the administrative authorities, the problem of dividing work between the judicial and the administrative authorities concerning the selection and the supervision of the treatment prescribed for the juvenile delinquent should be made the subject of a special study by the International Penal and Penitentiary Commission.
4. The same wish is expressed concerning the question of whether neglected and abandoned children shall be referred to authorities having jurisdiction in matters of juvenile delinquency.

The Assembly expressed its gratitude to Chairman Aulie and to the secretaries, and the Chairman closed the work of the Section.

General Assembly

Wednesday morning, August 16th, 1950

Chairman: Mr. SANFORD BATES (U.S.A.)

The *Chairman*, at 10.20 A.M. called to order the first meeting of the General Assembly devoted to the consideration of the question on the programme of the Congress. He referred to the Regulations which the International Penal and Penitentiary Commission had, as usual, prepared for the debates of the Congress, and he drew particularly the attention of the Assembly to articles 16, 20 and 22 of those Regulations.

As the Bulletin of this day indicated, Section I had appointed a drafting committee which was charged with preparing, on the first question of its programme, a draft resolution which would be submitted to the Section during the afternoon. Consequently, the Chairman proposed that the Assembly begin by considering the resolution submitted by Section I on the second question of its programme:

How can psychiatric science be applied in prisons with regard both to the medical treatment of certain prisoners and to the classification of prisoners and individualization of the régime?

This resolution read as follows:

1. The purpose of prison psychiatry is to contribute by the co-operation of the prison psychiatrist with other members of the staff towards a more efficacious treatment of the individual prisoner and to the improvement of the morale of the institution thereby attempting to decrease the probability of recidivism, whilst at the same time affording society a better protection.
2. The psychiatric treatment should be extended to include: (1) the recognized mentally abnormal prisoners; (2) a number of borderline cases (including those with disciplinary difficulties) who may, possibly for comparatively short periods only, require special treatment; (3) prisoners with more or less severe disturbances resulting from prison life; lack of treatment would lessen their chances of rehabilitation.
3. It is desirable, and would be highly advantageous, to have prisoners classified and separated into groups for special treatment, e. g. groups of feeble-minded persons and groups of inmates with abnormal personalities. An establishment for the treatment of inmates with abnormal personalities should have facilities for dealing only with a suitably homogeneous group, not exceeding about two hundred persons. It is of decisive importance that the treatment be not limited to a previously fixed period, and that the end of detention should not mean cessation of treatment — this should continue after discharge until adequate rehabilitation is obtained. It is desirable that social psychiatric after-care facilities be provided.
4. The general methods of psychiatric treatment — e. g. shock treatment, psychotherapy (including group therapy) — may advantageously be applied to criminals with due regard to occupation and prison routine. For prisoners with abnormal personalities it is necessary to work out indirect forms of treatment, not attempting to force upon them definite patterns of response. Direct and active co-operation on the part of the prisoner is of decisive importance, and his readiness to be treated is, therefore, a necessary condition. This state of readiness is stimulated under a system of indeterminate sentence which is morally justified on the grounds of public safety. The indefinite term element must, in all cases, be utilized with due regard to the risk to society which the prisoner would constitute if at large.
5. The assistance of the psychiatrist is essential in the classification of prisoners and in the training of the staff. Only when psychiatric centres are established within the prisons, permanently employing skilled forensic psychiatrists, is it possible to direct the special treatment of personality problems ascertained at the general classification, besides those spontaneous nervous reactions that may manifest themselves in prisoners previously classified as fully normal. The forms of psychiatric treatment would, of course, depend on the degree and nature of the development of the general correctional system in the country or locality in question as well as on the number of psychiatrists available.
6. By his own example and in collaboration with the other members of the staff, the psychiatrist can contribute towards making individualized treatment a reality. In his guidance and teaching, the psychiatrist should build on careful analyses of individual cases actually encountered, and he should avoid all temptations to dogmatize.

The *Chairman* called upon Dr. Stürup, the general rapporteur for this question, to give a brief expository statement.

Mr. *Stürup* (Denmark):

It has been a very easy task to discuss this second question in Section I. There was a strong feeling that the prison psychiatrist will be an important person in future prison work, and I feel very honoured that the task of general rapporteur was conferred on me. Already seventeen years ago laws were passed in Denmark which really gave an opportunity for using psychiatry, and the administration made it possible to appoint psychiatrists for this work.

With reference to the printed conclusion of the Section, I want to emphasize that the most important part is the first point where the Section tries to explain that the first job of the prison psychiatrist is not to coddle prisoners but to assist in defending society and giving better protection to the public; further, that he must do this in collaboration with the whole staff. That is the most important part of these conclusions. There is another very important thing too, namely that special institutions are needed for the special treatment of personality disorders, and that these institutions need some sort of indeterminate sentence in order to fulfil their tasks.

The *Chairman*:

Thank you, Dr. Stürup. The discussion on the resolution is now open. I suggest that persons who contributed to the discussion in the Section meetings are not invited to speak in the General Assembly, which gives an opportunity for members who were in other Sections to be heard upon the ratification of the decisions of the Section. Unless there is a special reason, such as a change of view, the chair would prefer not to recognize persons who were present at the Section discussion.

Mr. *Abrahamsen* (U.S.A.):

I believe that in the conclusions of the Section something should, if possible, be included about the establishment of a research institute of criminal behaviour where psychiatric treatment methods could be tried out. As it is now, the State of New York, for example, has already established those things which the resolution mentions, and I would like to see this Congress go a step farther in encouraging the setting up of research facilities for the study of treatment.

I note that no reference is made in the resolution to psycho-analysis. With regard to treatment, there is a reference to "the general methods of psychiatric treatment", which of course include not only shock therapy, psychotherapy and group therapy, but also, as is well-known, all recognized forms of psycho-analysis and hypno-analysis.

I would also like to call to the attention of the Assembly that the State of New York has adopted a new law about sex offenders where psychiatric examinations and treatment are utilized to the utmost, and where psychiatric treatment with the help of psychological reports – which I think should have been included in the resolution - Rorschach and Szondi tests and all sorts of tests, can round out the picture of the individual offender. All those who are working in the field of psychiatric criminology see, with a great deal of satisfaction the resolution that is submitted to this Assembly, but I would like to have it made a little more outspoken and more specific as to what really is wanted.

I would also like to say that the specialized treatment of individual offenders is necessary, but I have heard from many places that sex offenders, for instance, should be treated in special institutions, and this, according to the experience in New York, is entirely wrong; they can be treated, and they are treated in Sing Sing, together with other types of offenders.

The *Chairman*:

I am obliged to rule that Dr. Abrahamsen's remarks do not constitute a motion to amend the resolution and that the provisions of Article 16 of the Regulations have to be complied with if an amendment is to be considered, that is, the amendment has to be made in writing and signed by the author.

Mr. *Azevedo** [1]) (Brazil):

I would simply like to make a communication which is in very close relation to clause 4 of the conclusions. Two references are made there: to shock treatment and to psychotherapy (including group therapy). But no mention is made of brain surgery. The latter was initiated by the Portuguese scientist Egas Moniz. It has constantly been used by Freeman in the United States, and in Saô Paolo brain

[1]) An asterisk after a title or a name indicates that the speech has been translated from the French.

surgery called lobotomy, is used to-day with much success for impulsive mental disorder. By this operation one separates the anterior lobe from the posterior lobes of the brain and this reduces impulsiveness to an extraordinary degree. I only wanted to make this reference to brain surgery which is practised in Brazil to-day, following the methods invented by Egas Moniz.

The *Chairman* drew the speaker's attention to the provision of the Regulations concerning the amendment which he might perhaps want to present, but Mr. *Azevedo* stated that he did not plan to propose an amendment.

Mr. *Coopman* (Netherlands):

Dr. Stürup said that the principal object of psychiatry in prison is the protection of society, but I think – see point 1) of the resolution – that as an individual science, psychiatry like all medical science, has as its first object to cure the individual. On the other hand, the social sciences, like social psychology and sociology, have as their principal object the community, so the end of all science is, of course, the defence of society, and that must also be the end of the special treatment of the prisoner. Therefore, I would like to stress that the first task of psychiatry in prison is the more efficacious treatment of the individual prisoner. The prisoner, who by classification is found to be a mental defective, should get individual treatment: shock treatment, psycho-therapy, if possible group therapy, if possible psycho-analysis. If this is successful first with the individual, the result must undoubtedly be the protection of society.

The *Chairman*:

With reference to the procedure of submitting amendments, I have only ruled that verbal amendments cannot be accepted: an amendment to an important resolution at this stage should be made in writing and signed by the author. The chair is ready to waive the rest of the rule about the twenty signatures for the present meeting because of the fact that many members have not had that part of the Regulations called to their attention.

Mr. *Abrahamsen* (U.S.A.) submitted a written amendment with signatures, to introduce, in the parenthesis of the first sentence of

clause 4 of the resolution, the words "the recognized forms of psycho-analysis and" before the words "group therapy".

Mr. *Junod* (South Africa):

I am sorry to state that in the development of all the discussion about the souls of men there is no mention of spiritual action. I have assisted two hundred and eleven murderers right up to the execution and, therefore, I appeal to this Congress not to forget that there is a spiritual side to prison work. In our time we speak about psycho-therapeutic action, about lobotomy and about shocks. I am going to the Congress of Psychiatry in Paris where the inventor of the technique of shocks, Dr. Sakel, is putting a very strong question mark before electrical shock therapy.

I would like to insist that this Congress do not forget the spiritual side of action in the prisons, and this is the proper place to put in a word about it. I have tried to frame a very brief amendment which I shall sign, and which reads as follows :

> One of the most important parts op psycho-therapeutic action is spiritual action upon patients or wrongdoers. Therefore this Congress emphasizes the importance of the part to be played by persons competent to perform the cure of souls in penitentiary institutions.

The *Chairman*:

I am inclined to construe this amendment as being beyond the scope of the subject-matter, in view of Article 20 of the Regulations. I realize the deep sincerity of the speaker from South Africa, and I again admit that there may be a reasonable question as to whether the psychiatrists ought to be imbued with religious motives. I am, therefore, not ruling that this amendment is out of order but will leave it to the Assembly, by voting on it, to determine whether the amendment is one proper to the resolution. Does anyone else wish to discuss this problem?

Mr. *Abrahamsen* (U.S.A.):

I would only like to add to what the last speaker said about spiritual help and psychiatry that in America there exists something called pastoral psychiatry; also, the psychiatrists in Sing Sing, of whom I am one, do work with the priest, the minister and the rabbi. I assure you that all psychiatrists who are in this work trying to help

prisoners are imbued with the right spirit, and that it certainly has to be left to each individual psychiatrist to work out problems with the prisoner.

Mr. *Clipson* (United Kingdom):

I think it would be unfortunate if we were to allow the impression to go from this Assembly that there is any divergence of opinion between the people, who regard the spiritual side as very important, and the psychiatrists. It would be unfortunate if every priest, clergyman, or minister considered himself adequate to deal with the psychologist's side. It would be equally unfortunate, in my opinion, if every psychiatrist considered himself competent to deal adequately with all that may fall within the other field. And so, surely we are endeavouring to arrive at a happy co-operation, pastors recognizing the value of the contribution psychiatrists make and vice versa.

The *Chairman*:

If there are no other members who wish to discuss this question, I am going to call upon our rapporteur, Dr. Stürup, to comment upon the statements made and particularly to give his opinion on the matter of the two amendments that have been suggested.

Mr. *Stürup* (Denmark):

First in answer to Dr. Abrahamsen, I want to make it clear that the question laid before Section I was how psychiatric science can be applied in prisons in certain special respects, and therefore, the Section did not put into its answer something it was not asked about. The Section agreed that scientific work was very necessary, but it agreed on many other things too regarding psychiatry without putting these special matters in the resolution.

With regard to sex offenders, I, and I think many or perhaps all of the very distinguished colleagues who took part in the discussion, see them as included among the personality deviations. In any case I feel it is very difficult to exclude sexual life from the life of the personality as a whole, and the Section felt that personality deviations did include sex deviations.

On the question about including psycho-analysis I admit that there was some discussion in the Section whether or not it should be

mentioned in point 4) of the resolution – ".... e.g. shock treatment, psycho-therapy....". Some members did not want to have this exemplification, which was only thought to be an exemplification. Then it was said that it was important for lay people, who, it was hoped, would read the resolution, to know something of what was thought when we speak of "general methods of psychiatric treatment". For me psycho-therapy also includes recognized forms of psycho-analysis; I do not know if this is so in America, but in any case it is so in Denmark. But, one might perhaps discuss if group therapy is a part of psycho-therapy, and because of that I put".... psycho-therapy (including group therapy)" in the resolution so that people would not believe that the Section failed to include that psychiatric treatment. Therefore, I think it should be unnecessary in any case to give any further examples and insert, as Dr. Abrahamsen proposes, before the words "group therapy" the words: "recognized forms of psycho-analysis".

The same is true of lobotomy or any other sort of recognized psycho-therapy as a whole.

As for Mr. Junod's amendment, I feel, as has already been said, that as a psychiatrist I would not dare to interfere with the work of the priest. But it was put in the first part of point 1) of the conclusions that "the purpose of prison psychiatry is to contribute by the co-operation of the prison psychiatrist with *other* members of the staff....". The Section thought that the priest should be regarded as a member of the staff; it did not assume that people coming and doing work in prisons were not members of the staff. It was quite clear during the discussions in the Section that the phrase "the staff" included everybody in the work. Therefore, as far as answering the question on the programme goes, the Section included in its conclusions that the psychiatrist has to co-operate with the whole staff. I feel that this amendment goes beyond an answer to the question and do not think it necessary to include it.

The *Chairman*:

May I call your attention to the procedure of voting. According to Article 17 of the Regulations, in any disputed questions a decision cannot be recorded as a decision of the Congress unless there is a majority both of nations represented and of persons voting. The intimation in the Rules is, however, that until the roll call is asked

for the Assembly will vote by simple majority of members present. The chair will, therefore, ask in each instance, for a show of hands for and against a matter, and until another procedure is requested that will be the prevailing procedure.

Mr. *Upright* (United Kingdom):

I speak as a minister of religion intensely interested in the spiritual side of the work. I put in a plea in the Section yesterday for the closest possible co-operation between the psychiatrists and the chaplains in the prison, and I believe that along that line very fine work can be done. I feel strongly, like Mr. Clipson who has already spoken, that it would be rather disastrous in the present situation if we seemed to divide the one section, of the psychiatrists, against the other, of the chaplains. If we can work together in co-operation, as I believe we can, we can master the problem which our friend is so interested in. Therefore, I move the previous question.

The *Chairman*:

This motion cannot be debated, for if the previous question is voted by the Assembly that means that general debate will stop. I shall give the Chairman of the Section an opportunity to be heard after the previous question is voted. When that is done the two amendments will be voted on, one after the other without debate, and then the general question.

The motion to close the discussion was rejected, and the Chairman announced that the debate would resume.

Mr. *Cornil** (Belgium), Chairman of Section I:

I regret that after a rather short debate on this subject within the Section where there was no dissent at all, difficulties seem now to arise in the General Assembly. Everybody agrees on the substance; it is only a question of differences on how to proceed.

The first amendment consists in adding a method to the examples given in the draft resolution. It is perfectly clear that this enumeration gives only examples and is not meant to be complete. Once there was even a proposal in the Section to delete these examples, precisely to avoid proposals that others be added.

I therefore suggest that the adoption of the proposed amendment be not urged.

On the second amendment which refers to the religious influences, there are no differences of opinion, everybody agrees on that. The only question which arises is that of knowing if it should be mentioned in the resolution in this way. The question put to the Section concerned psychiatric treatment. The resolution states explicitly, and twice, that the psychiatrist must collaborate with all members of the staff. It is understood that religious work is included in this collaboration, and I believe that it is not at all necessary, and would hardly be desirable, to adopt the proposed amendment.

As Chairman of Section I, I therefore ask the Assembly to defeat these two amendments, but to point out that the minutes of this meeting should explicitly state that they were rejected only because they were out of place, and that everybody agreed on their substance.

Mr. *Junod* (South Africa) stated that the purpose of his amendment was fully achieved and that he was quite ready to withdraw it. It was evident to him that religion was becoming more and more unreal in the thoughts of many people, and he had proposed the amendment simply in an attempt to show that higher questions were very important questions in the penitentiary field.

Mr. *Bennett* (U.S.A.) moved the adoption of the report.

The *Chairman*:

Since there is no objection to the withdrawal of Mr. Junod's amendment I ask the Assembly to vote on Mr. Bennett's motion that the debate be closed.

Mr. Bennett's motion was passed.

The *Chairman*:

The motion submitted by Mr. Abrahamsen will be put to a vote first. It reads : "I move that, in point no. 4, line 2 be amended so as to include before the words "group therapy" the words "recognized forms of psycho-analysis".

The vote was negative.

The *Chairman* put to a vote the resolution as adopted by the Section.

The resolution was adopted by the Assembly.

The *Chairman* thanked Messrs. Cornil and Stürup for their services in connection with the preparation of this resolution. He then passed to the consideration of the resolution submitted by Section II, under the chairmanship of Mr. Fox, on the first question of its programme :

To what extent can open institutions take the place of the traditional prison?

The text of this resolution was as follows :

1. a) For the purposes of this discussion we have considered the term 'open institution' to mean a prison in which security against escape is not provided by any physical means such as walls, locks, bars, or additional guards.
   b) We consider that cellular prisons without a security wall, or prisons providing open accommodation within a security wall or fence, or prisons that substitute special guards for a wall, would be better described as prisons of medium security.
2. It follows that the primary characteristic of an open institution must be that the prisoners are trusted to comply with the discipline of the prison without close and constant supervision, and that training in self-responsibility should be the foundation of the régime.
3. An open institution ought so far as possible to possess the following features:
   a) It should be situated in the country, but not in any isolated or unfavourable location. It should be sufficiently close to an urban centre to provide necessary amenities for the staff and contacts with educational and social organizations desirable for the training of the prisoners.
   b) While the provision of agricultural work is an advantage, it is desirable also to provide for industrial and vocational training in workshops.
   c) Since the training of the prisoners on a basis of trust must depend on the personal influence of members of the staff, these should be of the highest quality.
   d) For the same reason the number of prisoners should not be high, since personal knowledge by the staff of the special character and needs of each individual is essential.
   e) It is important that the surrounding community should understand the purposes and methods of the institution. This may require a certain amount of propaganda and the enlistment of the interest of the press.
   f) The prisoners sent to an open institution should be carefully selected, and it should be possible to remove to another type of institution any who are found to be unable or unwilling to co-operate in a régime based on trust and self-responsibility, or whose conduct in any way affects adversely the proper control of the prison or the behaviour of other prisoners.
4. The principal advantages of a system of this type appear to be the following:
   a) The physical and mental health of the prisoners are equally improved.
   b) The conditions of imprisonment can approximate more closely to the pattern of normal life than those of a closed institution.
   c) The tensions of normal prison life are relaxed, discipline is more easy to maintain, and punishment is rarely required.
   d) The absence of the physical apparatus of repression and confinement, and the relations of greater confidence between prisoner and staff, are likely to affect the anti-social outlook of the prisoners, and to furnish conditions propitious to a genuine desire for reform.
   e) Open institutions are economical both with regard to construction and staff.
5. a) We consider that unsentenced prisoners should not be sent to open institutions, but otherwise we consider that the criterion should not be whether the prisoner belongs to any legal or administrative category, but whether treatment in an open institution is more likely to effect his rehabilitation than treatment in other forms of custody, which must of course include the consideration whether he is personally suitable for treatment under open conditions.
   b) It follows that assignment to an open institution should be preceded by observation, preferably in a specialized observation institution.
6. It appears that open institutions may be either
   a) separate institutions to which prisoners are directly assigned after due observation, or after serving some part of their sentence in a closed prison, or
   b) connected with a closed prison so that prisoners may pass to them as part of a progressive system.
7. We conclude that the system of open institutions has been established in a number of countries long enough, and with sufficient success, to demonstrate its advantages, and that while it cannot completely replace the prisons of maximum and medium security, its extension for the largest number of prisoners on the lines we suggest may make a valuable contribution to the prevention of crime.
   The rules and regulations obtaining in open institutions should be framed in accordance with the spirit of point 4 above.

The *Chairman* called upon Mr. Kellerhals, special rapporteur appointed by the Section under the provisions of the Regulations, to explain and interpret the resolution.

Mr. *Kellerhals** (Switzerland):

When the second Section, under the chairmanship of Mr. Fox, designated me as rapporteur on the first question on its programme, I considered this gesture as an honour paid to my dear country, Switzerland, and as a tribute to my father who died in 1945 and who defended the cause of open institutions at the Congresses of Washington, London, Prague and Berlin.

My task has been enormously facilitated by the work of condensation done by the general rapporteur, Mr. Germain, who, with truly French clarity, knew how to initiate the members of the second Section in the discussion. The subject "To what extent can open institutions take the place of the traditional prison?" has evoked the greatest interest and we owe it to the skill of Mr. Fox that the work could be finished yesterday afternoon.

In the penitentiary circles of all countries one talks of open institutions; but sometimes without knowing very well what is meant by this expression.

And we, the Swiss, have been happy to see that the Section did not only decide that open institutions should have neither walls nor bars; we were even conservative enough to request that some rooms should have bars, if not to prevent escapes, at least to protect the prisoner against the outside. For experience has shown us that while the prisoner understands very well that in the open institution there are regulations to be observed too, the public thinks it can do anything and tries to transgress the rules.

But, what we consider to be the greatest step ahead in the definition of the open institution, is the sentence contained in clause 2 of the conclusion of the Section which says: "Training in self-responsibility should be the foundation of the régime of the open institution".

The free and normal movement of the prisoner from one place to the other, their skin tanned by the sun, the feeling of their importance which they experience and the fact that they, with initiative and a feeling of responsibility, do trusted work on the grounds and even in the neighbourhood, such are the characteristics

of the open institution embodied in the conclusions of the Section already mentioned.

The Section then discussed the geographical location of the institution, and the members agreed that a place in the country, not too far from villages, would be the best. But here too, there has been progress, for the sympathetic collaboration of people on the outside is asked for.

Lately I visited the director of a closed institution in a town. He told me that in a not too distant past the prison was like an isolated island in the town but that in recent years the town had taken part in the life of the institution. People attend the concerts of its orchestra and the singing of its chorus, they participate in athletic events, and now the town people take part in the life of the prison, to their own good and to the benefit of the prisoners.

How much more does not the open institution need the understanding of the neighbourhood which sees the inmates every day and necessarily comes into contact with them and which should not be frightened when an escape occurs. The open institution also, above all, needs the collaboration of the reporters of the newspapers in the neigbourhood so that they not only write about the institution when a man has escaped or when an accident has happened, but that they might describe to the readers of their paper the normal life and the gay events in the institution.

In the Section, we discussed the question of labour in the open institution, and several participants were perhaps astonished that even the most ardent protagonists of the open and agricultural institution find it necessary to set up workshops and to provide the possibility for employing a certain number of inmates there. But in order to meet the needs of agriculture, industries and maintenance services, it is necessary that the population of an open institution be large enough in size. However, the number should not be too large, for educational reasons. Numbers of 150, 300, 500 were mentioned. Everything depends on the country and especially on the man and the staff who direct the institution. It is for this reason that the Section avoided fixing a number.

The Section tells you in its conclusions that open institutions are economical, both from the point of view of constructions and of that of staff. Nobody asked to speak on that topic. Having read the reports on modern open institutions, I take the liberty to put a question mark

concerning the cost of the personnel and especially the higher officers.

In the end, the Section debated the question of knowing who shall be sent to the open institution. Ideas differed. For instance, in many Swiss cantons, we send all prisoners to open institutions because there are no others there. Conditions may be similar in other countries where the execution of punishments is not centralized, and I refer, among others, also to the report of Miss Mahan where she says that in the State of New Jersey there is only an open institution for women, and that all punished women are sent there.

The speakers from the large countries, where there are perhaps more dangerous and more depraved criminals, were of the opinion that allocation to an open institution should preferably be preceded by a stay in a specialized observation centre. This idea prevailed in the voting; for the other countries there still remains the possibility of setting up the centre in the institution itself, if the authorities take the responsibility towards society of sending the prisoners to the open institution at first.

According to the proposition that the open institution must not absolutely be a separate establishment, but that it can also be connected with a closed establishment, the latter has the possibility of instituting a progressive system, and we hope to see the day come where the cells of the closed prison will become more and more empty and the open part filled with men who will have fulfilled the requirements permitting their transfer.

In spite of the excellent report of Miss Edna Mahan, the Section does not believe that the advantage of the open institution is greater for women than for men.

You see that the subject has been dealt with in its full breadth, and sometimes it was not easy for our esteemed Chairman to tie the knot, that is find a solution satisfying everybody. If this Assembly accepts the conclusions which Section II submits to you, the idea of the open institution will receive a powerful impetus.

Mr. Coopman has rightly said that we should not leave public opinion too far behind in the matter of the execution of punishments. But it is by demonstrations that the public becomes educated. We see that in the United States, in England, in my country and elsewhere.

Therefore, what we have to do when we reach home, is to have the deed follow the word. Practical action must take the lead. One will perhaps still fight in the sphere of theory, but it is in fighting that

one progresses, and for the penalist there is nothing more satisfying than the certainty that he has succeeded in reforming his men by constantly more liberal means.

The *Chairman* thanked Mr. Kellerhals and asked if anyone wished to discuss this report and the resolution submitted.

Nobody wanted to speak, and Mr. *Fox* (United Kingdom), Chairman of the Section, declared that there was nothing he wished to add to what Mr. Kellerhals had already said.

Mr. *Bennett* (U.S.A.):

In moving the adoption of the resolution, I would like to urge on all the members of the conference, and especially on the administrators, that the resolution be implemented in their respective countries as quickly and rapidly as possible. That is one way in which we can profit by our experiences here. So far as I am concerned, I pledge the administrators to support the wider use of this type of institution, and I hope my fellow-delegates will do likewise. I therefore move the adoption of the resolution.

The *Chairman* submitted the resolution to a vote.

The resolution was unanimously adopted.

The *Chairman* stated that the only other subject that seemed to be ready for discussion was a resolution submitted by Section IV, presided over by Mr. Aulie, on the first question of its programme :

What developments have there been in the penal treatment of juvenile offenders (Reformatory, Borstal Institution, Prison-école, etc.)?

The resolution was as follows:

The Congress notes the developments in the penal treatment of juvenile offenders and the evidence that although progress is slow, re-education is replacing repression and punishment.

The Congress recommends that scientific inquiry should be keenly continued into the causes of juvenile delinquency, and into the methods of classification and treatment and into the results. Meanwhile on present knowledge,

the Congress forbears to dogmatize. It recognizes the contribution which is made by the sociologists, the anthropologists, the psychologists and the psychiatrists, working in co-operation with those who have gained valuable experience in the field.

The Congress stresses the continuing need for classification into homogeneous groups, for small establishment, for intelligent after-care, and particularly for the employment of the right men and women to carry out the work of training and reform.

The *Chairman* asked the general rapporteur, Mr. Bradley, for a statement on the resolution.

Mr. *Bradley* (United Kingdom), general rapporteur and rapporteur of the Section:

You will have observed firstly that our question was essentially factual : What developments have there been in the penal treatment of juvenile offenders? In a word : What has been done? The Section, having of course as conscientious delegates read all the preparatory reports, contented itself by accepting their factual statements, and it recalls its reaction to them in the first sentence of the resolution.

But, the Section was not content merely with acknowledging achievement or the lack of it but addressed itself to the future. The outcome of its discussions finds expression in the last two parts of the resolution. The first sentence of the second paragraph refers to the necessity of research. The second sentence refers to the combined work of the psychologists and the practical men in the field, who must work in close collaboration. The final part underlines four of the many axioms which the Section considered most important in dealing with the institutional treatment of the juvenile or adolescent offender. May I underline the word "particularly" with regard to the "employment of the right men and women to carry out the work of training and reform".

The *Chairman* thanked Mr. Bradley and asked for discussion. Nobody asked to speak. He then asked if Mr. Aulie, as Chairman of Section IV, wanted to say anything on the report or the activities of the Section.

Mr. *Aulie* (Norway), Chairman of Section IV, had nothing to add to the explanations given by the general rapporteur.

Mr. *Gunzburg** (Belgium) proposed the adoption of the resolution.

The *Chairman* called for a vote.

The resolution was unanimously adopted.

The *Chairman* adjourned the meeting at 12.10 A.M.

General Assembly

Friday afternoon, August 18th, 1950

Chairman: Mr. SANFORD BATES (U.S.A.).

The *Chairman* opened the meeting at 2.45 P.M. He called for the consideration of the first question of the programme of Section I:

Is a pre-sentence examination of the offender advisable so as to assist the judge in choosing the method of treatment appropriate to the needs of the individual offender?

Mr. *Glueck* (U.S.A.), general rapporteur:

I am not going to take up a great deal of your time. We debated the question thoroughly at three separate sessions. We had a drafting committee which revised the conclusions and the resolution. As the draft stands at present, it reads as follows:

(1) In the modern administration of criminal justice, a pre-sentence report covering not merely the surrounding circumstances of the crime but also the factors of the constitution, personality, character and socio-cultural background of the offender is a highly desirable basis for the sentencing, correctional and releasing procedures.

(2) The scope and intensity of the investigation and report should be adequate to furnish the judge with enough information to enable him to make a reasoned disposition of the case.

(3) In this connection, it is recommended that criminologists in the various countries conduct researches designed to develop prognostic methods ("prediction tables", etc.).

(4) It is further recommended that the professional preparation of judges concerned with peno-correctional problems include training in the field of criminology.

May I say just one thing. I think that we have to bear in mind, in considering all the resolutions of all the Sections, the fact that we are not an international legislative body. Our task is not to go into specific details or into nice legalistic definitions. As I envisage our job, it is to state general principles and to set general standards. And I think, in the light of that conception of the function of this Congress, that this statement, prepared with the assistance of a very distinguished committee of draftsmen, adequately covers the various points raised in the different papers on question 1 and arrives at a satisfactory and reasonable accommodation of views.

The *Chairman* thanked the general rapporteur and called for discussion.

Mr. *Molinario** (Argentina):

I note that it is always a question of linking the pre-sentence examination of the accused with the problem of the liberty of the accused. Sometimes an argument of a legal nature has been raised against such an examination. It has been said that the accused must be considered innocent till the moment when a conviction which has been upheld has said the contrary, and it has been believed that the pre-sentence examination of the accused could somehow encroach upon his personal liberty. This question was examined at the Congress of Penal Law and Criminology held in Brazil in 1947. The countries of Latin America decided, in that respect, that one should envisage the question from the point of view of the provisional release (on bail or recognizance) of the accused, in such a manner that in cases where the offence imputed to the accused permitted the latter's provisional release prior to conviction, the examination of the accused should be optional and subject to the consent of the accused; but in case the law, either on account of the gravity of the offence or the previous record of the accused, would not permit the latter's provisional release prior to conviction, the pre-sentence examination should then be obligatory. I know very well that the decisions of the Congress must be general enough to permit an interpretation and an

application in conformity with the legislations of the various countries, but I think that it would not be inopportune to suggest to the countries which permit the provisional release of the accused, countries which are in the great majority, to introduce a distinction in the above-mentioned sense so that when, because of the mild character of the offence or of the good previous record of the accused, provisional release is granted prior to conviction, the examination should be optional but in the cases where provisional release is not granted, the accused must be required to submit to a pre-sentence examination.

I intend to draft an amendment embodying this principle and to present it to the Bureau of the Assembly if I find the support of twenty congressists.

Mr. *Gunzburg** (Belgium):

I want to speak for a moment, in order to say immediately how much I would have liked to support the proposition made by Mr. Molinario, and how much I regret my inability to do so. Indeed, it seems to me that it is necessary to make distinctions. The pre-sentence examination, which is dealt with in the resolution presented by Section I, can consist of two or even three parts, or even more. There is a physical examination which cannot be imposed upon the accused so long as he is not willing and is not committed to jail. But on the other hand, I think I understand that the conclusions of the Section envisage a complete socio-biological examination, for instance with respect to the heredity of the accused. Now, to ask and record the names of the father and the mother of the offender, the number of his children and of his brothers and sisters, his home conditions; his schooling, his work attitude; to determine a great number of biological and also and above all, sociological conditions, to examine the social milieu in which he has grown up — all this relates to points which not only can and must be examined at any rate, but which are to-day the subject of an enquiry by the examining judge without anybody ever thinking of demanding guarantees of individual liberty in this connection. Quite a part of the personal case history, of the kind the first Section would like to see constituted, can therefore be obtained without great difficulties. I hardly imagine that the Latin countries nor even the Anglo-Saxon ones, might find fault with this.

Another question which the Anglo-Saxons might raise – a procedural question – would be to know if this examination should be made before or after the verdict of guilt. As is known, the English judge does not want to know the antecedents of the accused. But this is a different question, and at this moment I think that the point raised by Mr. Molinario should only concern physical measures. With this limitation one can of course agree with his remarks.

Mr. *Bettiol** (Italy):

I think that any penal law of a subjective character is a penal law which might be dangerous for individual liberty. That is why I personally think that the pre-sentence examination of the personality of the accused can easily become something really threatening for the liberty of the individual. Now, the penal law must serve precisely to safeguard individual liberty. Nevertheless, in view of the broad character of the proposed resolution and especially in view of the circumstance that a penal law concerned with facts, must also take into account the character of the accused, that character being the most important element which must be kept in mind in order to individualize each problem of penal law, the Italian members of the Congress will vote in favour of the resolution proposed by Section I. But, they would be opposed to any proposition tending to give, in any degree whatever, an obligatory character to the pre-sentence examination of the accused.

Mr. *Azevedo** (Brazil):

I have asked to speak only in order to give my complete support to the proposition of Mr. Molinario. I attended the discussion of this question in the Congress of Penal Law and of Criminology held in Sao Paolo, Brazil, in 1947. Mr. Molinario has just given an entirely accurate picture of what was decided on that occasion. The rapporteur on this question was Mr. Loudet of Argentina. One of the Brazilian delegates, the great criminalist Ungria, was very vehemently opposed to the proposition, but the solution mentioned was finally adopted unanimously; it consists in not permitting an obligatory examination of the accused *in inspectione corporis* when he is at liberty. At that time I referred to a case which had been discussed in Italy and a summary of which is found in the work of Lessona ("A Treatise on Evidence", volume three) citing the opinions of Campogrande, Ricci and other great Italian professors who have studied the problem of the relationship between *jus in se ipsum* and *inspectio corporis* and have declared that a man cannot be obliged to submit to a physical examination against his will, for this would do violence to *jus in se ipsum* which is one of the fundamental rights of the human personality. A physical examination nearly always requires detention; psychiatrists declare indeed that they cannot give a psychiatric opinion on the normality or abnormality of a person without a commitment to a mental hospital which would permit scientific observation. To the extent that the physical examination is left out of consideration, I fully agree with Mr. Gunzburg that all examinations which do not require the *inspectio corporis* should be permitted.

Mr. *Molinario** (Argentina) submitted an amendment in writing and supported by twenty signatures. It was meant to add the following paragraph to the text of the resolution:

> In cases in which the offence imputed to the accused permits his provisional release, the personal pre-sentence examination of the accused shall be optional. In the cases in which such provisional release is not granted the examination shall be compulsory.

Mr. *Cornil** (Belgium), Chairman of Section I:

I propose that the Assembly should not adopt this amendment. I do this all the more easily because I entirely agree with Mr. Molinario on the substance of the question. In several of the reports which have been presented and especially that which originated in Belgium, this is the point of view which has been supported. It has been rightly stated that the examination could only be compulsory in cases where there was a commitment to jail. But once more I wonder if we can enter into such details. The Congress wants to adopt a general resolution which recommends an examination before the decision on the punishment is taken. It must do so in extremely general terms if it wishes its views to be shared by everybody. This is the reason why I recommend that Mr. Molinario's proposal be rejected.

The *Chairman*:

There is a difference of views with respect to the English

translation of Mr. Molinario's proposition. This is due to the fact that in Anglo-Saxon procedure there are two stages, "conviction" and "sentence" which may be some distance apart, while the Latin countries pass immediately from the verdict of guilt to the sentence. Will the general rapporteur please express his opinion on the question under discussion; and after that, it perhaps would be a good idea to postpone voting till we have the accurate wording of Mr. Molinario's proposition.

Mr. *Glueck* (U.S.A.):

I think that, as Mr. Molinario has been present at the Section meetings, he will agree that I have tried at least thoroughly to discuss the point at issue. This point vividly illustrates a semantic difficulty, a difficulty of language which we have come across in so many Sections and so many meetings of this Congress. I call your attention to the title page of Question 1, Section I. In the English statement we speak of a "pre-sentence examination". In the French statement we speak of "avant le jugement". Now, in Anglo-American practice, there is a sharp differentiation between what may or may not be done before and during the trial, when a person is still an "accusé", and what may be done in the way of an examination, once he has been transformed from an "accusé" into a "condamné", a convicted person. In order to avoid confusion in this matter, we decided to stick to the expression "pre-sentence investigation" and to leave to each country and to each country's laws the decision as to what can be done at the stage of arrest, before a person has been transformed by a finding of guilt into a convicted person.

Let me assure Mr. Molinario and the other gentlemen who have spoken that I am delighted to see to what extent throughout the world those wonderful basic notions of human liberty, in regard to which I assure you the U.S. is not intellectually "nouveau riche", have been incorporated in the views of other countries. I referred on page 3 of the English statement, on page 20 of the French one – you will find that reference in the footnote – to a system of constitutional protection of the accused before and during the trial, which I think is just as rigid in the defence of human liberty as anything that can be found in any constitution of the world or in any criminal procedure of the world. But, let us make clear that what is proposed in the resolution is a pre-sentence investigation after conviction, you

understand, and as long as that is the proposition I move that the motion presented by Mr. Molinario be rejected and that the resolution, as finally adopted by Section I, be accepted as it stands.

The *Chairman* announced that the text of Mr. Molinario's amendment was ready in both French and English, and read as follows :

In the cases in which the law permits the remand on bail of the offender, the personal examination of the latter will be optional. In the cases in which the law does not permit remand on bail of the accused the personal examination will be compulsory.

The Chairman ruled that the amendment was in order. Indeed it had to do with the question of a pre-sentence examination, even if it referred to the making of that examination at perhaps an earlier stage than that which some others had in mind.

Mr. *Göransson* (Sweden) proposed that the rest of the discussion on the question be postponed until after a consideration of the questions on the programme of Section III which had to be submitted to the General Assembly.

The *Chairman* accepted the motion which was approved by the Assembly. Further discussion of the first question of Section I was therefore adjourned, and the Chairman called for discussion of the first question of Section III:

Short term imprisonment and its alternatives (probations, fines, compulsory home labour, etc.).

Mr. *Dupréel** (Belgium), rapporteur for the Section:

The report presented on this question by the general rapporteur, Mr. Göransson (Sweden), has furnished a complete basis for a constructive discussion within the Section. The main points taken up by the Section participants were, first of all, the disadvantages of the short term prison sentences. Everybody agreed that the considerable shortcomings of an inappropriate use of short sentences should be stressed, and a French delegate, Mr. Cannat, even proposed a radical solution in the course of the discussion, namely the suppression by legislation of all sentences privative of freedom

of less than one year. During the same discussion the wish was also expressed that the suspension of the execution of the sentence might be employed with great flexibility; the fact of having had a first conviction should not deprive an offender of the favour of such suspension when he commits a second offence of a very different character from the first. Such would especially be the case in the mind of Mr. Molinario, who presented this idea, when an individual convicted for an intentional offence later commits an offence by negligence, and vice versa. Finally, certain members of the Section wanted to see emphasized what substitutes for short term prison sentences seem to be most suitable.

After a long discussion and the referral of the question to a committee, a complete agreement could be reached. Mr. Cannat withdrew his motion to suppress the prison sentences of less than one year, and Mr. Molinario's proposition was retained in a general form in the draft resolution presented to the Section. Under these circumstances, the resolution adopted by Section III on the first question of its programme reads as follows:

1. Short term imprisonment presents serious inconveniences, from a social, economic and domestic point of view.

2. The conditional sentence is without doubt one of the most effective alternatives to short term imprisonment.
   Probation conceived as suspended pronouncement of sentence or as suspension of execution of sentence, appears also to be one of the solutions much to be recommended. The granting of suspended sentence or of probation to the offender should not necessarily prevent a later grant of a similar measure.

3. Fines are quite properly suggested as a suitable substitute for short prison terms. In order to reduce the number of those imprisoned in default of fines it seems necessary that:
   a) the fine be adjusted to the financial status of the defendant;
   b) he be permitted, if need be, to pay the fine in instalments and be granted a suspension of payments for periods when his income is inadequate;
   c) unpaid fines be converted into imprisonment not automatically but by a court decision in each individual case.

4. It is suggested also that recourse should be had to judicial reprimand, compulsory labour in liberty, the abstention from prosecution, or a ban in certain cases against exercising certain professions or activities.

5. In the exceptional cases when a short term imprisonment is pronounced, it should be served under conditions that minimize the possibility of recidivism.

To summarize:

The 12th Penal and Penitentiary Congress once more notes the serious and numerous disadvantages of short term imprisonment. It condemns the all too frequent and indiscriminate use of short term imprisonment.

It expresses the wish that the legislator have as little recourse as possible to this type of imprisonment and that the judge be encouraged to the greatest possible degree in the use of alternative measures, such as already exist in certain countries, e. g. conditional sentences, probation, fines and judicial reprimand.

The *Chairman* called for discussion on this question.

Mr. *O'Neill* (Northern Ireland):

Just two small verbal amendments which would bring this resolution into line with existing British law. The first is in item 2: "Probation conceived as suspended pronouncement of sentence". In Great Britain and in Northern Ireland probation is a sentence. Therefore, the insertion of the words: "as a sentence or" would make that point quite clear and in conformity with existing legal practice and customs in the United Kingdom. It would therefore read: "Probation conceived as a sentence or as suspended pronouncement of sentence".

The second verbal amendment also is not at all a departure from principles. It is in item 3 (b): "he be permitted, if need be, to pay the fine in instalments", and add: "and to be under supervision till the fine has been paid". That is also a provision present in the British law and it would be merely, shall I say, a reshaping of this sentence to bring it into conformity with that law.

The *Chairman*:

On this matter, the chair will have to rule, inasmuch as the Chairman of the Section, Mr. Lamers, does not feel that he can accept these amendments, that they have not been presented in proper form and, therefore, can not be considered.

Nobody asked for the floor, and the *Chairman* put the resolution to a vote.

The resolution regarding the first question of Section III was unanimously adopted by the Assembly.

The *Chairman* asked Mr. Dupréel to present the resolution adopted by Section III on the second question of its programme:

How should the conditional release of prisoners be regulated? Is it necessary to provide a special régime for prisoners whose sentence is nearing its end so as to avoid the difficulties arising out of their sudden return to community life?

Mr. *Dupréel** (Belgium), general rapporteur and rapporteur for the Section:

In the course of the discussion of this second question, agreement was reached on the necessity of including conditional release in any good system of execution of punishments. There was also agreement in the Section on the necessity of giving to conditional release an as far as possible individualized form. Finally, wishes were expressed with respect to a good organization of the penitentiary régime during the period which precedes the release of each prisoner, whether by conditional release or by expiration. General agreement having been reached on the conclusions presented by the general rapporteur, two different ideas were introduced. First of all, the delegate of Sweden, Mr. Göransson, expressed the wish that these conclusions permit the retention of an institution found in his country, and also in certain other countries for that matter, namely a kind of automatic conditional release towards the end of the punishment. To take a concrete example, the Swedish example, in that country each prisoner serves his sentence in two manners : a first part which constitutes five-sixths of the sentence is served in prison, and the last sixth of the punishment is served in liberty, in the sense that a release on trial occurs in all cases after five-sixths of the sentence. This release has precisely the aim of not casting a prisoner out without doing something to keep an eye on him, to supervise him for some time still. The wish to introduce this idea of the possibility of an automatic release on trial has been taken into account, obviously combined with an optional conditional release which, in turn, has an individualized form and may be granted before five-sixths of the sentence are served. On the other hand, you will find in the conclusions an allusion to the pre-freedom régime. The Argentine delegation strongly insisted that it be said explicitly that a pre-freedom régime should be envisaged in every case before a prisoner's release. The resolution adopted by the Section reads as follows:

1. The protection of society against recidivism requires the integration of conditional release in the execution of penal imprisonment.
2. Conditional release (including parole) should be possible, in an individualized form, whenever the factors pointing to its probable success are conjoined:
   a) The co-operation of the prisoner (good conduct and attitudes);
   b) The vesting of the power to release and to select conditions in an impartial and competent authority, completely familiar with all the aspects of the individual cases presented to it;
   c) The vigilant assistance of a supervising organ, well trained and properly equipped;
   d) An understanding and helpful public, giving the released prisoner 'a chance' to rebuild his life.
3. The functions of prisons should be conceived in such a way as to prepare, right from the beginning, the complete social re-adjustment of their inmates.
   Conditional release should preferably be granted as soon as the favourable factors, mentioned under 2, are found to be present.
   In every case, it is desirable that, before the end of a prisoner's term, measures be taken to ensure a progressive return to normal social life. This can be accomplished either by a pre-release programme set up within the institution or by parole under effective supervision.

The *Chairman* called for discussion.

Mr. *Fox* (United Kingdom):

I do not rise to propose any formal amendments, but to ask for clarification on two points which seem to me not quite clear. The terms of this resolution seem to imply that it will be equally applicable to every prisoner, whatever the length of his sentence, and it seems to me possible that this is not in the mind of those who drafted it, and that they might wish to clarify this in some way. The second is on paragraph 3, the second sentence of which says : "Conditional release should preferably be granted as soon as the favourable factors, mentioned under 2, are found to be present". Now, what are the favourable factors mentioned under item 2? The first of them only refers to the conditions of mind and prospects of the prisoner, the other three refer to conditions which will be established by the administration. They must be deemed, I imagine, to be present at the moment they have been established. So it seems to me that the only favourable factor which is relevant for consideration under paragraph 3 is the first, that is 2a).

Mr. *Abrahamsen* (U.S.A.):

I do not want tho take any time here, but I am wondering whether in this resolution it would be possible to include something about psychiatric after-care. I do not know whether I am out of order.

The *Chairman*:

Yes, you are. I am very sorry. We all appreciate the importance of the psychiatric attitude both in and out of the prison. But the rule was suspended only for the last session and this time we have been enforcing it that any amendment must be submitted in writing with twenty signatures and be related to the subject under discussion.

Mr. *Dupréel** (Belgium):

I wish to reply to Mr. Fox in the name of the Section. Mr. Fox wonders if, in the spirit of the resolution, conditional release can be applied to all prisoners under sentence. In the minds of those who have drafted this text, it can indeed be applied to all offenders sentenced to a punishment privative of liberty. There is no limitation in that respect. But, it is not an obligation. The text leaves the door completely open on this point, and each country can determine if certain very serious punishments should be excluded from this favour. The resolution approved is that this measure should in principle be available whenever a punishment privative of liberty is involved.

As for the second point on which some one has wanted an explanation, I want to point out that when we speak of the conjunction of favourable factors, we have primarily in mind factors which derive from the prisoner himself: good conduct and good attitudes. These factors must naturally be evaluated by those who have the duty of taking care of the prisoner, that is, the administration and the specialized services which intervene in that connection. But the other points b), c) and d) of clause 2 of the resolution are also favourable factors which must be present in a general way. These are factors which depend on the legislator. In each country it is up to him to create the necessary conditions for the presence of these factors. What the text wants to say is that conditional release as proposed must be applied with the understanding that the necessary agencies exist too, and these necessary institutions are, as has been indicated, an authority capable of granting or refusing conscientiously – on the basis of knowledge, competently and impartially – the

measure which constitutes conditional release, and also other organs, namely those which are required to provide supervision after release, be they private or official bodies; we also need a very understanding public opinion. I do not think that there could be any doubts about this. We have wanted to include all necessary factors, whether depending on the prisoner or on the public authorities.

The resolution regarding the second question of the programme of Section III was adopted by the Assembly.

The *Chairman* stated that it would be proper to resume consideration of the first question of the programme of Section I:

Is a pre-sentence examination of the offender advisable so as to assist the judge in choosing the method of treatment appropriate to the needs of the individual offender?

He pointed out that an amendment on this subject had been moved by Mr. Molinario.

Mr. *Cornil** (Belgium), chairman of Section I:

I think I can say that Mr. Molinario would be ready to withdraw his amendment in the form first presented, on condition that the Assembly would agree to say that it is of the opinion that, at least in countries which have the Latin procedure, such a measure would be desirable. In view of the differences existing in the procedure of Anglo-Saxon countries, it seems for the moment entirely impossible to introduce the amendment which he has proposed in a resolution of a general character.

Mr. *Molinario** (Argentina) asked if this statement signified that the Assembly approved his proposition with respect to the Latin countries.

The *Chairman*:

I cannot say in advance how the Assembly would vote, but if there is any change which you are prepared to make in the amendment to the effect that it is applicable to Latin countries only, I am sure that it would be acceptable.

Mr. *Molinario** (Argentina) stated that, in agreement with Mr. Cornil, he had indeed changed his text in that sense. His proposal would then read as follows:

In the countries of Latin law, the personal examination should be optional in the cases where the law permits the provisional release of the accused. In the cases where the law does not permit the provisional release of the accused, the personal examination should be compulsory.

The *Chairman* suggested that this amendment, if adopted, be inserted as an additional clause between clause 1 and clause 2 of the resolution of the Section, and he put it to a vote.

The amendment proposed by Mr. Molinario was adopted.

The *Chairman* then called for a vote on the resolution adopted by Section I on the first question of its programme, with the amendment adopted by the General Assembly.

The resolution was unanimously adopted [1]) in its new wording.

The *Chairman* then called for consideration of the second question of the programme of Section II:

The treatment and release of habitual offenders.

The text of the resolution adopted on this question by the Section had been distributed in mimeographed form. It read as follows:

1. Traditional punishments are not sufficient to fight effectively against habitual criminality. It is, therefore, necessary to employ other and more appropriate measures.
2. The introduction of certain legal conditions so that a person can be designated an habitual criminal (a certain number of sentences undergone or of crimes committed) is recommended. These conditions do not prevent the giving of a certain discretionary power to authorities competent to make decisions on the subject of habitual offenders.
3. The 'double-track' system with different régimes and in different institutions is undesirable. The special measure should not be added to a sentence of a punitive character. There should be one unified measure of a relatively indeterminate duration.

1) See final text of the resolution adopted by the Congress on pp. 556–57 below.

4. It is desirable, as regards the treatment of habitual offenders who are to be subject to internment, to separate the young from the old, and the more dangerous and refractory offenders from those less so.
5. In the treatment of habitual offenders one should never lose sight of the possibility of their improvement. It follows that the aims of the treatment should include their re-education and social rehabilitation.
6. Before the sentence, and thereafter as may be necessary, these offenders should be submitted to an observation which should pay particular attention to their social background and history, and to the psychological and psychiatric aspects of the case.
7. The final discharge of the habitual offender should, in general, be preceded by parole combined with well-directed after-care.
8. The habitual offender, especially if he has been subjected to internment, should have his case re-examined periodically.
9. The restoration of the civil rights of the habitual offenders – with the necessary precautions – should be considered, particularly if the law attributes to the designation of a person as an habitual criminal special effects beyond that of the application of an appropriate measure.
10. It is desirable
    a) that the declaration of habitual criminality, the choice, and any change in the nature of the measure to be applied, should be in the hands of a judicial authority with the advice of experts;
    b) that the termination of the measure should be in the hands of a judicial authority with the advice of experts, or of a legally constituted commission composed of experts and a judge.

Mr. *Beleza dos Santos** (Portugal), general rapporteur and rapporteur of the Section:

The conclusions which the Assembly has before it were unanimously adopted by Section II. The Section first of all established facts from which two orienting principles are derived. The first is that there exist in each country special constant conditions which have to be taken into account when formulating conclusions regarding the treatment and release of habitual offenders. These conditions are related either to the criminality of the country, to the manner in which public opinion regards this criminality, or to specific characteristics of its legal system and ideas pertaining thereto. The general report had already made an allusion to this situation, and Mr. Van Helmont especially emphasized this fact strongly in the Section and pointed out the necessity of taking it into account. The second principle, which was to guide the Section, is that in certain respects, experiments have

been made in various countries in various directions and that all of them have given satisfaction. One cannot say, therefore, that one of the adopted solutions would be better than the other, but simply that the one or the other should be adopted. Clause 10 of the resolution adopted by the Section gives an example of the conclusions at which, with this principle in view, the discussion of the question has arrived.

Then, I want to review very briefly the different conclusions which are submitted to the Assembly's approval. The first is prompted by a fact everywhere observed, that traditional punishment is unable to prevent and treat recidivism effectively; on the other hand one must, as everyone knows, make a distinction between recidivism and criminal habit. There are recidivists who are not habitual offenders and there are habitual offenders who are not recidivists. I have mentioned this distinction in my general report. In the course of the discussion in the Section, Mr. Jiménez de Asúa also drew the attention of the meeting to this point. It seems, therefore, that the first conclusion is in harmony with experience in all countries. It must also be stressed that we have not spoken in clause 1 of the resolution of "security measures", but of "appropriate measures". The first of these expressions is undoubtedly the most common nearly everywhere. In the lecture which Mr. Ancel delivered this very morning, he constantly spoke of security measures. This expression is, however, not adopted by everybody. Indeed, there are specialists who think that it is not accurate. We have to recognize, furthermore, that we are very used to employing accepted and recognized expressions which, however, do not correspond to their real content : penal law, penitentiary science are to-day expressions which have a scope which is in contrast with the original meaning of these words. But, as there are to-day persons who think, for reasonable cause, that the words "security measures" are not appropriate, we have preferred to use a more vague expression until we reach agreement on a generally acceptable term — if that day ever arrives.

Clause 2 of the conclusions contains two principles. The guarantee against arbitrary action by the authority, which has to decide on the designation of criminal habit, is necessary, for certain of the measures provided represent a privation or a limitation of liberty : internment, prohibition to exercise an occupation, prohibition of residence, etc. These are very serious limitations of rights which are of the highest value to the individual, and consequently it is unquestionably necessary

to have guarantees so that the authority might not arbitrarily take decisions that are so important. On the other hand, the specific requirements imposed — here I am speaking only of the provisions of substantive law and not of the procedural guarantees which will be touched upon later — must not strangle the authority and hinder its action. Here it would seem impossible to fix rigid criteria and give precise rules for determining exactly when an offender is a habitual one, what measures should be taken with respect to him, how long that measure should last, how and in which sense it could be modified, and when it should cease. We do not have specific rules for making decisions in this matter in advance. We must, therefore, leave broad power to the authority which will have to decide on these cases. This is the moment to remember that science is dry and the tree of life verdant. Life presents complex and multiple situations which cannot be reduced to the strict precepts of the law.

The third conclusion is a condemnation of the dual system, in the sense of a system which advocates the application of a punishment followed by a security measure with various régimes and in different institutions. Clause 3 of the resolution says that this system is not to be recommended, and that the special measure should not be added to a punishment. We should rather resort to a single measure of relatively indeterminate duration. The reasons for such a solution are very clear. They are furnished by the experience of the countries which have known or which know the dual system. Why necessarily have one régime follow the other, one treatment after another? If an efficient treatment could be applied from the beginning of the privation of liberty, the subsequent corrective treatment might come too late, and, at any rate, precious time will often be lost. Furthermore, the dual system interrupts the continuity in the treatment of the prisoner. The knowledge gained from the first period of observation will largely be lost, and the influence of the personnel on the prisoner will necessarily be broken. Everything, therefore, prompts the condemnation of the dual system in the traditional sense of this term. I really think that I should not say a single word on this subject after Mr. Ancel's lecture from which the condemnation of the dual system grew as a necessary conclusion.

Clause 4 of the conclusions concerns classification which appears here like in many other fields. Most, if not all, specialists agree on the necessity of classifying the habitual offender. First, the juveniles must

be separated from the adults : this is a requirement which all practice makes evident. Then, one must classify from various other points of view : more or less dangerous offenders, more or less educated offenders, etc.

The fifth conclusion adopted by the Section speaks of the possibility of the improvement of the offender as one of the aims which one should never lose sight of in the treatment. Indeed, the habitual offender is not necessarily an unimprovable offender. Perhaps there are some who will never improve, but who would dare to affirm it in advance? Who would assume the responsibility of saying that a habitual offender who gives every reason for believing that he cannot be reformed will never be different later on? I cited, in the Section, several examples personally known to me and others also cited some. Here we have to put into practice that humane and active social defence of which Mr. Ancel spoke.

I shall not mention the other conclusions, except clause 10 with respect to which I want to point out that it is a conclusion where we take into account the existence of different systems, of special conditions and, especially, of the experiences of different countries. Certain countries, for instance, have a judge of execution of punishments who works with experts who have a personal knowledge of the prisoner and of the penitentiaries, and this experiment has given satisfaction. Other countries have resorted to boards, and this experiment has also given satisfaction. The resolution proposes, therefore, the choice of the one or the other of these two solutions. Moreover, I must also say that, in my opinion, this last conclusion does not oblige the Congress to take sides on the very disputed question of a separation – a *caesura*, to use Mr. Cornil's word – between the judgment of facts and guilt on the one hand, and the decisions on the choice and the execution of the measure, on the other. Mr. Cornil is the apostle of this idea and has acquired numerous disciples. I am glad to say publicly that I too have been convinced by my colleague.

The *Chairman* thanked Mr. Beleza dos Santos and called for discussion.

Mr. *Bettiol** (Italy):

I greatly regret that I cannot share the view of Mr. Beleza dos

Santos. Indeed, I think that the habitual offender is still the true enigma of the penal law which has not yet found its Oedipus. It is an enigma even if many legislations already have this notion, as for instance the Italian legislation. But I believe that this type of offender has no natural basis but is solely an artificial creation of a political character. While I pay tribute to the spirit of liberty in which my colleagues have laboured, I think that the introduction of a single measure to combat this form of delinquency is particularly dangerous. Italy is emerging from a sad political and legal experience which has also its repercussions in the penal law. I believe that a single, relatively indeterminate measure is a very atomic bomb for the penal law; it announces the end of freedom for the individual and represents also a danger for society. I am therefore obliged to vote against the proposed resolution.

Mr. *Ancel** (France):

I would like to raise only one simple question regarding the exact meaning of some words in clause 10 of the resolution. But stating this question, I cannot all the same, hide my amazement which the statement just made has produced in me and certainly in a great many of you, namely the statement according to which the notion of habitual offender would be artificial and of a political nature, I believe that many of you are not at all ready to subscribe to that claim and that you rather think that the category of the habitual offender belongs to those which have emerged, so to say irresistibly, from the facts and the evolution of the penal law, until it has finally imposed itself on the legislator, even though he, attached to traditional punishments, has not wanted it for a long time. But I do not want to start that discussion here again, and I now come to clause 10 of the conclusions, which says that "it is desirable that the termination of the measure should be in the hands of a judicial authority with the advice of experts, or of a legally constituted commission....". The words "legally constituted" are the ones regarding which I would like an explanation. I suppose that this means a commission constituted in accord with specifications in the law, which is a new guarantee of individual liberty, and I therefore entirely approve of clause 10. But the words "legally constituted" might give rise to confusion or discussion. I wonder if it is correct that they mean that the commission shall be set up, not by an administrative authority, but

by the law itself, guarantor of individual liberty, which should fix the composition and the functioning of this commission.

Mr. *Fox* (United Kingdom) Chairman of Section II:

After consultation with the general rapporteur, I can reply to Mr. Ancel that that is what we do mean by the words "legally constituted".

The *Chairman* put the resolution to a vote in the form adopted by Section II, and this text was approved by 58 votes to 5.

The Chairman then proceeded to the consideration of the third question of the programme of Section IV:

Should not some of the methods developed in the treatment of young offenders be extended to the treatment of adults?

The text of the resolution adopted by the Section on this question read as follows:

The Congress agrees that both fields, that of the control of adult crime and that of the control of juvenile delinquency, are involved in the gradual change from crime and delinquency control through punishment to control through correction. For varying reasons much more progress in that direction has been made in the juvenile field and it is therefore advantageous to look to that field for suggestions and leads for further developments in adult crime control.

The Congress considers that many adults are capable of response to the kind of training and conditions which in several countries are applied only to juveniles. Because a young man or woman is legally and adult, it should not mean that he or she must be condemned to a form of imprisonment which is shorn of all chances for education, training and reformation.

More specifically, the Congress suggests that the experiences acquired in the field of juvenile delinquency with regard to preparation of case histories, probation and parole and judicial pardon should be utilized also in the adult field.

Mr. *Vassalli** (Italy), general rapporteur and rapporteur for the Section:

First of all I must excuse myself for not having been able to prepare an exposé giving a sufficiently clear and broad idea of the nature of the question on which the General Assembly now has to decide. But the debates of Section IV on this part of its programme were very brief, a great part of the time at its disposal having been devoted to the study of the two other questions. The debate was, as

a matter of fact, completed only to-day at 1 P. M. You will, however, have had the time to read the preparatory reports and the general report, and to reflect perhaps on the enormous scope of the question submitted for the consideration of the Congress. Mr. Struycken, Minister of Justice of the Netherlands, pointed this out very well in his speech Monday morning, at the opening of the Congress. Question 3 of Section IV, he said, goes beyond the bounds of this Section and is connected with all the other questions which have been submitted to the Congress; in some way it touches on all the problems of penal law and procedure. I did not fail to draw the attention of my colleagues in the Section to all the points of contact between this and the other questions, and especially the first question of Section I regarding the pre-sentence examination and the personal case history of the accused, a question which for that matter had been the subject of a single report by Mr. Pinatel (France), who dealt jointly with that question and the one now under discussion; with the second question of Section I regarding the utilization of psychiatric science in prisons for the medical treatment and the classification of prisoners; with the question of the same Section I regarding the classification of prisoners; finally, with the first question of Section III, concerning the replacement of short term prison sentences by certain measures which, in various countries, have been introduced and tried out at first precisely in the treatment of young delinquents, and the extension of which to the treatment of adult offenders was demanded in several preparatory reports as well as in the general report on the question under discussion. I also did not fail to call attention to the resolutions adopted in the different Sections from day to day regarding the questions just mentioned. This made the absence of a thorough debate on this question less regrettable while at the same time it facilitated the task of those who had to prepare the resolution submitted for your consideration. This resolution was not given final form by me but by a committee on which I worked with Messrs. Lejins (U.S.A.), Bradley (United Kingdom) and Gunzburg (Belgium). We also owe to Mr. Gunzburg a very remarkable preparatory report which greatly helped me in the preparation of my general report.

The resolution submitted to the Assembly will certainly appear very vague, even extremely vague to many of you. But, everybody has agreed on the fact that anything else was impossible. The Section

felt that in replying affirmatively to the question raised by the International Penal and Penitentiary Commission the problem was one of stating a general principle which appeared ripe enough to be proclaimed. It is possible that certain doubts may be expressed here; I have myself thought of the very great differences that can exist between juvenile delinquents and adult offenders. But I want to point out that the Section has unanimously approved the resolution; this may perhaps, to a certain extent, be due to the very vague character of the conclusions submitted to it.

I simply wish to add that the institutions to which it was believed necessary to refer in the last paragraph of the resolution are given as illustrations and have been selected from among those which seemed to be most suitable for the development in view, always taking into account the resolutions adopted in the other Sections.

The *Chairman* stated that many congressists had left the hall and that therefore it would hardly be fair to continue the discussion of the question. He proposed that the debate be postponed until the meeting of the following morning.

The meeting was adjourned at 5.25 P.M.

General Assembly

Saturday morning, August 19th, 1950

Chairman: Mr. J. P. HOOYKAAS (Netherlands)

The *Chairman** opened the meeting at 9.40 A.M. and stated that the General Assembly had to examine five more questions on the programme of the Congress. This being the case, he asked those who intended to participate in the discussion to be as brief as possible in their statements.

The Chairman called for consideration of the second question of the programme of Section IV:

Should the protection of neglected and morally abandoned children be secured by a judicial authority or by a non-judicial body? Should the Courts for delinquent children and juveniles be maintained?

The text of the resolution adopted by the Section read as follows:

Convened to examine the wish expressed in 1948 by the Mental Health Congress in London, in favour of abandoning the system of Courts for delinquent children and of replacing it by a system of administrative authorities, along the lines of the "councils for the protection of youth" in Scandinavia,

The XIIth International Penal and Penitentiary Congress holds that:

1. At present it does not feel that it should express a preference for any specific judicial or administrative system of handling juvenile delinquency; the basic philosophy of the two is very much the same; and the structure of the respective institutions must depend on the legal order and customs of the country concerned.
2. Whatever be the system in any particular State, the following principles should be observed:
   a) The handling of juvenile delinquents shall be entrusted to an authority composed of people who are experts in legal, social, medical and educational matters, or, if this is impossible, the authority shall, before pronouncing a judgment seek the advice of experts in medico-educational matters;
   b) The law concerning juvenile delinquents, both in respect to subject matter and its form, must not be patterned after the norms applied to adults, but shall especially take into consideration the needs of juvenile delinquents, their personality, as well as the importance of not endangering their adjustment in later life;
   c) The special laws applying to juvenile delinquents shall guarantee to parents an impartial examination of their rights concerning the education of their child and shall protect the minor against arbitrary infringement of his individual rights.
3. As the present Congress is not in possession of the necessary data in order to propose a solution of this problem of co-ordination between the judicial and the administrative authorities, the problem of dividing work between the judicial and the administrative authorities concerning the selection and the supervision of the treatment prescribed for the juvenile delinquent should be made the subject of a special study by the International Penal and Penitentiary Commission.
4. The same wish is expressed concerning the question of whether neglected and abandoned children shall be referred to authorities having jurisdiction in matters of juvenile delinquency.

Mr. *Clerc** (Switzerland), general rapporteur and rapporteur for the Section :

The time is brief and I shall try to be concise, which is difficult. The draft resolution is long, as were the debates of the Section. The latter devoted a particularly attentive consideration to the question

which was submitted to it, because it worked on it from Tuesday morning to Friday noon. This was not due to profound differences in views, but the subject, as formulated, gave rise to various interpretations and still more numerous digressions.

Under these conditions, it is necessary to remind you of what gave rise to the debate. That is the purpose of the preamble which makes allusion to the motion made by a French physician, Dr. Heuyer, at the Mental Health Congress in London. This London Congress did not vote a resolution in favour of suppressing the children's courts and replacing them by administrative organs of the "Scandinavian" type, but it seems to have wanted to keep the motion for further study.

This is what the International Penal and Penitentiary Commission assumed when it placed this subject on the agenda of its Congress. Other organizations have done the same, and a fortnight ago the IIIrd Congress of Juvenile Court Judges, held in Liege, voted a resolution rather similar in spirit to that which is proposed to this Assembly.

The reference to the London Congress in the preamble is not only useful for circumscribing the debate but is in harmony with the explicit intentions of the IPPC, as appears from the commentary with which the question in the programme has been furnished; it is also a manifestation of intellectual co-operation, penologists bringing their contribution to a problem which preoccupies medical circles.

Clause 1 of the resolution gives the result of the deliberations : The Section was of the opinion that there was no reason to prefer the one or the other contrasting systems. I shall not take the time to develop the arguments advanced in my general report which everybody received at the beginning of the Congress.

I owe it to truth to say that a proposal was made to recommend the administrative system. When voted on, if my memory is correct, this proposal received no other vote than that of its author. That means that the principle set forth in clause 1 was adopted, so to say, unanimously.

I must also point out a lack of agreement between the French and the English texts : Mrs. Glueck has stated that she could not return to her country with the impression that the adopted resolution was motivated by differences in philosophical points of view. She presented an amendment to this purpose. In taking position on this point, I stated that it was very difficult to translate it into French without

becoming verbose, and that the word "philosophy" in the English text could hardly be translated except by "inspiration". In order to appease Mrs. Glueck, I proposed to change the French text by saying *"aucune raison", "aucune"* implying that there was no "philosophical reason" for our resolution.

Mrs. Glueck understood this point of view, but the Section, pressed for time, did not perceive that it adopted the French text of the general rapporteur and Mrs. Glueck's English text. Only last night did the officers of the Section notice this divergence, and that is why the two texts have been printed as voted.

I hope that in order to facilitate the French translation, and especially to improve the text, Mrs. Glueck will consent to delete from the English text the terms which are not in the original French text, especially since everybody is agreed on the substance.

Now to clause 2. While the Section refused to recommend one of the systems — judicial or administrative — as the *ideal system*, it nevertheless wanted to restate the principles which should govern the organization of the authorities having jurisdiction over delinquent minors.

Under paragraph a), it expresses the desire to see the authority perfectly oriented in all the aspects of the problem presented by a delinquent minor : legal, social, medico-pedagogical aspects. The resolution indicates the means which can be employed to this purpose: the establishment of a "mixed" authority, to adopt Mr. Ancel's word, consisting of a lawyer, a physician and an educator (the word "people", used in the text, means that it can also be a woman, as Mr. Gunzburg would have it and not without reason). It goes without saying that if the judicial organization of a State does not allow the establishment of a „mixed" tribunal, the judges must then resort to experts in medico-pedagogical matters.

Under paragraph b) the Section states that the law applicable to minors — the substantive law as well as the procedural law — must be "thought out" especially for those to whom it applies and not be a copy, an adaptation of the law which governs adults.

Under paragraph e) the Section wanted to point out that in every case the authority should take into consideration the rights of parents and the individual liberty of the young accused. This is one of the points on which the Section was most unanimous.

I must add two remarks regarding clause 2 of the resolution :

The first is that at first sight, absolutely elementary things are stated there, and one might wonder if it is worth the trouble to proclaim well-known truths so solemnly. An affirmative answer becomes necessary for anyone who has read the proceedings of the London Congress on Mental Health. Our Congress, while stating that it cannot follow Dr. Heuyer in his reform project, indicates nevertheless how the objectives aimed at by the French physician can be reached.

My second remark is that we can discuss indefinitely the terms used in the resolution. We have chosen traditional expressions in order to avoid giving definitions of every term utilized. Thus, the term *juvenile delinquent* especially concerns the child or the adolescent who has committed an act defined as an infraction by the penal law. The expression seemed more intelligible and clear than the term *maladjusted child* or other modern euphemisms.

The two last points of the resolution are the result of my resolute, at times even violent attitude which refused to adopt conclusions on points which went beyond the question discussed or which had not been sufficiently debated in the meetings of the Section. However, I proposed to retain two of these questions in the form of "recommendations".

The first deals with the problems of the division of labour between the administration and the judiciary. It was Miss Craven who showed that this problem of the division of labour between the judge and the administration was really the meat of the question, a truth which no doubt had escaped Dr. Heuyer. Our Section thought that the IPPC, or the organ which will succeed it, would be wise to look at this problem more closely.

The second recommendation, which results from the fact that, due to lack of time, the Section could not discuss the problem, is that the IPPC should also examine if the same authority should deal both with juvenile delinquents and other juveniles in danger of being neglected and abandoned.

I believe I have now commented on the essentials of the debates of the Section and the resolution. You have been able to convince yourself that the Section has tried to be honest, by refusing to decide on questions which have not been sufficiently studied and by not adopting vague formulas.

I submit the result of my work to the Assembly and ask for

a vote of confidence in order to speed the discussion. "By a steep, sandy, fatiguing road", Section IV has finally arrived at the adoption of the resolution now presented, and it dares to hope that there will not be too many "busy bodies" tho prolong a debate which has already lasted too long.

Finally, I must deplore – and ask the Assembly to do so with me – that another Swiss has not been able to assume the task confided to me – Professor Delaquis. In the closing session, the Chairman whose good-heartedness is well known, will no doubt find some affectionate words for him. It is proper, in order to deny the claim that "no one is a prophet in his own country", that the Swiss delegation should also proclaim the affection, gratitude and respect it feels toward a compatriot who has with all his heart served the cause which we would like to serve as well as he has done.

The *Chairman** thanked Mr. Clerc for his presentation and called for discussion.

Mr. *Pinatel** (France):

I only wish to make a correction and also to ask for a clarification. The correction is that the real thought of Dr. Heuyer, as seen from the works he has published since the London Congress, is that he has not condemned the juvenile courts as such so much as the exterior manifestations of the jurisdiction, to the extent in which it is still in certain countries too much of a police or of a penal character.

With regard to the classification, I would like to know whether there is not a contradiction between paragraph b) of clause 2 of the resolution and the recommendation expressed with regard to the third question of the programme of Section IV, a recommendation discussed yesterday and the subject of the report by Mr. Vassalli, calling for the extension to adults of measures taken regarding minors.

Mr. *Clerc** (Switserland), general rapporteur:

In response to Mr. Pinatel, I wish to say that for the moment there is no contradiction because the resolution presented by Mr. Vassalli has not yet been adopted by the Assembly. But this is a dilatory argument. With respect to substance, Mr. Vassalli must solve the following question: Are there institutions destined for minors which

must be adapted to adults? Now, the second question which is presently under discussion deals only with minors; it fixes the point of departure and by examining it, we do not at all come into conflict with the resolution of Mr. Vassalli. If Mr. Vassalli were to adopt a view which contradicts mine I shall speak, whenever the third question of Section IV will be examined.

Mrs. Glueck has made no proposal to modify the text. I believe that the Congress could adopt the two texts in their present version, with the understanding that in French the term *"aucune"* is perfectly clear and that if we were to add anything we fall into a pleonasm. But I understand very well that for the Anglo-Saxon countries, which perhaps do not have the habits of formal logic characteristic of continental thought, the specification which has been added in the text might be justified. I am not one for compromise – I have shown that sufficiently in the Section – but I am a national of a country whose inhabitants belong to different language groups, and I know that sometimes certain texts must be complemented in order to express an idea which can be formulated more simply in another language. That is why I accept both texts in their proposed wording and think that the Assembly can go ahead.

Mr. *Vassalli** (Italy):

I want to limit myself to a very brief statement concerning the question just raised by Mr. Pinatel. I am of the opinion that his scruples are founded, but we must not worry about the problem of a contradiction between the two resolutions. In fact, everybody knows that the law of minors is to-day, in nearly all countries, still a very special thing, and the Congress is invited to adopt conclusions with respect to this law, knowing that for adults there exist different systems nearly everywhere. The second question of the programme of Section IV calls for conclusions which presuppose the existence of these different systems, and it is an entirely different thing to propose, as the third question does, the extension to adult offenders of particular treatment methods provided for minors. I therefore think that the two resolutions can be separately adopted in the wording proposed by Section IV and that there exists no contradiction preventing the General Assembly from so doing.

The *Chairman** thanked Mr. Vassalli for his statement and was

very happy to note that the two general rapporteurs of questions 2 and 3 of Section IV were fully agreed to admit that there was no contradiction between the two resolutions proposed by the Section on these two questions.

Mr. *Aulie* (Norway), Chairman of Section IV:

I can add very little to the explanations given by the general rapporteur, and agree with what has been said as regards the relationship existing between the answers given to the second and the third questions of the programme of the Section.

On the other hand, I confirm what Mr. Clerc has stated with respect to the small differences between the French and English texts of clause 1 of the draft resolution, even if the sense of this item is the same in both languages. I must accept the blame for this difference, which is entirely due to my fault as Chairman of the Section. We were pressed for time yesterday by the end of the morning, just when the suggestions for improving the text were presented. I fear that I called for a vote perhaps in a somewhat confusing manner.

In order to remove this difficulty, I would like to recommend that the General Assembly adopt the French text, and that the English text be later adjusted to the final French text.

The *Chairman** agreed to Mr. Aulie's proposal and asked the Assembly to decide on this procedure.

The Assembly unanimously adopted this procedure.

The *Chairman** then called for a vote on the French text of the resolution proposed by Section IV on the second question of its programme, with the understanding that the English text would be adapted to the French.

This resolution was unanimously adopted.

The *Chairman** called for discussion of the third question of the programme of Section IV:

Should not some of the methods developed in the treatment of young offenders be extended to the treatment of adults?

He pointed out that the previous afternoon the general rapporteur, Mr. Vassalli, had already presented the resolution adopted by the Section on this question [1]) and he called for discussion.

Mr. *Bettiol** (Italy):

I regret very much that I cannot support this resolution. I think that the penal law for adults should remain what it is, namely oriented toward the idea of a humane and reasonable punishment. The penal law for minors is something different. It is a world of its own, where the idea of correction alone dominates. To transfer this idea into the field of the penal law for adults would be to transform this law into a compensatory law. For this reason, I feel obliged to vote against the resolution presented by Section IV.

Nobody else asked for the floor, and the *Chairman** called for a vote.

The resolution was adopted by a very strong majority against 3 opposing votes.

The *Chairman** called for consideration of the third question of the programme of Section I:

What principles should underlie the classification of prisoners in penal institutions?

The resolution adopted by the Section read as follows:

1. The term classification in European writings implies the primary grouping of various classes of offenders in specialized institutions on the basis of age, sex, recidivism, mental status, etc., and the subsequent subgrouping of different classes of offenders within each such institution. In other countries however, notably in many jurisdictions of the U. S. A., the term 'classification' as used in penological theory and practice lacks philological exactitude. The term should be replaced by the words 'diagnosis (or, if desired, classification), guidance and treatment', which more adequately portray the meanings now inaccurately included in the *one* term 'classification'.
2. In view of the foregoing, it is concluded that for the purpose of distributing offenders to the various types of institutions and for sub-classification within such institutions the following principles be recommended:

1) See page 448 above.

   a) While a major objective of classification is the segregation of inmates into more or less homogeneous groups, classification should be flexible;
   b) Apart from the imposition of the sentence further classification is essentially a function of institutional management.
3. For the purpose of individualizing the treatment programme within the institution, the following principles are recommended:
   a) Study and recommendations by a diversified staff of the individual's needs and his treatment;
   b) The holding of case conferences by the staff;
   c) Agreement upon the type of institution to which the particular offender should be sent and the treatment plan therein;
   d) Periodic revision of the programme in the light of experience with the individual.

Mr. *Muller* (Netherlands):

I shall make a long story short. I note that the resolution adopted by the Section this morning is widely different from the conclusions in the Section. It appeared that a difference in the meaning of the word "classification" on the Continent and in the United States presented some difficulties, to say the least. A subcommittee was appointed which considered it to be fair to give both meanings, the Continental and the American, a place in the resolution, and to add its own conclusions to each of these meanings. The Continental meaning of the word "classification" appears to be "distribution of prisoners over prisons and in the prison"; the American meaning is "programme-making for individual treatment". That is the story of how this resolution, as it is worded now, came into being.

The *Chairman** noted that nobody had asked for the floor and put the resolution proposed by the Section to a vote.

This resolution was adopted by a very strong majority against one opposing vote.

The *Chairman** called for consideration of the third question of the programme of Section II:

How is prison labour to be organized so as to yield both moral benefit and a useful social and economic return?

Mr. *Pompe* (Netherlands), general rapporteur and rapporteur of the Section:

I must tell you that the Section had only one meeting to give to this important question, and the Chairman accomplished the feat of giving us all an opportunity to discuss and yet to finish that question, but the final drafting of the text was done afterwards by the officers of the Section and I was asked to present it here.

As a preface to the reading of the conclusions may I mention two principles that I think we have to take as the basis for all the conclusions. First, that the special punishment in imprisonment consists only in privation of liberty and not in making the life of the prisoner intentionally disagreeable, in addition. Second, that labour is a thing that belongs to man, that if you do not give a man the opportunity and the obligation to work he will deteriorate, he will be less of a man he was before. If you do not give the opportunity and the obligation to work to prisoners, they will leave the prison in a worse state than they entered it, and that is contrary to the responsibility of the State for those whom it puts into prison.

But, after this brief preface I propose to read the conclusions, the final drafting of which was done on the basis of the discussion which took place in the Section:

1. a) Prison labour should be considered not as an additional punishment but as a method of treatment of offenders;
   b) All prisoners should have the right, and prisoners under sentence have the obligation to work;
   c) Within the limits compatible with proper vocational selection and with the requirements of prison administration and discipline, the prisoners should be able to choose the type of work they wish to perform;
   d) The State should ensure that adequate and suitable employment for prisoners is available.
2. Prison labour should be as purposeful and efficiently organized as work in a free society. It should be performed under conditions and in an environment which will stimulate industrious habits and interest in work.
3. The management and organization of prison labour should be as much as possible like that of free labour, so far as that is at present developed, in accordance with the principles of human dignity. Only thus can prison labour give useful social and economic results; these factors will at the same time increase the moral benefits of prison labour.
4. Employer and labour organizations should be persuaded not to fear competition from prison labour, but unfair competition must be avoided.
5. Prisoners should be eligible for compensation for industrial, accidents and disease in accordance with the laws of their country. Consideration should be given to allowing prisoners to participate to the greatest practicable extent in any social insurance schemes in force in their countries.
6. In order to stimulate the prisoners' desire for, and interest in, their work, they should receive a wage. The Congress is aware of the practical difficulties inherent in a system of paying wages calculated according to the same norms that obtain outside the prison. Nevertheless, the Congress recommends that such a system be applied to the greatest possible extent. From this wage there might be deducted a reasonable sum for the maintenance of the prisoners, the cost of maintaining his family, and, if possible, an indemnity payable to the victims of his offence.
7. For young offenders in particular, prison labour should aim primarily to teach them a trade. The trades should be sufficiently varied to enable them to be adapted to the educational standards, aptitudes, and inclinations of the prisoners.
8. Outside working hours, the prisoner should be able to devote himself not only to cultural activities and physical exercises but also to any hobbies he may have.

The *Chairman** thanked Mr. Pompe for his explanations and called for discussion.

Mr. *Pinatel** (France):

Item 6 of the conclusions states that "in order to stimulate the prisoners' desire for, and interest in, their work, they should receive a wage". I believe that this wording is excessively restrictive and that it distorts the entire concept of prison labour. To me, the remuneration of such work must not only be dependent on the willingness of the prisoners to work and the interest which he may have for it, it must also be based upon the idea that a wage must be given to the prisoner so that he might help his family and might also pay the fine or the costs of justice to which he has been sentenced. I therefore think that the formulation proposed is much too restrictive and that is why I wish, if I can collect the twenty signatures required by the regulations, to submit an amendment which would simply say in the first sentence of item 6 : "Prisoners should receive a wage".

Mr. *Cornil** (Belgium):

I do not want to propose an amendment, but simply present a commentary regarding which I think that everybody will agree. The resolution ends with the words "to.. physical exercises but also to

any hobbies he may have". I think that this expression is a bit excessive. I do not know if the prison administration would be ready to organize golf courses and other activities of such kind in the prisons. I therefore find that the formula is somewhat too general.

Mr. *Ancel** (France):

I only want to make one observation with respect to item 7 of the resolution which states : "For young offenders in particular, prison labour should aim primarily to teach them a trade". I fully agree with this text, with the spirit which animates it and even with the resolution in general. But, everybody knows that there are often offenders who are not juvenile delinquents or young offenders, in the narrow sense of the word, who do not have a trade and to whom it would be a good idea to teach one. I therefore regret a little that an impression is given in the French text that this vocational training, necessary for all prisoners who have no trade, is limited to juvenile delinquents alone. On the other hand, we see more and more, from the penitentiary point of view and even from the point of view of penal law in general, the gradual emergence of a particular category which does not include minors in the sense of the penal law, but what might be called young offenders – the term used in the English text – who have passed the age of penal majority but have not reached thirty, for instance. It is evident that for this category of offenders, vocational training is as important as it is for juvenile delinquents proper. I am not proposing a modification, but I would like it understood that by *"délinquants juvéniles"* in the French text we are not thinking only of juvenile delinquents in the sense in which the penal law uses this term.

Mr. *Nuvolone** (Italy):

I want to point out that several congressists have some reservation with respect to the formulation of paragraph b) of clause 1, which says : "All prisoners should have the right to work". Perhaps this reservation is of a formal character, but to me it seems exaggerated to say that all prisoners have a right to work. A statement made in this form can become the source of events which are contrary to prison discipline. For Italians, to state that somebody has a right to work, has the right to do something, means that he can ask courts to enforce this right. Now, it would seem, at

the very least, an exaggeration to make such a statement about prisoners. It is certainly desirable that all prisoners should work, but it is excessive to say that all prisoners have a personal right to work, because of the consequences to which this might lead. If we adopt this course, we may even end up perhaps by admitting that the unemployment of prisoners should give rise to an indemnification by the State.

Mr. *Pettinato** (Argentina) stated that the Argentine delegation agreed with Mr. Pinatel's amendment, for it was in harmony with the conception of justice with regard to work inspired by the new Argentine constitution and applied in the penitentiary treatment in the penal institutions of that country.

Nobody else asked for the floor, and the *Chairman** asked the general rapporteur to reply to the various persons who had contributed to the discussion.

Mr. *Pompe* (Netherlands), general rapporteur:

I tried to be brief, but since there is reason for more discussion, I am glad to be able to give a brief answer to the several distinguished speakers here. Mr. Pinatel has formulated an objection against the beginning of the first sentence of clause 6 of the resolution.

Mr. *Pinatel** (France) who had submitted his amendment in writing and signed by twenty congressists, made a further comment that it was clear that the formula which he proposed concerned prisoners who worked, since the resolution in question concerned prison labour.

Mr. *Pompe* (Netherlands):

There is a question of principle behind this amendment. There is a group which says that wages should be given only for reasons of utility, as was done in the beginning. There are others that say: wages should be paid also for very serious reasons of justice, for each worker has a right to receive wages according to the value of his work. Personally, I am of the conviction that the second principle is the right one and I agree with it. But, even if you would leave the wording as it stands it would not be in contradiction with these two principles.

You are saying that both in order to stimulate their desire and their interest in their work, it would be good that the prisoner should receive wages. I think that the best idea would be really to accept the amendment of Mr. Pinatel. It does not resolve the big question of principle, but I think there is no time to discuss that. I do not know if Mr. Fox, Chairman of Section II, will agree that we should simply delete the beginning of the first sentence of the proposed text.

Mr. *Fox* (United Kingdom), Chairman of Section II, shared Mr. Pompe's views on this point.

Mr. *Pompe* (Netherlands) stated that in such case all the officers of the Section agreed with Mr. Pinatel's amendment.

The *Chairman** took note of this agreement and proposed that the text of the resolution as amended according to Mr. Pinatel's proposal, be put to a vote.

The Assembly agreed with this procedure.

The *Chairman** noted that he had not received any other amendments but that of Mr. Pinatel, and he assumed that Mr. Ancel, for instance, had not intended to present a formal amendment, but only a remark on the text. Before proceeding to a vote, he asked Mr. Pompe if he still wished to reply to the other speakers.

Mr. *Pompe* (Netherlands):

Mr. Cornil has made a remark about the ending of clause 8 of the conclusions. I can say that both Mr. Fox, Chairman of the Section, and I agree to alter the text so as to replace "to any hobbies he may have" by "also to hobbies". Perhaps Mr. Cornil is satisfied now. Therefore, that is another amendment we accept.

Another question comes from Mr. Ancel. You see, I am not compromising but I am only very glad to reach an agreement with other persons by the end of this Congress. I think that in clause 7 of the conclusions the translation of "young offenders" by "les délinquants juvéniles" in French could give rise to a certain misunderstanding. We could just as well use "les jeunes délinquants", and then Mr. Ancel would be satisfied perhaps.

There remains, finally, the very interesting question raised by Mr. Nuvolone, which is a particularly captivating question for jurists. As you are not all jurists here, I am afraid that I cannot, even if I would very much like to speak for half an hour on this, say very much about it. Has the prisoner a right to work? No, not a right in the sense that he could go to court to enforce that right, but a right in the sense that State authorities, in the same sense that prisoners under sentence have an obligation to work, have an obligation to give all of them work. This applies not only to prisoners under sentence but also to prisoners pending trial. And why has the State this obligation? Because the State has put him in prison, and by putting him in prison it has assumed responsibility for that man and the State may not act in such a manner that the man leaves the prison in a worse state than when he entered it. To avoid this, an individual must be given the opportunity to work. This is an explanation which we can all accept and to which we should hold on; in this sense, I think, we might claim that every prisoner has a right to work.

I want to add something that I just heard. The International Labour Organization, at its meeting in Geneva this year, stated that every man has a right to work, but not in the sense that he could go to court to enforce it. I will not discuss this question; it is very much debatable whether every man has a right to work. But, when the State puts him in prison the State has unavoidably created a judicial relationship between itself and that person. The State has, therefore, a certain responsibility and it is only in that sense that I conceive the right to work mentioned in the resolution. Perhaps, there may come a time – I will not question that – when prisoners will have gained rights which they will also be able to assert in court. I do not know. But is is not meant in that special sense, but in the general sense that prisoners have a right to work and this means, of course, that the State has the obligation to give work to the prisoner.

I hope that these explanations on a subject of evident interest to lawyers will be sufficient.

The *Chairman** sincerely thanked the general rapporteur for his long explanations. He noted nevertheless that the time was passing and that it was necessary to proceed to a vote. The Chairman and the general rapporteur of Section II had agreed to adopt two minor amendments to the proposed text. The first consisted in substituting

at the end of clause 8 the words "to hobbies" for the words "to any hobbies he may have". The second proposed a substitution, in clause 7 of the French text, of the words "jeunes délinquants" for the words "délinquants juvéniles". The Assembly, on the other hand, had already agreed to the inclusion of Mr. Pinatel's amendment in the proposed text. The Chairman therefore asked for a vote on the text of the resolution including the three amendments proposed and adopted by the officers of the Section.

The resolution was unanimously adopted by the Assembly[1].

The *Chairman** called for consideration of the third question of the programme of Section III:

To what extent does the protection of society require the existence and publicity of a register of convicted persons ("casier judiciaire"), and how should both this register and the offender's restoration to full civil status be organized with a view to facilitating his social rehabilitation?

The text of the resolution adopted by the Section read as follows:

1. In the data about a defendant which appear to be useful to the sentencing judge at some phase of the penal procedure, information regarding his previous criminal record must be considered as indispensable in indictable offences at least. Information regarding his police record ought to be added, whenever this can be done without great inconvenience. All this information should be accumulated in a penal register according to a system involving the most effective centralization.
2. The copy of the *penal register* should not be read publicly in court. After sentence this copy should be returned to the authority in charge of the register. Any unauthorized disclosure of the content of this register or extracts therefrom should be punished.
3. Inasmuch as it may be impossible for certain countries to abandon the communication of data from the penal register to public officials as well as to private persons and to the person concerned, this communication ought no more to mention the data considered to be affected by the passage of time. This communication should not be effected through the direct delivery of a document by the authority in charge of the register. It is the local or regional administrative authority, which would issue a *social certificate* on the advice of a commission, composed of persons conversant with various aspects of social life. This certificate, while being based on the extract of the register and on other admissible information would take account, as the case may be, of the needs for the *moral and social rehabilitation* of the person concerned.
4. Means for the convicted person's *restoration to full civil status,* founded on a moral improvement, must tend towards individualization. Their advisability and structure require renewed study.
5. The penal register, the delivery of extracts and of social certificates as well as the restoration to full civil status ought to be regulated by the legislator.
6. Uniform standards for the organization of the penal register should form the subject of a world convention to be followed by regulations concerning the exchange of extracts and of other information.

1) See final text of the resolution adopted by the Congress on pp. 556–57 below.

Mr. *Vrij* (Netherlands), general rapporteur and rapporteur for the Section:

While all the preparatory reports have given the impression that, in the Anglo-Saxon countries, the content of all judgments concerning the same person is not collected and recorded as is the case in the countries of continental Europe by means of the penal register, the discussion in the Section has shown that in the United States of America for instance, when the judge asks for this minimum of indispensable data regarding the defendant, one can, at least in the case of serious offences, procure for him the criminal record and even the police record of the individual, by means of a completely centralized system. Clause 1 of the resolution has, at any rate, been worded in such a manner that it proclaims the necessity of a penal register in terms which are such as to comprise the different systems. While clause 2, in stating some principles of procedure, points out the secret character which ought to be given to the use of this register, clause 3 deals with administrative practice, deeply rooted in several countries, which consists in communicating information drawn from this register. In view of the fact that in business one cannot dispense with the possibility of securing in one manner or another information on a man looking for a job, it is desirable to substitute for the practice of sending extracts from the penal register a system of transmitting indispensable information by issuing a social certificate. This modification of the present certificate of good life and moral conduct should easily permit one to take the interest of social rehabilitation into account. That the text simply says to "take account", is due to recent American efforts made with the purpose of having the

employer appreciate complete sincerity on the part of the candidate for a job.

As regards the restoration to full civil status, modern ideas are that even if it is more and more individualized, it hardly favours but rather impedes social rehabilitation. On the other hand, the great majority of the reports mentioned this institution only very briefly. It therefore seemed proper to stop at the request that it be restudied. Clause 5 of the resolution stresses the necessity of organizing the institutions involved here by means of explicit legal provisions. This problem, even more than all the others, imperatively requires international unification of the rules involved, and this is what clause 6 demands. I express the hope that the International Penal and Penitentiary Commission will find the opportunity to take the initiative in this job of unification, which might result in international exchanges of truly vital importance.

The *Chairman** thanked the general rapporteur for his report and said that he had received from Mr. O'Neill (Northern Ireland) a written amendment supported by twenty signatures. This proposition was meant as a substitute for clause 3 of the resolution and read as follows:

> The penal register is a confidential document and no copy of it, or of any part of it, shall be transmitted to any organization or private individual.

The *Chairman** called for discussion and suggested that one of those who had signed the amendment take the floor for the purpose of presenting it.

Mr. *O'Neill* (Northern Ireland):

There is a fundamental objection to the conclusions on one particular point. I should like to make quite clear, of course, that this penal register, the criminal record of any person, is in the possession of the State, and it is only the State that should have that record, and it should not be communicated to any outside individual or organization. It may be in the possession of a federal bureau of investigation or of the police or of a ministry of justice, but that State department, and it alone, should possess that document and should not release it to any other person or for any other purpose.

On the question which the Section had to consider: To what extent does the protection of society require the existence and publicity of a register of convicted persons ("casier judiciaire"), we have already agreed that the existence of such a register is most desirable. I say at once, however, that to give publicity to such a register is most undesirable . And when we come to the second part of the question, namely how both this register and the offender's restoration to full civil status should be organized with a view to facilitating his social rehabilitation, I think the suggestion in the resolution before you that data can be communicated to privative individuals would be deterrent to any rehabilitation of a criminal. To my mind, this is a negation of human liberty. After all, if a man commits an offence, his offence should be known to the police but to no one else, and to release such information to outside individuals should be resisted, and there should be a resolution of this Congress that we are opposed to it. I beg to move.

Mr. *Glueck* (U.S.A.):

I am in favour of the amendment proposed by Mr. O'Neill in view of the general spirit and aims of the amendment. But I wonder if it has occurred to him that to adopt the amendment in the extreme language which he proposes would virtually stop all research by universities, particularly follow-up researches in which, as you know, my wife and I are particularly interested. And so I wonder whether he would accept a modification to his amendment providing that in the case of learned societies, universities, etc., the information in the criminal record or judicial record shall be available under certain carefully guarded conditions.

Mr. *Gunzburg** (Belgium):

I have not had the chance to attend the debates of the Section, but I hope that the general rapporteur or the Chairman of the Section will kindly explain the terminology on two points. I know that this would also interest other members of the Assembly. In the question raised by the International Penal and Penitentiary Commission, recourse was made to a term which is generally used and known to everybody: "casier judiciaire", and in the English text where the expression "register of convicted persons" has been used, the term "casier judiciaire" nevertheless has been added in

parentheses. This is rather understandable, for everybody knows what the "casier judiciaire" is. However, I have not found this expression in the resolution adopted by the Section. Various terms are used. In clause 3 mention is especially made of the data of the penal register which will or will not be communicated to the prison administrations and other persons.

On the other hand, the Section examined what information might be retained after a certain lapse of time. The daily Bulletin of the Congress mentions that at a given moment a proposal was made to have recourse in that connection to a term which is familiar to all of you, prescription (statute of limitation). I would like to ask the general rapporteur and the Chairman of the Section if they do not think that, while there are scruples at using these words which have an exact and clear meaning, there is a much greater danger in creating a new terminology which can give rise to confusion. That is the purpose of my speaking and I think that many members would be very happy to have this explained.

Mr. *Herzog** (France):

I cannot support Mr. O'Neill's amendment. Had this proposition been conceived in such a form that it raised the problem of restrictions on the communication of the criminal record, I would have been able to approve for I admit that the problem arises and that it must be studied. But I cannot give my support to a motion which refuses, in a categorical and somewhat ruthless manner, if I may say so, any information from the penal register. I think in fact that the problem of individual liberty, to which a Frenchman is as sensitive as anybody, must be consonant with the problem of public policy. To take only an example, I believe that there is nevertheless a certain value in that a banker who hires a cashier could find out if this individual has already been sentenced two or three times for thefts of bank funds. In view of these facts I regret that I cannot agree with Mr. O'Neill's proposed amendment.

Mr. *Molinario** (Argentina):

I have asked for the floor only because I want the discussion to proceed methodically. Mr. O'Neill's proposal has undoubtedly a very broad and general scope. But we have just heard, in the same spirit and in the same sense, the opinion of Mr. Gunzburg who would be

glad to see that the lapse of time mentioned in the resolution should be specified in an absolutely clear manner. The resolution is somewhat general, but on this point I do not want to see generalities, but absolutely sharp lines. I would at least like to see stated that communication shall no longer occur after a certain lapse of time which must be fixed by the law and not be left to the will and pleasure of the administration in charge of the penal register. I therefore take the liberty of informing the chair of the fact that if Mr. O'Neill's proposal is rejected, I shall present a second proposition saying that the time limit after which data from the register no longer can be communicated either to the public or administration must be definitely fixed by law. I proposed in the Section that this period be that of the statute of limitation applied to the execution of the punishment; this seems to me to be the most precise expression and fits in with all laws which recognize the institution of the statute of limitation. We know that the vote on that proposition was tied and that consequently it was regarded as rejected. But I feel obliged to submit a similar proposal to the Assembly, that is in case Mr. O'Neill's proposal were not adopted.

The *Chairman** stated that the questions raised by Messrs. O'Neill and Molinario were of the greatest interest and the greatest importance. But they had already been examined in the Section and it was not possible, due to lack of time to pursue their consideration in a plenary meeting.

The Chairman therefore proposed to close the debate and to give the floor for the last time to the general rapporteur after which the vote would be taken on the two amendments proposed.

Mr. *Vrij* (Netherlands), general rapporteur and rapporteur for the Section:

First, there is the question of the terminology to be used in the resolution. Now, I think that Mr. Gunzburg, not having been present at the discussion of the Section, could have heard from the report I presented to you that we European continental people discovered in the Section that a "casier judiciaire" exists in no Anglo-Saxon country. Therefore, we had to find a broader expression. I thought "penal register" covered the whole thing and that we should not

restrict ourselves to an institution which — I draw your attention to that — it has not been possible to describe in one term in the English version of the question.

I come now to Mr. O'Neill's fundamental objection. I must say that there is a very urgent need in industry that the employer should have means of knowing something about the man who is seeking work in his factory. Now, the Anglo-Saxon members of our Congress have heard and have read in all our reports that this is the origin of that regrettable practice of getting information from the register. They all have had opportunity, but have failed to tell us how that urgent need of industry is met in Anglo-Saxon countries. I think that we have given due consideration to all that may lie behind that by beginning this paragraph of our conclusions in saying: "Inasmuch as it may be impossible for certain countries to abandon the communication of data from the penal register to public officials as well as to private persons and to the person concerned, this communication ought....". I think that Mr. O'Neill and his partisans do not take into account that this is a practice deeply rooted, for exactly a century, in the legal systems of numerous countries.

As to what Mr. Molinario said again, after we had the pleasure to hear him in our Section, I must call attention to the satisfaction given to Mr. Molinario when he made his remarks there. Mr. Molinario thought that it would be a good idea to say that the communication of data from such a register, when made, ought no more to mention the data considered to be affected by the passage of time. This great principle has been expressed in the text and I can fully answer to what he proposes: you must again take into account what is thought in different countries about the problem. We must not insist that our view should prevail over the views of many other countries, and there are many countries which do not think, as does Mr. Molinario, that an erasure in the penal register or the giving of data from that register needs a formal judicial decision, as he demands; there are countries which think that even that, and just that, in our modern penal law is a matter for evaluation of a social character, for you cannot say beforehand at what moment inscriptions in the penal registers should no longer be taken into account. In view of this divergence of ideas, I think all we need in this Congress, is to consider that his idea is cared for in that general principle:

"This communication ought no more to mention the data considered to be affected by the passage of time."

The *Chairman** then put to a vote the amendment submitted by Mr. O'Neill.

This proposition was rejected by a majority.

Mr. *Molinario** had in the meantime submitted the text of an amendment supported by twenty signatures, aiming at substituting, at the end of the first sentence of clause 3 of the conclusions, for the words "this communication ought no more to mention the data considered to be affected by the passage of time" the words „this communication ought not to mention these data once a period of time which should be fixed by law has elapsed".

This proposal was put to a vote by the Chairman and was adopted by 61 votes to 45.

The *Chairman** then submitted the entire resolution submitted by Section III, as just amended to a vote.

This resolution was adopted. [1])

The *Chairman**:

The General Assembly has now finished the consideration of the questions mentioned on the programme of questions of the Congress. The Officers of the Congress have received two motions which I shall make known to the audience. In view of the late hour, these motions cannot be discussed, however.

The first motion comes from Mr. Moreau (Belgian Congo) and reads as follows:

The XIIth International Penal and Penitentiary Congress:

Considering the approaching attachment of the International Penal and Penitentiary Commission to the United Nations Organization;

Considering the universal field of action of the United Nations Organization and the general scope of the recommendations formulated by that organization;

Considering, furthermore, the circumstance that the resolutions adopted by

[1]) See final text of the resolution adopted by the Congress on pp. 571–72 below.

the Congress might not fit in with the general conditions of life in underdeveloped countries;

Specifies that although it is desirable that the principles serving as foundation for its recommendations be accepted as universally as possible, these recommendations are, however, formulated only with a view to their application in countries the inhabitants of which have reached a sufficiently advanced degree of development.

The second motion has been presented by Mrs. Field (United Kingdom):

The XIIth Congress of the International Penal and Penitentiary Commission puts on record its hope that the body, on which the functions of the International Penal and Penitentiary Commission are about to devolve, will in the organization of its work of the selection of subjects for consideration provide for early investigation of the special problems presented by women offenders and of the types of institution required for women prisoners.

Moreover, Mr. Drapkin (Chile) who orally presented, in the course of the discussion in Section I [1]), a motion asking for the examination of the sexual problem of prisoners under sentence by the next International Penal and Penitentiary Congress, has since then submitted the following motion to the Officers of the Congress:

Considering that in the twelve International Penal and Penitentiary Congresses which have taken place since 1872 until to-day, none of the nearly three hundred proposed and debated questions has dealt with the sexual problem of the prisoners under sentence; and considering that it is high time to face the responsibility of a public discussion on this subject,

The undersigned takes the liberty of urging the International Penal and Penitentiary Commission to examine the possibility of including in the programme of the questions to be discussed during the next International Penal and Penitentiary Congress "The sexual problem of prisoners under sentence".

The *Chairman** gave the floor to Mr. C. van den Berg, director-general of international health affairs in the Netherlands Ministry of Health, delegate of the World Health Organization to the Congress, who wanted to say a few words.

Mr. *C. van den Berg* (World Health Organization):

I should like to express the interest of the World Health Organization, which as you know is one of the specialized organizations of the United Nations, in the work of your congress.

1) See page 88 above.

The World Health Organization is not only working in the field of physical health, but also in that of mental health and it considers the prevention of crime and the treatment of offenders to be an important part of mental health.

Already at the stage of the Interim Commission of the World Health Organization, the period between the adoption of its constitution and its coming into force, the World Health Organization participated in the United Nations programme for the prevention of crime and treatment of offenders by providing a consultant to prepare some memoranda for the benefit of the United Nations. One of these contributions, by Manfred Gutmacher on "The Medical Aspects of the Cause and Prevention of Crime and the Treatment of Offenders", has already been published in the Bulletin of the World Health Organization.

Since then the Mental Health Section of the World Health Organization has been set up and has been able to collaborate much more actively with the United Nations in this matter. As a first step there is being undertaken a study of the psychiatric aspects of the etiology, treatment and prevention of juvenile delinquency.

As a result of a meeting which the United Nations called of all the international organizations interested in the psychiatric aspects of the field of criminology and penology, it was agreed that as a next step the World Health Organization should undertake a study of group and individual psychotherapy in prisons.

Mr. Chairman, the World Health Organization shall be pleased to make the results of its work in this field available to the International Penal and Penitentiary Commission, and on its behalf I express the wish that in the future there will be a close co-operation between our organizations.

The *Chairman** stated that the General Assembly had terminated its work and proposed to adjourn the meeting for a few moments, in order to permit the Minister of Justice of the Netherlands, who had wished to do the Congress the honour of attending its closing session, to take a seat on the rostrum.

Intermission. [1])

1) See Proceedings of the closing session on page 516 below.

GENERAL LECTURES

The Problem of Applied Penal Law in the Light of New Relevant Tendencies [1])

PAUL CORNIL

Professor at the University of Brussels,
Secretary-General, Ministry of Justice of Belgium

The title of this adress announces a complete picture of modern problems of applied penal law.

I could not undertake to treat such a subject without a long preamble in which I would explain my inability to master such a vast and ambitious subject, but you have not come from so far away to listen to this kind of rhetorical precaution. I shall therefore attack the question immediately. However, I should state two reservations. The first involves the incomplete nature of my address. Had I formulated its title myself I would have called it "Some modern penitentiary problems", for I have, in fact, limited myself to those penitentiary questions which, within the applied penal law as a whole, seem of the greatest importance to me. Furthermore, my experience in this field is limited to some twenty years of work in the prison administration of my country, and to journeys in nine others where, beginning twenty-five years ago, I have visited penal institutions and administrative agencies. It is true that the circumstances of war permitted me also to add to such visits a view of the penitentiary problem as seen from the inside of institutions. My knowledge of countries that I have not visited comes entirely from my reading. Finally, this brief address runs the risk, to some degree, of being an awkward anticipation of the conclusions to be arrived at by this Congress. It is obvious, indeed, that the questions placed on our agenda figure among present penitentiary problems. It will therefore not be a surprise if I happen to encroach on this or that question discussed this week.

1) English version of Lecture given in French at 9 A.M. on Tuesday, August 15, 1950 in the Hall of Knights, Binnenhof. Chairman: Mr. Hooykaas.

With the above two reservations in mind, I shall try to trace for you the outline of the four problems that seem to me particularly important in the applied penal law of to-day.

For a century and a half, the penal law haw has undergone a considerable evolution. The execution of punishments has also been completely transformed.

These two changes, though parallel, have been independent of one another. In general, the transformation has been more rapid and profound in the execution of punishments than in the penal law itself. The reason is quite simple: the penal law cannot change except by legislative action. This can be achieved only with great effort when public opinion supports the new idea. In the administrative field, on the contrary, experiments can be tried without any change in law and this makes penitentiary administration much more flexible.

I do not here need to concern myself with the present state of penal law. It is enough to observe that most of our penal legislations to-day exhibit a hybrid character which indicates an incompleted transformation. In many countries, the penal law still retains a classical base on which there are superimposed legal provisions inspired by theories of social defence.

Some people think that this dual system is necessary. We must, they say, keep the classical punishments for the responsible delinquent and use the measures of social defence for the irresponsible. But they forget, among other things, that the content of the penalty has been modified. More and more, the punishment aims also at the protection of the community against crime, either by re-education or by preventing the criminal from repeating new offences. In fact, the difference between penalty and security measure is retained only superficially and is kept in some legal prescriptions which are still enforced though they have lost their justification.

A dual system of penalties and security measures is therefore difficult to justify and, as people have already noticed, it is therefore necessary to reconsider the penal law. I am definitely convinced of this necessity, but I would like to show that a still greater incoherence exists in the field of applied penal law. There the experiments and changes occur sometimes in a dispersed order. In

relation to the duration of the punishment they are particularly hampered by legal provisions that are not in line with new tendencies. The partial reforms adopted are timidly made. We do not always dare to draw the conclusions from the new ideas, with the result that illogical and paradoxical situations are created. Finally, the very conditions of the execution of punishments privative of freedom raise insurmountable difficulties that in part destroy efforts to render them efficacious.

This is what I shall try to elucidate with reference to the four problems of applied penal law: the duration of the punishment; the respect for human dignity in penitentiary treatment; prison labour; the problem of the family and the prison community.

The duration of the punishment

Our forerunners who lived during the epoch of classical penal law did not know how happy they were. We pity the criminal who, at the beginning of the 19th century, was exposed to rigorous and exemplary punishments, but during the same epoch the judges and the prison directors had none of the cares and anxieties imposed on their successors: the choice and the execution of punishments were both simple matters. A prison term, the length of which was fixed in advance, was served under a simple and little varied régime. There was no hesitation or fumbling in the execution of punishments. However, this effort to reduce the penal problem to a too simple logical operation failed quickly. The duration of punishment was made more flexible by the introduction of minima and maxima. Extenuating circumstances, suspended sentences or probation and conditional release successively added new elements and placed the judge and the administration face to face with the difficult problem of the measure of punishment.

Other well-known factors have since then accelerated this evolution. The positivistic and sociological school have demonstrated the individual and social factors in crime which must now be kept in mind in the sentence and in the manner of executing the punishment. The idea of re-education enters into repression, closely followed by the corollary idea of social defence.

The result is that when one tries to determine the nature and the aim of a penal sanction to-day, one is struck by the complex and often contradictory character of the purposes assigned to the

sanction. In most cases one would find oneself in a quandary in deciding what purpose the duration of any penal measure of imprisonment actually serves.

Frequently the sentence is a punishment proportioned to the seriousness of the offence but at the same time it should permit the re-education and care of the offender. The year in prison inflicted on the thief should serve as a warning to future thieves of the danger that treatens them. At the same time, this year in prison should permit the re-education of the prisoner. It would be a miracle if these two periods were to coincide exactly.

Sometimes we allow a security measure of indeterminate duration to replace the punishment in the case of a child, an abnormal offender or a recidivist, but except for these cases punitive imprisonment retains its double appearance of intimidation and treatment.

This conflict between the functions of punishment is basic to a conflict between authorities, for if the punishment stops being purely intimidating and acquires an educative and therapeutic aim it can no longer be fixed in advance and should be fixed for each case in taking into account individual and social factors independent of the nature of the offence.

What should the judge do when faced with this problem? Should he become acquainted with these new techniques of diagnosis and treatment, select the appropriate measure and supervise its execution or is it necessary that he retain instead his classical rôle — determining guilt, fixing the duration of the consequent punishment — and abandon to administrative agencies the task of determining the treatment to be applied to the culprit?

This conflict between authorities is found everywhere. We find it resolved in different ways which shows that the theory limps. Now it is the judge who directs the execution of the measure (this is the case in most juvenile courts), now he is satisfied to pronounce sentence, leaving the widest powers possible to administration to determine the details of the execution. The best example of this attitude is the penal system of California, where the Youth Authority and the Adult Authority have very wide powers in the choice and the execution of the punishment.

The variety of the solutions adopted in this connection is such

that I would find it difficult to tell what the relevant tendencies actually are.

The discussion of this problem too often takes on the aspect of a conflict between courts and penitentiary authorities, each trying to defend its prerogatives and freedom of action.

My view is that before choosing the one side or the other it would be necessary to reply to two preliminary questions. The first of these questions would be to ask the legislator to clarify his thinking. He should stop chasing at the same time the rabbit of intimidation and the fox of the offender's re-education. By hunting both of them simultaneously, he risks losing both and to botch his job. A choice is necessary and if he chooses re-education he must let the judge be guided by this objective alone. It is, of course, obvious that this would not prevent him from obtaining a certain intimidating effect, but the latter should only be accessory and the judge could fix the duration of the punishment essentially with reference to the needs of re-education.

The legislator should therefore say in what cases he wants the punishment to pursue an educational purpose and in what cases he wants it to have an essentially intimidating character.

Should this choice between re-education or deterrent punishment be made according to the nature of the crime or according to the personality of the offender? Is it, e. g., necessary to deter every murderer by the infliction of a severe penalty or is it possible to re-educate those murderers who seem able to benefit from that treatment and to punish the others severely?

If the choice between those two methods of treatment does not depend on the crime committed but on the personality of the offender, this choice cannot be made by the law itself. To whom shall we then leave this selection based on the study of the individual – to the judge or to the prison administration?

And this leads us to another preliminary question, that of the rôle assigned to penal classification. A very marked tendency in many modern countries is that which consists in determining, by individual examination of the offender and by social investigation, the treatment to which he should be subjected. This is the basis for the choice of the repressive measure. This is also the way in which the prisoner is assigned to the specialized institution where he will undergo an appropriate treatment.

The problem here is to know at what moment and by whom this classification should be made. If it is a phase of judicial procedure, properly speaking, the examination should occur prior to sentence and the judge is the one who, after determining guilt, should decide on the manner in which the measure he has chosen should be executed. If, on the contrary, one wants to maintain an almost complete separation between the sentence and the execution of the punishment of the offender, there will be a tendency to proceed to this examination only after sentence and to avoid the intervention of the judge in this second phase of the repression.

I am convinced that we are here in the presence of an essential problem and that its satisfactory solution can only be found if we make a sincere clarifying effort to determine what we want to do without continuing to search for two objectives at the same time.

The respect for human dignity

In comparison with the penitentiary administrations of the *Ancien Régime* we have made obvious progress with reference to the respect for the offender as a physical individual. In fact, if one excepts the abuses which everybody condemns, such as the increasingly rare cases of corporal and capital punishments, one can say that the physical integrity of the prisoner is respected. But is this also true of the respect for human dignity?

The material comfort of penitentiary institutions has increased, paralleling to that extent the raising of standards of living on the outside. Let us recognize, however, that the progress of penitentiary institutions has followed the living standards of free men at a respectful distance.

There have been many jokes about palatial prisons but we still have a long way to go to reach them; the most modern of our prisons offer only a very relative luxury to their inmates. Furthermore, the simple life has been retained on purpose. It is not just a result of the slowness of an administration in adopting new ideas. A noticeable difference between the life of the prisoner and that of the honest citizen is deliberately retained.

The change in disciplinary methods is perhaps more important. Formerly, and even now sometimes, the prisoners lost all individuality on entering prison. The principle was that a prisoner had no rights, except those granted to him by the regulations. This

presupposed a complete passivity on the part of the prisoner.

One must have undergone this régime to understand its harsh nature. To be reduced to implicit obedience, to be subject to the imperatives of the regulations and the caprices of the personnel touching on the minutest details of life, is one of the most depressing aspects of imprisonment.

The introduction of modern pedagogical methods has found itself in direct opposition to this conception. If the prisoner should take initiatives instead of obeying passively it is indispensable that he should be recognized as having certain rights and if he participates in a system of self-government and has some authority over other prisoners it is necessary to define the rights and the duties of every prisoner.

It is curious to note that evolution in this direction has been hastened by reaction against abuses and cruelties committed in concentration camps. In these vexing and cruel places the individual was lost in the mass and had to bow without question to a uniform rule, to the fancies of the staff and to the arbitrary orders of some inmates to whom the personnel had entrusted part of their authority. Many political prisoners subjected to such régimes by the fortunes of war have experienced their degrading character and have since taken part in the effort to reform prison treatment in the direction of the greatest possible respect for the dignity and the personality of the individual. How far can we go in this direction? Is it possible to adopt the diametrically opposite attitude and to consider the prisoner as retaining all his rights except for those he loses by his sentence or that are contrary to his penitentiary treatment?

If one shares this conception, instead of saying that the prisoner can do nothing not authorized by the prison authorities, one then starts with the idea that the prisoner has all the rights of free men except those of which he has to be deprived for the protection of society.

All this may appear theoretical and without any practical interest whatever and yet the man who is put in prison is not only deprived of his freedom, separated from his family and rendered incapable of working at his trade, but he is usually prevented from exercising any initiative not provided for by the regulations. He cannot read what he wants; he can only receive authorized visits at times fixed by the regulations; his getting up and going to bed,

his activities, his movements in the building, his requests are all governed by precise rules.

Moreover, the exercise of important civil rights are only granted him as a favour; he cannot marry without authorization and he can be refused such authorization without further explanation. In this field too we often lack both consistent practice and logic.

By what means do we justify these restrictions imposed on man's freedom? Sometimes by the afflictive character of the punishment and by the more or less conscious desire to make the régime hard; sometimes by the practical necessities of institutional life; sometimes — though rarely — by the aim of re-education or treatment.

It would profit us to review each of these prohibitions and to keep only those really necessary and justified.

Prison labour

We make prisoners work, but we do not know why any more.

In the case of some classes of prisoners, particularly the young ones, we talk of undertaking or carrying on vocational training. In reality, efforts made in this direction are nearly always limited. The choice of trades taught in prison is small and we all know that few prisoners continue after their release to work at the trade they learned in prison. Besides, it is rare for us to measure the duration of imprisonment in accord with the result obtained in this vocational education.

In the case of other offenders we claim that work is part of the punishment. We live no longer in the epoch when forced labour or hard labour or strenuous labour was sought as a means of punishment and yet we think that it is necessary to make the prisoner work and we write into our penitentiary regulations that work is obligatory, as if idleness were not even more insupportable than normal activity.

We sometimes say that the labour of prisoners should be productive in order to lessen the costs of maintaining them. As a matter of fact, it may seem logical that the State should seek to reduce the burden of these costs in its budget. However, whenever efforts are made in this direction, one runs headlong into the protest of free enterprise and of labour unions.

Some countries have therefore been led to adopt as a rule not

to supply prison products except to public authorities, a more apparent than real limitation on the competition with free industry.

Elsewhere, the use of modern equipment has been avoided in order to reduce productivity.

In general, one attempts to diversify prison labour in order to avoid mass production of goods in a single branch of industry. Nevertheless it is true that these various palliatives greatly reduce the possibility of organizing prison labour in a manner which would be useful for the inmate as well as for the State.

Labour unions too are on the defensive. Recently, strike pickets circulated near a penitentiary institution in protest against a job done by prisoners.

A final, more modest but perhaps more realistic, justification for prison labour is the observation that work is a normal characteristic of life. The prisoner, as well as the free man, should devote a large part of his time to work. For some socially unstable persons, such regular occupation would constitute a schooling in discipline. For others it would mean simply a transposition in their ordinary life, even though the prison tasks differ from their work in freedom.

If the justification for prison labour is often unclear and if, as I have just shown, its organization runs into great difficulties, wages and working conditions are no more easy to fix. It is not rare to find that prisoners receive no pay for the work they do. This is part of the idea that if they work it is solely an aspect of the execution of the punishment inflicted on them.

It is more common that the prisoner receives a modest remuneration, thanks to which he can buy some sweets, save a little money for the time of his release or even send some small sums to his family. The amount of these wages is much lower than the wages of free workers. In fact, one proposes that the State should deduct from this income the expenses of maintaining the prisoner in prison. It is said that it would be unjust that a prisoner, housed and fed at the expense of the State, should also receive the wage of a free worker. One loses sight of a fact that will be touched upon later, namely that it is the prisoner's family who most often suffers from it.

But there is another effect of this insufficient wage which has arisen since the adoption of social security legislation in most countries.

For quite a while people have asked themselves if a prison

labourer should receive compensation in case of an accident. In almost all countries, the conclusion has been negative on the basis that there was no labour contract between the State and the prisoner. Only a few countries have adopted legislation on this subject.

The situation has become even more paradoxical, since many countries have begun to pass social security laws against unemployment, on family allowances, old age pensions, and sickness insurance. The free worker and his employer are forced to observe these legal requirements and to pay the necessary contributions, while the State that makes prisoners work abstains from this obligation, all the time pointing to the special character of the labour and the absence of a contract.

The result is special difficulties for the family of the prisoner and problems in the social rehabilitation of the released offender who finds himself barred from the benefits of the social security laws because of his stay in prison.

To summarize, it is time to define the rôle of prison labour, the aim it has and the conditions under which it is carried out. It is of no use to set up good prison shops so long as there is no agreement on the significance of the work to be done in them. Besides, there is a certain hypocrisy in talking about the re-education and the social rehabilitation of prisoners if the conditions under which they are put to work constitute a handicap as soon as they leave the prison.

The problem of the family and the prison community

The imprisoned offender is separated from his family, which is usually deprived of his earnings with the result that an unmerited suffering is inflicted on an innocent family group.

In addition, it frequently happens that the absence of one of the spouses due to imprisonment provokes a more or less profound disintegration of the home. The wife who is left alone finds consolation and sometimes economic support outside the home, the children are badly cared for and their education suffers from it.

As for the prisoner, this separation from his family creates emotional problems. His confinement to the prison community forces him to live in an abnormal society in no way resembling family life.

This problem has often aroused the attention of specialists

in prison matters. The solutions so far proposed are lame though it is impossible to ignore this aspect of punitive imprisonment. It is simply hiding the truth to insist on the individual character of punishment which should only strike the performer of the crime when in fact the measure taken manifestly has a grievous repercussion on his family.

In certain countries it has been felt that some of the inconveniences due to this separation from the family should be softened by authorizing conjugal visits by the wives of the prisoners. I shall not stress the displeasing aspects of this practice which does not remove the material or moral difficulties in the life on the prisoner's family and may even increase them through the birth of a child during the father's imprisonment.

Another palliative is the practice of furloughs given to the prisoner for visits to his family. From the point of view of the prisoner, experience shows that these brief trips without transition from imprisonment to freedom are not without their inconveniences and are often the source of incidents. From the point of view of the family, these furloughs give but a momentary relief to emotional problems without resolving economic difficulties.

In the last analysis, it seems clear that the only really effective means to solve this problem would be to authorize the prisoner's family to share his life in certain cases. This idea may seem inacceptable at first view, yet it is not inachievable and we find examples of prison communities that come quite close to it.

So far as principles are concerned, if imprisonment is no longer considered simply as a punishment but as a means of re-education, one cannot see why the individual undergoing it should necessarily be deprived of all normal life, separated from his family and subjected to living conditions that are little calculated to further his re-education. It is mostly in the interest of the family that one might be opposed to the adoption of such a system. How can one oblige these wives and children to live in a prison community and share the life of offenders? This objection does not seem serious enough to reject the system immediately.

First of all, it could be understood that only those families that want it would be subjected to this régime. Besides, it must be admitted that it is of primary importance to prisoners, who will ultimately regain their freedom, to safeguard the unity of their

family and avoid finding the home disintegrated when they return.

There is finally the objection of the criminal community. Why, you may say, expose these women and children to life in the midst of criminals? They have not deserved this. To reply to this I have to leave the discussion of the family question a moment in order to consider that of the prison community. Our ideas have greatly advanced with respect to the subject of the criminogenic prison environment.

At the beginning of the last century, as a reaction to the promiscuity of the prison of the *Ancien Régime,* there were created and developed various types of cellular régimes, sometimes to force the prisoner to meditate and sometimes to separate him from other prisoners.

By and by we have given up this isolation of the individual and the cell is regarded, in most cases, only as a place where the prisoner spends the night. We permit the prisoners to work and live together but we try to counteract this promiscuity by carefully classifying them. An effort is made to constitute homogeneous groups of prisoners of the same category by removing harmful elements from these communities.

One could elaborate at length — but I lack the opportunity — on the necessity for making such groups of prisoners really homogeneous.

In free life we run across people who are very different and the factory community or the office community is made up of very diverse personalities. Does prison re-education require, on the contrary, that absolutely similar people be grouped together? Grouping by age facilitates education and vocational training, but it retains a wide diversity of temperaments and this is perhaps necessary if one wants to apply in this re-education psychological methods of group treatment which are increasing in vogue.

In fact, if one wants to change the conduct of prisoners through the clash of different temperaments in the discussions initiated during group treatment, it is necessary not to put absolutely similar character types together. At any rate, the present tendency is to consider as a positive factor for re-education, the reciprocal influence of prisoners on one another. Hence, the objection as to the criminal environment that might be made against setting up family communities would seem to me to lose much of its force.

I know very well that the idea of generally establishing familial prison communities would naturally appear as a paradox. So far as I am concerned, I am perfectly aware of what may seem paradoxical in this idea, considering the prejudices and the attitudes we have to-day toward the criminal.

People will also complain that such a penal régime has lost its punitive character. Detention is transformed into a forced residence in a given place and in the compulsion of observing the rules of the community.

From the point of view of deterrence, this criticism holds ground, but if we consider the protection of society, we could answer to the point only if we could demonstrate that a criminal submitted to such a community régime would contract habits of regular living which are apt to be maintained after he has been liberated.

It is nevertheless true that this suggestion seems to me the only one that affords a satisfactory solution to the family problems caused by imprisonment.

This summary examination of the four problems that seem to me to be the most important in the execution of imprisonment discloses evident and important obstacles opposed to the effectiveness of this punishment. The first is the lack of clarity in the goal assigned to this repressive measure. In view of the legislator's lack of precision, the prison administration does not know what to do to organize an efficacious and coherent penal system. It is not impossible to remedy this defect and render the ideas that dominate penal legislation more clear.

But the second obstacle that obtrudes itself when one studies punitive imprisonment is more difficult to surmount because it results from the very nature of punishments that remove freedom.

Imprisonment, some problems of which we have just described, remains to-day, under various names, the main penalty used by criminal law. It seems to me certain that in a not too distant future, this penalty will be considered as no less primitive than the corporal punishments of the past centuries. In its most simple form, imprisonment consists in placing the individual between four walls or inside an enclosure in order to keep him completely away from his normal social activity. And the value of this penalty, at least in this primitive

form, is measured by the lapse of time during which the life of the prisoner runs on.

We know to-day that crime has its origin in the social maladjustment of the offender, who reacts to the temptations and influences of his environment, considering his personal temperament. If this is so, a punishment that takes away liberty is necessarily inefficient in procuring the reform of the prisoner. How can one prepare a person for social life when one separates him from his fellowmen by isolating him from his environment?

Conscious of this fundamental error, modern penologists try to remedy the deficiencies in the prison system resulting from the very nature of imprisonment rather than from the nature of the prisoners. That is why to-day one tries to make the life of the prisoners resemble the life in freedom as much as possible. Open institutions, self-government and improvement in the labour and the living conditions of the prisoners notably result in making the prison community more natural and realistic and to make it more like or less different from life in freedom.

In some countries even further steps have been taken to adopt forms of partial imprisonment, such as attendance centres and semi-free homes with imprisonment during the night or on Sundays.

Deprivation of freedom is not complete. It alternates with periods of social life which tend to counteract the noxious influence of imprisonment and also to test the conduct of the prisoner.

It is curious to note that this evolution reduces the difference between punitive imprisonment and other penal measures, which in a way are approaching it. Probation, for instance, i. e. social treatment of the offender, improves its educational techniques and does not differ fundamentally from semi-free detention. Even the fine in its most individualized forms is accompanied by a social guardianship that subjects the offender to a restraint which in certain ways resembles detention in open institutions.

Certain security measures too, would gain by a transformation in the same direction. The deprivation of the right to exercise a trade or profession, such as the cancellation of a driver's licence, should be accompanied by an effort at re-education in freedom, an effort to bring the offender to a mode of driving that permits the restoration of his licence.

It is only in this way, by improving penalties of all kinds, that

we shall succeed in diminishing the rôle of imprisonment as a repressive measure. It is through the constructive imagination of the legislator and the executive that we shall reach that perfection in the repressive system when physical restraint will diminish and yield place to the most refined methods of re-education arrived at through psychological motives or by therapeutic means.

Of course, these methods are infinitely more difficult and more delicate in application. It is more difficult for the probation officer to exercise a beneficent influence on his client than for the prison director to make sure of the physical presence of an inmate in a prison. But the result obtained is much more promising than the effect that one may expect from a simple privation of liberty.

Can we to-day claim that our penal methods produce good results? We should be most circumspect on this point for not only do the statistics show a high number of recidivists, but we might ask ourselves to what extent the successes and the failures can actually be attributed to the application of punishment.

When we find ourselves in the presence of a favourable case, we can say that we might perhaps have obtained the same result without applying the punishment. On the other hand, a reading of the case history of a recidivist would raise the following question: To what degree has the execution of the punishment and the difficulties of social rehabilitation provoked or facilitated the relapses?

In penitentiary affairs as in other fields each epoch has its own fashions and slogans. To mention but a few, we have had the popularity of the cell, the progressive system and self-government. To-day we have the fashion of classification and specialized institutions. Each of these fancies passes after a certain time and enters the museum of history.

It would be vain and presumptuous to think that our generation has found the final road to progress. Our penal methods will age like their predecessors, but this should not lead us to scepticism or discouragement. What is most important is that in our search for penal reform we let ourselves be guided by the desire to limit repression to what is indispensable for the protection of society, and to safeguard as much as possible the human dignity of the offender.

The Organization and Problems of the Federal Prison System of the United States of America [1])

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Even though, as your distinguished Chairman, Mr. Bates, has indicated, I was called on short notice to describe to you the organization and functions of the Federal Prison System of the United States of America, I appreciate highly the privilege you have thus accorded me. I was happy indeed to accept the invitation for the important reason that it affords me the opportunity to tell you how pleased all members of the American Delegation are that we can get together with representatives of other countries and participate in so well organized a conference. In the pleasant and agreeable atmosphere provided by our Dutch hosts we have so far gained much profit from the discussions that have taken place. It is freshening and heartening thus to be able to renew and deepen our faith in international discussions and the frank exchange of views among peoples of different backgrounds and heritages. It renews and strengthens our belief that through machinery of this kind it should be possible to lay the groundwork in various fields of social and economic endeavour for amicable settlement of international differences of opinion. To be sure, the outlook for a peaceful and happy world seems grim and dark just now but when men and women can interchange opinions and views as to how to promote orderly government, as we are doing here, without rancour or discord, there is little need for discouragement.

Before describing the organization and problems of the Federal Prison System it is my very happy privilege to bring to you the greetings of the Attorney General of the United States, the Honourable Howard McGrath. I consulted him just before I left as to the wisdom

[1]) Lecture given on Wednesday, August 16, 1950 at 9 A.M. in the Hall of Knights, Binnenhof. Chairman: Mr. Bates.

and propriety of coming to this conference in view of the tasks America is facing in carrying out in Korea the edict of the United Nations. He told me that he thought I should by all means participate in the conference because he thought that even amid these anxious moments we could profit much from exchanging ideas with those from whom in the past we have drawn so much strength. I am very happy, therefore, to extend to you his very cordial and warm regards.

Federal Prison System. In thinking of the Federal Prison System you must be sure to distinguish it from that of the various States. Our country is a confederation of sovereign States each of which has its own law enforcement machinery, its own courts and its own correctional systems. In addition, the central government must enforce certain laws necessary to its own maintenance and for the promotion of the general public welfare. A person, for example, who counterfeits the currency can be tried only in the Federal courts and be committed only to a prison run and operated by the central government. Likewise, a person who refuses to pay taxes to defray the cost of maintaining the Army and Navy, etc. is apprehended and convicted only by the central government. In addition, certain specific powers have been delegated to the central government by our Constitution. Some of these like the late statute prohibiting the sale of intoxicating liquors carried penal provisions.

Historically, however, the system of Federal prisons developed slowly. At first the few prisoners who violated Federal laws were boarded in State and county institutions. As late as 1890, when construction of the first Federal prison was authorized, there were only 1252 men and women in custody who had been convicted of violating Federal statutes. After the turn of the century the Federal law enforcement activities came to be more important. As a result, the first United States Penitentiary was completed at Leavenworth, Kansas, in 1905. At about the same time a similar insitution was opened at Atlanta, Georgia.

Although the number of Federal prisoners continued to increase and many of them had to be boarded in State prisons, no additional Federal prisons were built until 1924 when an institution for women and a reformatory fo young men between the ages of 17 and 30 years were authorized. These institutions, however, proved entirely inadequate to handle the increasing number of Federal offenders.

The greatest influx of prisoners occured in the middle twenties as a result of the enactment and enforcement of the act to prohibit the sale and transportation of intoxicating liquors. Without outlining for you the many difficult problems connected with the enforcement of this act let me say that one of its results was a tremendous overcrowding of the prisons of the central government. By 1929 it was recognized that the Federal Prison System required a complete reorganization and Congress after a sweeping investigation enacted a series of laws to correct the situation.

The Director of the Federal Prison Bureau at that time was the able Chairman of this morning's meeting and your President, Mr. Sanford Bates. Under his leadership an act to reorganize the administration of the prison system of the central government was approved by the Congress and by President Hoover. This act was of great significance because it laid down for the first time certain fundamental principles. It was due to Mr. Bates' leadership, his great ability to comprehend and make clear the broad picture, his conviction that prisons could provide adequate protection of the public only through the rehabilitation of the offender, that fundamental changes in the approach of the United States Government to its prison problem were brought about. For instance, the legislation reorganizing the Federal Prison System included a broad statement of policy which has provided the basis for the development of a single integrated system of penal institutions. It is as follows:

> It is hereby declared to be the policy of the Congress that the said institutions be so planned and limited in size as to facilitate the development of an integrated correctional system which will assure the proper classification and segregation of Federal prisoners according to their character, the nature of the crime they have committed, their mental condition, and such other factors as should be taken into consideration in providing an individualized system of discipline, care and treatment of persons committed to such institutions.

In the past twenty years, the Federal Prison System has consistently moved toward the objective of providing an institutional programme sufficiently diversified and with enough special purpose institutions to permit the effective handling of all types of offenders. In implementing the mandate of the Congress, provision has been made for habitual criminals in close custody penitentiaries; the more hopeful rehabilitative prospects are placed in institutions of medium

security; the young reformable offenders are sent to reformatories. So-called correctional institutions have also been constructed to house men with relatively short sentences who present no serious custodial problems and open camps and institutions for men requiring little or no custodial restraint.

Early in the history of the Bureau, the necessity was seen for removing from the larger penitentiaries the vicious, intractable offenders who were desperate escape risks and who were a constant threat to the well-being and adjustment of other inmates. Some of these offenders had figured prominently in the wave of gangsterism and kidnappings of the late twenties and thirties. This led in 1933 to the acquisition from the War Department of the United States Disciplinary Barracks at Alcatraz Island, California, and the remodeling of that institution to provide a maximum custody penitentiary for the civil branch of the central government.

Meanwhile, the population of Federal institutions continued to mount and the problems of overcrowding were acute. This situation prompted the President, on June 21, 1937, to allocate to the Bureau, from funds available to Public Works Administration, $ 12,905,000 for construction of additional institutions and expansion of existing plants. The regular appropriation of the Department of Justice made available additional $ 1,350,000 for construction. With these funds a number of new institutions were constructed.

The Federal Prison System now includes twenty-five institutions for the care and treatment of Federal prisoners ranging from the most desperate and intractable to the most hopeful teen-age delinquents.

Types of prisoners. Distributed among these institutions which span the length and breadth of the United States are a number of different types of offenders. They vary of course not only in character and mental and physical make-up but according to the kind of law violation they have committed. For example, one of the largest groups are those who still manufacture intoxicating liquor illegally. The tax on spirits in the United States is very high and it is therefore quite profitable to manufacture whiskey, particularly, and sell it without payment of the tax. These so-called "bootleggers" operate mostly in the remote mountain areas. They construct small distilling plants and the whisky thus manufactured is smuggled into towns and cities and sold clandestinely far cheaper than the spirits

manufactured in legitimate plants. For the most part the men who commit these offences are otherwise law abiding citizens and usually allege that they must resort to these practices because of the economic conditions under which they live. Most of them are poor and destitute and believe they have no other way of making a living. As a group they are not difficult to handle in prison and are ordinarily committed to open institutions or camps.

Another large group in our institutions are young men who steal automobiles in one State and transport them into another State. This interstate transportation of stolen property then becomes a Federal offence and the person when convicted is committed to an institution of the United States Government. Of course the States also have a number of prisoners who have stolen automobiles but did not transport them out of the State in which they were registered.

It is difficult, I know, for persons not intimately familiar with the United States Government to understand why there should be this overlapping of jurisdiction and it can be understood only after one has studied the complicated nature of our democracy with its many checks and balances. But however that may be, the fact is that large numbers of young boys come to our institutions for taking automobiles belonging to others and rushing off with them across the country to some Eldorado that they envision. Most of these young boys are from broken homes, frequently are rebellious and quite serious behaviour problems.

Another group we receive are men and women who forge or utter securities and checks belonging to the United States Government. A few of these are skilful and notorious fraudsters but many of them are ignorant people coming mostly from the slum areas who steal these checks and obtain their value from tradesmen.

Then we have a few notorious bank robbers, gangsters and kidnappers. The notorious bandit and gangster Al Capone was sent to a Federal institution not because he was convicted of the numerous crimes of which he was undoubtedly guilty but because he refused to pay the taxes on his ill-gotten gains.

We also receive a number of men and women who illegitimately and abusively use narcotic drugs. These persons are committed to separate hospitals and every effort is made to cure them of their addiction.

Then in addition there is a large group of prisoners who commit

offences on Federal property or sabotage our defence or refuse to join the Army or commit serious felonies while members of the Army, Navy or Air Force.

Classification. The first thing that must be done, of course, with so many different types of prisoners is to put them in different categories according to their age, their character, their mental condition, the length of their sentence and so forth. This we call classification.

But the term classification, as now used in Federal correctional administration, means far more than the separation of prisoners into types. It is a process through which offenders, their backgrounds, abilities, and economic, social and physical handicaps and problems are studied and a programme devised looking toward the correction or elimination of the factors which may have contributed to their delinquency or criminality. The major defects of prison rehabilitation programmes of the past have been the lack of co-ordination and the failure to provide the special programmes each prisoner needs. The present Federal classification programmes, which was formalized in 1934, was devised to meet these needs.

By statute all Federal prisoners are committed to the custody of the Attorney General, rather than to specific institutions. Classification begins with their commitment to the institutions most suitable to their requirements. After arrival at the institution, the inmate is placed in a separate quarantine section for thirty days, during which he is examined and interviewed by the various staff officers, including the physician, the psychiatrist, psychologist, educational and vocational supervisors, the case worker or parole officer, the chaplain, and a representative of the custodial force. On the basis of these interviews and examination, together with reports from the Prosecuting attorney, law-enforcement agency or police, the Federal probation officer, and other reports, a case summary or admission summary is prepared. This summary embodies all significant information known about the offender and furnishes the basis for determining what programme may be expected to benefit him most, as well as what precautions will be required in supervising him while confined.

By the end of the thirty-day period, the case is presented to a staff conference, or the Classification Committee. After a tentative

programme has been decided upon, the inmate is called before the committee and his work assignment, educational and training programme are discussed with him. To be effective, it has been found that, insofar as possible, the inmate should accept the programme decided upon. The decisions of the committee are then placed into operation and cannot be changed in any major respect without referral back to the committee.

The classification reports are of value not only to the institutional authorities in making decisions concerning the inmate, but also to the Board of Parole in determining if and when he should be released, to the central office which must decide on whether he can or should be transferred or some action taken in his case, and to the United States probation officer who will supervise the inmate after release.

The classification programme is therefore the hub around which all institution activities revolve. It is the best assurance yet developed that the treatment and training facilities will be utilized realistically in the individual case.

Treatment Programme. To make this classification work we must, of course, have means for measuring the reaction of the inmate and testing his responses to the various opportunities that are provided for him. That means that the prisoner is assigned first of all to quarters of a type selected on the basis of security risk, and his ability to get along in a group situation. He may live in an inside cell, a single outside room, or a dormitory or barracks. Unless assigned to a special educational or vocational training programme, he will be expected to do a full day's work. The work activities of the institution resemble in many respects those of the community. There is work connected with the feeding and clothing of inmates, work connected with the maintenance and repair of plant, work in the farms and gardens, work in the industries manufacturing shoes, or textiles, or furniture, or processing food for government use. Whatever the character of these work activities the man will have some opportunity to learn not only good work habits but the skills which can make him a more productive worker in the community.

He will also have an opportunity in most instances to attend classes, either to brush up on academic subjects, or if he had the capacity, to study more technical subjects such as radio, Diesel

engineering, the machinist trade and many others. If he wishes he may take college extension courses by correspondence, or some of the technical courses offered by the larger correspondence schools.

Evenings may find him on the recreation field taking part in an intramural athletic programme or in the offices of the institution magazine editing copy, or attending a forum conducted by visiting lecturers from the outside community. If he has been an alcoholic, he may be attending one of the meetings of the institutional Alcoholics Anonymous society; or he may be attending a class in religious education conducted by the chaplain, or reading one of the many thousands of books to be found in the library. About once a week he will see a movie. Occasionally a group of entertainers from the community will put on a show in the auditorium. On Sundays, if he wishes, he may attend Mass or Protestant services or perhaps sing in one of the church choirs.

Our aim is to fill his day with interesting activities – activities which have been organized for the specific purpose of reshaping his attitudes and developing his faculties in the direction of social usefulness. But in the background of these activities there will always be a degree of regimentation. Regimentation in moving from quarters to work, from work to the dining hall, from dining hall to quarters. At regular intervals, day and night, he will be counted. Constantly his activities will be supervised to assure his security and safekeeping. In the midst of all of these activities he will be lonely and long for the sight of family and friends and for the friendly sounds of a free community.

He will be subjected also to the necessity of complying with a number of regulations which are required for the protection of the security of the institution. Each prisoner upon admission, for instance, provides us with a list of people with whom he wishes to correspond and whom he wishes to have visit him. We check this list to see that they are who they purport to be and are reasonably reliable individuals. We encourage a man to write and keep in touch with his family and friends but we do not permit him to correspond with his business associates where the sole objective is to give instructions as to how his business affairs should be managed. We insist that the prisoner divest himself of active participation in business. We permit him to do whatever is necessary to protect and husband the property and business he had at the time he came into the institution but do

not permit him to do anything to continue as an active operator, so to speak.

Sometimes of course an inmate refuses to comply with these regulations, quarrels with his fellow inmates and otherwise becomes a disciplinary problem. In the Federal System we do not permit the use of corporal punishment under any circumstances. We depend more upon depriving men of their privileges than we do upon punitive measures. If he violates the rules we deprive him of the opportunity of seeing the moving pictures or participating in athletic events in the yard, etc. One of the things, incidentally, which amazes most of our European visitors is the extent to which prisoners are free to engage in athletic events and sports. We believe full participation in group programmes of any kind helps men and women to learn to work together and stimulates development of healthy minds and attitudes. Also, they are surprised by the freedom of movement which is extended to prisoners in the Federal system. We have found that it is not necessary to keep a prisoner under constant surveillance and that it promotes his rehabilitation and strengthens his confidence and self-respect to permit him as much liberty and freedom as possible.

So through a process of trial and error over the years we have found that many of the restrictions formerly imposed upon prisoners could be removed with salutary results. One of the most interesting experiments, incidentally, that we have undertaken in the Federal Prison System is the development of a new type of institution which I have described in a paper I have prepared for this conference on Open Institutions. I hope you will find it interesting because I believe that we are just beginning to realize the extent to which prisoners may be housed in institutions differing from the traditional walled prison.

Release Procedures. But rather than go into that in detail I think I had better tell you something about methods of releasing men from the Federal institutions. Some prisoners are of course released because they have completed the sentence pronounced by the court. These men go out without control or supervision. Others are released at a time somewhat earlier than their maximum term because they have earned remission by good conduct or hard work or for some outstanding service. Then others are released by parole. In the

United States prisons a prisoner becomes eligible for consideration for parole, or "ticket of leave" as the English would call it, after he has served one third of his maximum sentence. The American concept of parole is not leniency or clemency but it is viewed as a means of returning the offender to the community under conditions best suited to his rehabilitation. Also essential to our concept of parole is that the released offender be given assistance, guidance and supervision in that difficult period of transition from institutional régime to life in the community. Approximately 40 per cent of the prisoners in Federal institutions are released provisionally on parole. Some of these men of course do not live up to their conditions and are returned to the institution as parole violators. The percentage of those who do not live up to the conditions of their parole varies according to a number of factors but it now runs about 25 per cent. However, only about 8 or 10 per cent commit other crimes while on parole. Most of those returned as violators are sent back because they will not work, will not support their families, because they use intoxicating liquor or refuse to abide by some condition of their parole. All in all, however, parole has been found to be the safest and most intelligent method ever found to release law violators.

Pre-release Programme. In this connection you might be interested in our pre-release programme. In a number of institutions we have established pre-release units where the men about to be released live together under conditions approaching more nearly those in the community. Discussion programmes have been established in which every conceivable subject affecting their community adjustment is considered. These include not only the conditions and responsibilities of parole, but problems relating to employment, how to apply for a job, what the employer expects of an employee, family responsibilities, budgeting income, leisure time and community activities of various types. One of the encouraging and important developments in this programme has been the interest which socially-minded citizens have taken in it. Persons from all walks of life – employers, employment agency representatives, representatives of labour, bankers, ministers, and others – have come to our institutions to spend an evening in informal discussion of problems with the men who are soon to re-enter society.

Conclusion. To conclude this general outline of the Federal Prison System I would like to say a word or two about our objectives and hopes. How to strike an equitable balance between society's instinctive need to punish for criminal behaviour and how to bring about the rehabilitation of the offender poses many problems. Changes in the methods and philosophy underlying the treatment of crime, have reflected changes in the cultural pattern and the values of groups as well as nations. As Winston Churchill once said:

> The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country.
>
> A calm, dispassionate recognition of the rights of the accused, and even of the convicted criminal against the State – a constant heart-searching by all charged with the duty of punishment – a desire and an eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment; tireless efforts toward the discovery of curative and regenerative processes; unfailing faith that there is treasure, if you can only find it, in the heart of every man – these are the symbols which, in the treatment of crime and criminal, mark and measure the stored up strength of a nation and are a sign and proof of the living virtue in it.

It cannot be disputed that flogging, mutilation, branding, striped clothing, the silent system, we in America believe, have resulted only in the degradation of the human personality and are inconsistent with our present concept of human values and the dignity of the human being. It has become almost axiomatic therefore that the focus of prison administration must be centered on the individual and on the study and interpretation of his behaviour. The only justification for imprisonment is social protection and the prime justification for the prison is correction.

Through developing further the individualized approach to the treatment of the offender, through the use of modern science and psychiatry, through the development of more open institutions, by challenging the community to assist the discharged inmate, our work, we believe, can continue to be stimulated and improved.

Certain it is that we must develop and preserve the human values that are entrusted to our care. In America and in all democratic countries life is not cheap, nor are man's ambitions to be frustrated. We believe that even in prison a man has certain fundamental rights and dignities which we must preserve. We must learn over the years how to understand the prisoner better and how to develop his inherent

worth. We must also do our best to offset the vindictive attitudes of the purely vengeful members of the social order. It is organizations such as this that must give meaning and guidance to the belief that there is no problem which arises from the fact that people must live together harmoniously that cannot be solved by the thoughtful, considerate and understanding effort of those same people. You will perhaps recall that Solomon when he was asked by his master what it was he most desired in this world pleased him by asking not for power, nor for riches, but for an understanding heart. Our aim is to gain truly understanding hearts so we can approach the goals that have so long undergirded the rich traditions of the International Penal and Penitentiary Commission.

Thank you and please come to see us.

Security Measures Appropriate to a Humane System of Social Defence [1])

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The International Penal and Penitentiary Commission has kindly asked me for a lecture on the measures which are appropriate substitutes for punishment, taking into account the necessities of a humane social defence. This is an honour of which I am personally very conscious, but it is a rather fearful honour for several reasons, the first of them being the very quality of the audience I have been called to address. Another reason for my embarrassment – undoubtedly the most important one – is that this lecture was originally to be given by Mr. Karl Schlyter, for whom all the members of the IPPC, all the participants in the Congress and I personally feel an affectionate admiration and who is better than anybody else qualified to present this delicate question to you. A last reason for my hesitation dwells in the importance of the subject itself, which requires for its adequate treatment not one but several lectures and of which I can only give you the broad outlines.

The character of the specially enlightened audience that is listening to me will fortunately permit me to moderate this presentation by assuming your familiarity with a certain number of ideas which have hitherto been frequently discussed. Furthermore, we shall not take up the old controversies about the distinction between punishments and security measures nor speculate again on whether such measures should be substituted for punishment or merely complement it. This problem has been treated many times and was in particular subjected to careful scrutiny on the occasion of the congress of the International Association of Penal Law in Brussels in 1926. Nor is it

[1]) English version of Lecture given in French at 9 A.M. on Friday, August 18, 1950, in the Hall of Knights, Binnenhof. Chairman: Mr. Hooykaas.

a question of finding the security measures that are most likely to win the battle against criminality, or of enquiring how they may be classified or systematized. The International Prison Congress at Prague, in 1930, attacked this problem which has been taken up again by a special subcommittee of the IPPC, on whose behalf I had the honour to present a report a few days ago. It would certainly be useless to pretend to dispose of this problem during a single lecture and still more useless simply to display a few security measures, which would necessarily have to be looked at superficially, before congressists who know them perfectly. The justification for the present communication can lie only in placing the problem in a new light, thanks to the idea stressed by the very title — the idea of a humane social defence, the need of which is now imperious, and which no truly modern system can leave out of consideration.

Hence, the method to follow in the course of this lecture is clearly settled. We must, in fact, successively establish, first, what the requirements of a humane social defence are and of what they consist, and second, by what practical means it would seem possible to meet the requirements so defined.

To speak these days of a humane social defence is neither an empty formula nor a simple linguistic device. The idea of social defence which was so alive at the beginning of this century, when it had found eloquent and convinced promoters in Liszt, van Hamel and Prins, seems to have been put in the shade a little during the very period, when, curiously enough, it has been introduced into positive legislation. But to-day, after the second World War, it shows a definite revival. Two congresses of social defence, held in 1947 and 1949, have recently demonstrated it. Other congresses are in preparation, and an International Society of Social Defence was founded at the end of the Congress in Liege in October 1949, in order to place a firmer stamp on this new doctrine. It is no accident, besides, that when the United Nations Organisations decided to take the leadership in directing the battle against criminality under the two aspects of crime prevention and the treatment of offenders, it confided this task to a new section entitled the "Section of Social Defence." These various events are, furthermore, only the almost simultaneous manifestations of a general reform movement noted in Belgium, as well as in Italy, France and the Northern countries, which is reflected in theory, legislation and penitentiary practice.

It would undoubtedly be wise to define this new "social defence", which is no longer quite the same as that of which Prins in 1911 stressed the necessity in a book that remains famous. The new social defence is, in fact, essentially a humane social defence, and that is a point which it is not useless to emphasize a little.

At first, social defence was indeed, rather rigidly as the words themselves indicate, the defence of Society. Above all, it was to hinder the offender to cause injury by assuring the protection of the innocent mass of decent people. This conception, during the last years of the nineteenth and the early years of the twentieth century, certainly took issue with classical penal law, especially in that it again brought the insane criminal, irresponsible but eminently dangerous, within the domain of the penal law. But this conception was still largely repressive and to become convinced of it it was enough to fall back on certain claims made by the positivists of the late nineteenth century. For instance, Garofalo, in approaching the study of his rational system of punishment, placed as motto at the head of his analysis of the subject the following significant phrase : "In social life there are not only duties of leniency". We know, besides, that he did not hesitate to advocate the death penalty, a measure of absolute elimination, for socially unassimilable serious criminals. Without going to that extreme, the earliest measures of social defence were indeed essentially eliminatory, whether it was a question of French transportation, life internment of recidivists through American laws of the *Baumes* Act type or of deportation to the southern regions in the Argentine penal system. In all these hypotheses, an effort was made to construct a strict system still largely based on the idea of intimidation and in which social defence hardly entered except to remove all relationships between the last offence committed and the sanction attached to it. Gradually, as security measures were introduced into positive law and penitentiary practice, ideas became more modified. The idea of active protection, completely oriented to-ward the social recovery of the individual offender, was substituted for the idea of what one might call the passive protection of society. This individual offender, however, was no longer the "criminal man" in the Lombrosian sense of the term, i.e. a person stamped by a kind of inexorable fatality and ordinarily finding himself destined to be excluded from society. It was a man like other men, having like

them the same rights with respect to society itself and to whom the latter should apply the most appropriate social treatment.

It is thus and so that social defence has become or has again become humane, and it is thus it has affirmed its new needs which may be ascertained both in its starting point or foundation, in its goal, that is, its objective, and lastly in its methods and its spirit.

At its starting point, the new social defence rests above all on knowledge and understanding of the offender's personality. It is therefore far removed both from the *homo criminalis* of classical penal law, i.e. the national standard person, master of his actions and sensitive to personal punishment as well as to collective intimidation, and from the *uomo delinquente* with characteristics once for all defined and easily, though scientifically recognizable. Social defence has been enriched by the great movement for the individualization of punishment that marked the last century and by all the criminological researches of the preceding century which, from criminal typology, in the sense which for instance *Saldaña* used it, to classification in the sense used by American penologists, have tried to find in each offender the characteristics proper to his personality.

As to its objectives, it has pursued no less humane ends. It no longer tries to safeguard social welfare by sacrificing the individual, even the criminal by a brutal and pitiless segregation of those deemed unreformable. It has assumed that individual prevention is often more important than general or collective prevention, which furthermore always remains hypothetical. To-day, social defence tries above all to secure a social re-adjustment which assures the recovery of the offender and which, here too, does not and cannot take place except in terms of the possibilities of this human personality.

Finally, the new social defence is humane both in methods and spirit. Its methods, to which we can give no special attention here but which would certainly merit careful study, are revealed in these essential words: observation, classification (i.e. diversification) and re-education. But, from the point of view of a humane social defence, the methods are validated only by the spirit in which they are applied. The work undertaken is above all one of social aid, which assumes that judicial individualization is followed by a very extensive individualization of treatment and constantly pursued with a respect for the human personality. Indeed, it is no longer a question of degrading or humiliating the offender in order to compel him to

repent, but on the contrary to restore to him the feeling of personal dignity which he has misunderstood.

Such are the needs of social defence and the exigencies of a theory which wants above all to be effective. All these points would merit lengthy elaboration, but it is enough to point them out before proceeding to enquire, in the light of the fundamental principles thus stated, how, side by side with repressive measures, one can try to meet what has been called the imperatives of a humane social defence.

Before passing on to the enquiry proper concerning the measures designed as substitutes for punishment in a system of humane social defence, we need to understand exactly the nature of this problem, which I have the honour to deal with before this Congress. Two observations seem indispensable to me in that connection, one of a comparative and the other of a legislative character.

From a comparative point of view — and without taking up the old problem of the substitution of security measures for punishments — I would say that in modern systems one notes an increasingly clear tendency to use social defence measures instead of older punishments. In this connection, the evolution of security measures has been significant. When they first appeared, security measures accompanied and usually even followed upon the execution of the punishment, and this rule was as true for the French transportation of 1885 as it was for the English preventive detention of 1908. The new system generally consists in permitting the direct imposition of a security measure without giving any heed, in principle, to the view-point of repression. This, for instance, is the meaning, with regard to preventive detention, of the reform introduced by the Criminal Justice Act of 1948. This is also the meaning of the Swedish act of 1937 by comparison with the earlier act of 1927, and finally this is the meaning of the elimination in France, by decree of February 2nd, 1945, of the question of discernment "for juveniles, to whom henceforth only re-educational measures may be applied". Thus we have passed from a repressive level to the level of protection and social assistance.

From the point of legislation, with reference to the positive organization of a coherent system of social defence, it will be noted that the measures should essentially be individualized and that, therefore, they should be set up with regard for the diverse classes

of offenders for whose treatment they are designed. There is no question here of taking a position on the delicate problem of the classification of offenders into distinct criminological categories, nor of attempting to list the categories which positive legislations have adopted in so far as security measures are concerned. Nevertheless, the careful study of security measures now in use leads one to observe that all positive legislations set apart more or less the offenders, who should be subjected to a curative measure, those susceptible of re-education, properly speaking, and, finally, certain offenders, usually petty ones, in whose case the security measure is mostly designed to avoid, as much as possible, the imposition of a prison term, especially a short one.

Now, many of these offenders, especially those of the first category are already, of course, undergoing measures of internment or detention. These measures are as inevitable for the criminal insane as for serious recidivists. Here the problem is not one of substituting a measure of treatment in liberty for the actual punishment but of transforming the latter in such a way that the internment becomes curative or re-educational instead of simply segregative or punitive. The question then pertains, at least in the area of positive realities, much less to the theoretical modification of the measure as to terminology or legal definition than to its internal transformation at the level of its manner of execution. The urgent problem consists of the establishment of enough institutions, diversified and organized to assure an effective social treatment of these categories of offenders by a personnel, social collaboration and scientific facilities apt to realize these aims. The ultimate aim in view, through collaboration between medicine and law and the socialization both of penal justice and of penitentiary practice, consists of transforming the old internment measures even more, rather than substituting new measures for them. This aim will primarily be reached by having the services and organs charged with penitentiary administration take cognizance of the needs and exigencies of social defence. In the necessarily brief time at my disposal I shall therefore leave aside the internment measures based on the segregation of individuals, who have to undergo a long internment due either to their mental state or their criminal record. Whatever is done, this internment, especially of habitual offenders, will for some time to come retain, at least externally, a largely repressive aspect and an intimidating value. Not

being able to examine here in detail the necessary transformation of security internment into re-educational internment, I shall be content in my remaining comments, to consider the other categories of offenders for whom we are more and more trying to institute a certain number of measures to replace detention and to achieve what, in the case of juveniles, one to-day customarily calls re-education in an open environment.

These are the measures which remain to be examined before we close, for they are the ones which can be truly said to be used exactly "instead of punishment". But it is important – still at the legislative level – to understand clearly that in a coherent system of humane social defence internment measures and measures of re-education through treatment in liberty should both rest on the same foundation. Both should harmonize in a public policy toward offenders, which is resolutely oriented in accord with the exigencies of a humane social defence.

With these remarks as reservations we may be permitted to assume that the new measures designed, I repeat, to avoid punishments that curtail liberty, may be sought in these different directions and, since it is precisely a question of humane social defence, depending on whether man is regarded from the point of view of his physical or bio-psychological constitution, his personal liberty, or his social conduct.

Just to remind you I shall mention the measures devised in terms of the physical, mental or bio-psychological constitution of the offender. We would then range from the simple disintoxication cure applied to alcoholics or narcotic addicts to the complete internment of the insane and even, if one approves such measures and regards them as compatible with human dignity, to the castration and the sterilization of certain offenders.

If one envisages the measures taken with reference to personal liberty, one would range from security internment and re-educational internment, already mentioned, and measures limiting freedom, such as residence prohibitions or the expulsion of foreigners, to the bond of good conduct and even the fine (to the extent that the fine can be regarded as not merely a financial punishment but as an organic measure of social defence) and, finally, to the various forms of conditional freedom of which probation is the best known.

Finally, if one looks at man from the view-point of his social

conduct, one could establish a system of social defence measures that would affect him either at work or during his leisure time. In certain instances the measure might consist in an obligation to perform such or such a task; this is in fact sometimes one of the conditions of probation. More frequent yet, it might consist in a prohibition against engaging in such or such activity, whether this involves the profession of the banker, the merchant, the accountant or the teacher, for instance. Other measures might be directed at the leisure time of the person. Sometimes it would be of a somewhat passive type and would consist essentially in a prohibition against frequenting certain places of amusement: saloons or racetracks, for instance. It could also be active and involve an obligation to devote a part of the person's free time to undergo an appropriate treatment or frequent such and such an institution. The system of week-end imprisonment (the *Freizeitarrest* of the German law of 1943) and the attendance centre of the Criminal Justice Act of 1948 are typical examples of similar measures, the multiplication of which, especially with regard to juvenile delinquents, may be expected in future legislation.

This is, in brief outline, the general picture of the social defence measures based on the study of the personality of the offender and taking into consideration the exigencies proper to the respect for human dignity. It is obviously not a question of reviewing them in detail; it is enough to enumerate them to see once more that, in addition to internment measures properly speaking (and sterilization measures too), the needs of a humane social defence in reality primarily point to the organization and development, in a modern penal system, of three essential measures on which, in closing, I would like to make a few comments, namely : *mise à l'épreuve* or probation; the fine as punishment transformed into a measure of social defence; and the various prohibitions or interdicts, the recent flowering of which is in many ways one of the characteristics of contemporary criminal law. It is certainly not to the members of the Twelfth Penal and Penitentiary Congress that it would be proper to explain how one should define probation. Therefore, there would be no point to an examination here of the various problems raised by this institution. If, however, I regard it as necessary to give it special mention it is because, among the social defence measures designed to take the place of the old punishments, it undoubtedly occupies the place of

honour. There are quite a number of difficulties in assigning the proper place to probation in comparative law, i.e. in the economy of the various legal systems now in force. Even the definition of probation raises some controversies. As general rapporteur at another congress I recently had the occasion to try to place it within the more general framework of an institution which is broader, namely the *mise à l'épreuve*.

I do not intend to raise these various problems here. I shall merely mention that comparative penal law, to the extent it obliges us to pin down existing institutions in their inter-relationships, permits us to take note of the full importance, and especially of the expanding power of probation. It is significant that probation might be studied either from a legal or a social point of view or from the point of view of re-educational therapy. It is also significant that a complete idea of the institution cannot be acquired except by those who have engaged in this triple study. The result is that, at a moment when penal and penitentiary ideas are in a marked process of evolution, probation presents the advantageous characteristic of being in tune with a movement of thought which is trying to liberate penal reform from a too narrow legalism.

Looked at from this view-point and freed from certain purely technical legal controversies that are of no importance for the moment, one may admit that probation presupposes altogether a suspension of the penal measure originally incurred (whether it is a question of a suspension of the execution or of a suspension of the imposition of the sentence), supervision and even organized constructive assistance, and, finally, a very intense individualization which is noticeable both in the choice of the probationer and of the probation officer and in the active and necessary participation by the offender in his own re-adjustment, in accord with the conditions set by the judge in each individual case and always modifiable. Viewed in this manner, probation appears essentially as a typical means of humane social defence having as its primary object to save the offender from a punishment that deprives him of freedom. The success of probation in Anglo-American countries has already shown of what developments it is capable. The supervised liberty adopted by the Latin countries for minors and in some exceptional cases for certain adults is in many respects nothing but an adaptation of the probation system. The Scandinavian countries, which here again are found in the front line

of a progressive evolution in penal matters, have on the other hand adopted probation in order thus to revivify the system of conditional sentences. In years to come one may expect to see probation, or to be more exact perhaps, the institution of *mise à l'épreuve,* to play an increasingly great rôle in the treatment of offenders and the prevention of recidivism.

Everyone is undoubtedly agreed on this point; among the measures of social defence destined to replace the old punishments, no one is certainly astonished at seeing probation at the head of the list. Some of those who are doing me the honour of listening to me are more likely to be astonished at finding the fine in that list. An extension of pecuniary penalties is, no doubt, generally suggested by those who seek to avoid short prison terms. But in this desire expressed by many criminalists there is nothing but a concern for seeing a non-institutional punishment substituted for a prison sentence. The partisans of this reform are generally the first to say that a well computed and well applied fine has a chance of being more efficacious and more certain to strike the offender than a short prison term, which furthermore is socially harmful. The punitive point of view and a concern for intimidation remain, therefore, as a basis for this reform.

However, comparative penal law can give some useful pointers of a legislative order here too. The penal law of the twentieth century has already witnessed a transformation of the fine as punishment. In many legislations it has lost its rigid character, which naturally was unjust because it struck in unequal measure the rich and the poor, and modern statutes have on this point tended to give the judge a greater discretionary power and hence a power of individualization. We have also been able to note that modern legislations have quite happily reacted, from a social viewpoint, against the old system in which, in case of default in payment, a commitment automatically transformed the pecuniary penalty into one of imprisonment. England, by acts of 1914 and 1935, and Sweden, by an act of 1931, show notable instances of desirable provisions on this point by granting delays to the well-intentioned offender and by an almost complete suppression of automatic commutation. Sweden, who must again be cited as the standard-bearer of social defence, has been particularly enlightened in working out its *dagsbot* (day-fine) system, according to which the fine is computed in relationship to the amount which the offender

can give up daily without a risk of his or his family's falling into misery or want.

Now, it would seem that it is here that an extension of the system would appear possible in the direction of a humane social defence. The fine thus understood really implies a continued effort of indemnification on the part of the offender himself. We are not prevented from imagining that still better results might be derived, if one thought of attaching to this prolonged fine a system of supervision and assistance for the individual punished. A fine so modernized and implemented by a supervised obligation to work would thus fit into an enlarged system of *mise à l'épreuve,* side by side with and related to probation. We probably have here an institution which will develop in the future.

A final point, which I would like to stress with reference to the new social defence measures destined to replace punishment, concerns the various prohibitions or injunctions which may be imposed on the offender more and more widely in modern penal laws. Here again we have legislative provisions which easily allow a comparative analysis of legislation in force. Our century, for that matter, whether we regret it or not, is indeed one of paternalism. More and more the legislator thinks that it is not possible to leave the rehabilitable offender to himself, his imagination or his free will. Therefore, we notice the entrance and multiplication in contemporary law of more and more prohibitions which tend to replace old punishments. Of the numerous countries where we find licences for automobile drivers, each tends to think that it is better for public safety and even for the tranquillity of the holder to cancel, temporarily or permanently, the licence of a reckless driver rather than to sentence him simply to a fine or to jail.

The organization and the control of occupation promote even more certain measures which may be characterized as of an administrative-penal character and which annually crop up with increased frequency in contemporary economic legislation. These measures, which range from specific confiscation to the closing of establishments, are in reality (French jurisprudence has not deceived itself in this respect) security measures and not punishments. They often are accessory to short and rather illusory prison terms. Were they better organized, thye would certainly replace these terms to advantage.

At the same time, modern statutes are seen to make more and more frequent use of injunctions or new obligations that are this time of a semi-disciplinary character and which, in certain respects, remind us somewhat of the sanctions now in use in schools or military barracks. The English attendance centre of the Criminal Justice Act of 1948 suggests rather well the idea of school or military "confinement" (*consigne*). We can here imagine that we are in the presence of an expression of a legislative trend which is destined to develop in the future and which aims, also, at substituting an educational measure – which is not entirely deprived, besides, of an intimidating character – for old and simply punitive sanctions. It only remains to take care that the punitive point of view does not definitely conquer the re-educational point of view.

In the few preceding explanations I have not tried to enumerate all the measures which would be indicated instead of punishments, keeping in mind the needs of a humane social defence. I have tried rather, in the light of modern experience and the evolution of contemporary legislation, to disengage the directions in which it would seem possible to look for a solution of the problem before us. In closing I shall remind you of the fact that this problem consists in devising a system of social defence which truly protects the national community and is founded on the individualization of the penal measure and on respect for the human personality. From the data I have already presented it would also seem clear to me that this substitution of social defence measures for punishment will be done less by the elimination of certain punishments and their automatic replacement by security measures than by the integration of new devices in a system animated by a public policy of social defence.

In any case, furthermore, the measures in view will not end by a complete elimination of punishments and not even of short prison terms. There are at least two reasons for this which we must discuss briefly.

The first is that many of these new measures, as I have just said, consist of prohibitions or in obligations imposed on the offender. Now, these prohibitions and injunctions naturally are not imposed except in conjunction with various sanctions that might be fines, probation on more severe conditions and, finally, when the one or the other of these has been found inadequate, punitive

imprisonment itself. Modern juvenile delinquency legislation, which is so characteristic of the tendencies of social defence, is an illustration in point. One might say there is no legislative system which has entirely abandoned the idea of eventually applying penal sanctions to minors. There are, at any rate, none where the minor or the juvenile delinquent cannot, in certain cases, be subjected to a measure or internment, whether in a *prison-école* or in a Borstal.

A second reason will for a long time counteract the complete disappearance of short prison terms. There is, in fact, a whole category, and perhaps even several categories of offenders for whom the punishment of imprisonment retains a certain value of social prevention. Even from the point of view of individual prevention, certain offences due to negligence, certain serious failures to observe obligations in the interest of public safety, certain special attacks on the physical individual or on honour seem as yet to demand, in a large degree, that legislation provide at least the possibility of imposing punishment privative of liberty. In such cases, the problem does not consist, then, in wanting to eliminate at any cost penalties that cannot be replaced by anything else, but to transform the old sanction by making it in turn a measure of social defence.

To this end, two objectives are necessary. The first consists in removing from short term imprisonment its character of catch-all punishment and of common currency in the routine of the lower courts. This punishment, which was formerly regarded as normal, will soon, it is hoped, assume the rare character which truly modern legislation have given it with regard to minors. In addition, these short terms must be organized in accord with new methods. A new conception of prison labour, the use of open institutions or well-organized internment camps and some trade training could give, even to short terms, an educational value or function. The *detention centre* of the English Criminal Justice Act of 1948 constitutes in this respect an experiment which it would be interesting to follow. In any case, the system will not develop in value except to the degree that it becomes part of a conscious public policy and oriented in terms of the needs, which we tried to make clear at the beginning of this lecture, the needs of a humane social defence.

Closing Session

Saturday, August 19th, 1950 [1])

Chairman : Mr. J. P. HOOYKAAS (Netherlands)

The *Chairman** [2]):

I hereby declare the final session of the Congress open, and welcome His Excellency the Minister of Justice of the Netherlands. We are very happy, your Excellency, over the great honour which you have shown the Congress by attending its closing session. You have asked me to give you the floor, and I follow your request.

Mr. *Struycken**, Minister of Justice of the Netherlands:

I am glad to make known to the Congress that it has pleased Her Majesty the Queen to express her appreciation for the important work of the Congress and of the extraordinary merits of its eminent President, Mr. Sanford Bates, by appointing him Knight Grand Officer of the Order of Orange-Nassau, by virtue of the following Royal decree :

We, Juliana, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. etc., at the joint recommendation of our Ministers of Justice and of Foreign Affairs, of August 17th 1950, have approved and agreed to appoint Sanford Bates, Trenton, New Jersey, President of the International Penal and Penitentiary Commission, a Knight Grand Officer of the Order of Orange-Nassau. This decree, a copy of which shall be sent to the Chancellor of Orders of the Netherlands, shall be carried into effect by our Ministers of Justice and of Foreign affairs so far as each is concerned.

August 17th, 1950.

1) This meeting followed immediately upon the General Assembly of the same date (see p. 475 above).

2) An asterisk after a title or a name indicates that the comments of the speaker have been translated from the French.

On behalf of the Government, I heartily congratulate you, Mr. Bates, on this high distinction.

The *Chairman** :

Mr. President !

It is a high privilege, after His Excellency, the Minister of Justice has spoken to you on behalf of Her Majesty the Queen and the Dutch Government, to speak to you on behalf of this Congress and, as the Honorary Vice-President of the Commission, on behalf of the Commission. We all know your great merits in the field of penology. These merits are known the world over. We know all the work you have done for the IPPC, and we are all very glad and very happy that this very high decoration has been given to you by the Queen.

His Excellency, the Minister of Justice, has said that this decoration is also given to you to honour the Congress. I think that all the Congress will be very glad and very happy also that the Government of the Netherlands has appreciated so much the work it has done. The Minister has also said, I think, that the honour that is done to the Congress is symbolic. But, I think that there is also another side or, possibly, two other symbolic sides to this decoration. You all know all the interest that the Government of the United States has taken in the work of these congresses and the work of the Commission. The first congress that was held in London was prepared by Mr. Wines, Secretary of the National Prison Association of the United States, at the request of the Government of the United States. Since then there have been two presidents from America. You know their portraits in the book of Mr. Teeters. They are Mr. Barrows, who was president from 1905 to 1909, and Mr. Henderson, from 1909 to 1910. You, Mr. Bates, are the last president of the Commission because the work of the Commission is to be integrated in the work of the United Nations. It is symbolic that there was an American president at the commencement and that there is an American president at the end of the Commission. In this respect, I think, the decoration that is given by the Queen of the Netherlands is symbolic to this Commission. But I think it is also symbolic in another aspect. You all know that the work of this Commission has much interested the Dutch delegates. We had first Professor Pols of Utrecht, who was for twenty six years delegate of the Netherlands to the Commission; our second delegate Professor Simon van der Aa, of the University

of Groningen was delegate of the Netherlands to the Commission forty-six years and at the same time for twenty-eight years secretary-general of the Commission. I am proud to be the successor of these two men; I think that during the second half of the life of the Commission no person has done more for the Commission and for the work of these international congresses than Professor Simon van der Aa. I think it is very nice that it is possible for the Dutch Government to give a decoration to the delegate of the American Government, because it marks the end of the Commission, as I already mentioned.

We are very happy to congratulate you very warmly, Mr. Bates, on this very high decoration.

Mr. *Bates* (President of the Congress):

Your Excellency the Minister! Honorary Vice-President of the Commission!

I can say only that I am deeply touched and gratified at the great honour which your Government, through its Gracious Queen, has conferred upon my country. We, in America, have long had deep admiration and affection for the Dutch people and this new evidence of the warm relationships that exist between us is gratifying to everyone of us. Your Excellency, Mr. Minister, I prefer to regard this very beautiful ornament, this decoration that I wear, as one which has been given to a great country, the United States of America, a country which from the very beginning has had due regard for the common man, the man in trouble, the man who needs help, even the man whom society finds need to punish, and it is a privilege to accept this as a citizen of that country. I am proud to succeed to the job carried on by my distinguished American predecessors to whom our colleague, Mr. Hooykaas, has referred. The first president of the IPPC was from my country and it looks as though the last president would be also. Again, Excellency, I must accept this honour, this decoration, in a purely representative capacity; in a second important respect I received it because I happen to be the President of the IPPC, and I accept it on behalf of that Commission and regard it as a tribute to colleagues, who through the ages have consecrated their lives to the cause of prison improvement throughout the world. Many of these intrepid men and women have gone to their reward. It has been likewise my pleasure, for more than twenty-five years.

to have worked with those still living, who are some of the most devoted, most patriotic men and women in the world, on this Commission.

I can only say, Your Excellency, that, as an individual, I am deeply moved that your Gracious Queen has seen fit to honour this distinguished group of people. And I feel confident that this is just one more indication that under whatever form or leadership it goes on, the spirit of penal reform in an international sense, so recognized here to-day will prevail and ultimately triumph over the forces of ignorance, superstition and hatred.

Again I sincerely thank you.

The *Chairman**:

I have now the agreeable task of formulating the votes of thanks of the Congress. First of all, I wish to thank most respectfully Her Majesty the Queen of the Netherlands, who kindly wished to honour the Congress by receiving its officers. I also wish to thank respectfully H.R.H. the Prince of the Netherlands who kindly participated in this reception. I am fully convinced that all those who had the high privilege of taking part in this manifestation will keep it as an unforgettable memory. I propose that we send the following telegram to Her Majesty Queen Juliana :

The XIIth International Penal and Penitentiary Congress expresses to Your Majesty its respectful and heartfelt gratitude for the great honour which your Majesty has kindly shown it by receiving the officers of the Congress in your Palace.

Signed: Honorary President: Hooykaas; President: Bates; Secretary-General: Sellin.

I propose that we send the following telegram to His Highness the Prince Royal, Bernhard :

The XIIth International Penal and Penitentiary Congres expresses to Your Royal Highness its gratitude for the honour which Your Royal Highness has kindly granted the Congress by attending the reception of the officers of the Congress by Her Majesty Queen Juliana at the Royal Palace.

Signed: Honorary President: Hooykaas; President: Bates; Secretary-General: Sellin.

(Applause)

Next, I wish to thank the Government of the Netherlands which has kindly placed at our disposal for our work the historic, as well as

magnificent hall, has furnished all necessary means for the organization of this Congress, has given us a grandiose reception and will offer us a dinner this evening.

I also wish to thank His Excellency, the Minister of Justice, who has done us the great honour of attending not only our opening session but also several of our receptions and the closing session of to-day, and who will be present this evening at the official dinner. I sincerely thank you, Mr. Minister.

(Applause)

Thirdly, I thank the Mayor and the Aldermen of The Hague who have given us a magnificent reception in the Municipal Museum of The Hague, as well as the Mayor and the Aldermen of the City of Amsterdam, who have offered us an equally magnificent reception in our national museum, the Rijksmuseum of Amsterdam. I am convinced that these two receptions will also leave ineffaceable memories, especially due to all the modern and ancient paintings which you have been able to see in the course of these events. I must also thank the motion picture firm of Tuschinsky which last night gave us a film performance. I believe that this event greatly contributed to our work, because it permitted the congressists to see things pertaining to the penitentiary field in Argentina, Chile, Switzerland, the United States and also in the Netherlands.

Fourthly, I want to thank the President of the Congress. I have already expressed myself on that subject and I suppose that you, Mr. President, are fully convinced of our friendship and admiration for you. We are sincerely grateful to you for all you have done for our work.

(Applause)

I also want to thank all the rapporteurs of the sixteen countries, who have presented a total of 134 very remarkable reports preparatory to the present Congress. I also thank the twelve general rapporteurs, who have synthesized these preparatory reports. My thanks also go to the four chairman of the Sections : Mr. Cornil of Section I, Mr. Fox of Section II, Mr. Lamers of Section III and Mr. Aulie of Section IV, for the remarkable work they have done. I include all twelve secretaries of these Sections.

I also thank Mr. Cornil, Mr. Bennett and Mr. Ancel for the lectures they have kindly delivered.

I furthermore would like to thank the entire International Penal and Penitentiary Commission. We have had numerous meetings in Berne, as well as in Paris, to organize this Congress, and I know very well all the work they have done. I would more particularly like to thank first of all Mr. Delaquis, who for eleven years, from 1938 to 1949 inclusive, was the Secretary-General of the Commission. As you know, he has been elected Honorary President of the International Penal and Penitentiary Commission. Mr. Delaquis has displayed great activity in the organization of this Congress. I have had considerable correspondence and prolonged discussions with him on this subject. I propose that we send him the following telegram:

The XIIth International Penal and Penitentiary Congress the Hague 1950, presents to you its deep admiration and warm gratitude for all your work in preparation for the Congress. Best wishes.

Signed: Honorary President: Hooykaas; President: Bates; Secretary-General: Sellin.

(Applause)

I also wish to thank very warmly the present Secretary-General of the Commission, Professor Sellin from Philadelphia. He has had an immense job to do. In fact, the Permanent Office in Berne is the centre of the Commission and no other activity could be compared to that which Mr. Sellin has had to display. He has been good enough to come from Philadelphia for a year and a half to assume the direction of the Commission's secretariat. I am fully convinced that you all think that he is a person to whom the Congress owes much and I ask you to rise and give Mr. Sellin an ovation.

(Applause)

Mr. *Sellin*:

Mr. Hooykaas, Friends!

I am deeply touched by this proof of your kindness. I simply want to thank you.

(Applause)

Mr. *Hooykaas**:

I also wish to thank very warmly the first assistant of the Secretary-General of the Commission, Miss Pfander. As you know Miss Pfander has been working with the Commission for fifteen

years. She continued her work after Mr. Delaquis' departure and she has played a very important rôle in the Secretariat of the Commission. During January of this year, she also assumed, for a while, the function of Acting Secretary-General between the departure of Mr. Delaquis and the arrival of Mr. Sellin.

(Applause)

I also wish to thank warmly Mr. Berthoud of the Secretariat in Berne for all the work he has done for our Congress.

(Applause)

I offer my warm thanks to the members of the local Committee of Organization of the Congress, who have done much work. I cannot of course mention every name, for we have had a committee and many subcommittees. I shall mention two names only. First of all, I have in mind the second delegate of the Netherlands to the International Penal and Penitentiary Commission, Mr. Lamers, Director of the Dutch Prison Administration. Mr. Lamers has taken part in numerous activities in relation to the Congress, but above all, the whole exhibit which you have seen and the film evening of yesterday were entirely organized by Mr. Lamers and should be considered as his achievement.

(Applause)

I want to thank all others who have collaborated, inside or outside the Ministry of Justice, in the work of the local committee. In this connection I want to mention especially Mr. J. D. van den Berg, who has for an entire year been working on the organization of this Congress.

(Applause)

I wish to close by expressing a wish. In the Greek legend, it is said that the bird Phoenix rose from its ashes due to the effect of the sun. I very sincerely express the wish that the work of the International Penal and Penitentiary Commission will rise from the ashes of the Commission through the effect of the sun of the United Nations.

Mr. *Bates*:

I am sure you will agree with me that it is about time that some of those votes of thanks were turned toward the man who is giving

The Secretariat of the Local Committee preparing the Congress.

The local Secretariat during the Congress

them. You must have seen a very significant omission in the list of those to be thanked. I will not keep you guessing any longer as to whom I am talking about : Our good friend Mr. Hooykaas.

(Applause)

I wondered what this Court of Cassation was, but having seen this man work during this week and knowing what he has done in previous weeks, I think one could call it the Court of Cassation, because I do not see how Mr. Hooykaas could have done any work in addition to what he has done for us. So, now that all of these merited and proper votes of thanks have been expressed, I hope there will be placed, in a prominent part of the record of this great meeting, our deep thanks and appreciation for this admirably managed and extremely successful Congress.

(Applause)

Mr. *Hooykaas**:

Mr. President,

I thank you most warmly for the all too kind words you have spoken in my behalf and I thank the audience with equal warmth.

I declare the XIIth International Penal and Penitentiary Congress closed.

The meeting ended at 1.15 P.M.

Receptions and Other Events

The labours of the Congress were accompanied by a full programme of receptions, excursions and visits to institutions, organized for the congressists by the Ministry of Justice.

Excursions were arranged for each day of the week, primarily for people who did not participate in the meetings of the Congress. To receive the ladies, a ladies' committee had been organized under the chairmanship of Mrs. Vrij-Ledeboer; Mrs. Simon van der Aa-Tellegen, widow of the former Secretary-General of the International Penal and Penitentiary Commission was honorary chairman of this committee.

We shall limit ourselves here to a summary of the official part of the programme of the festivities and excursions organized by the Dutch authorities for the congressists in general or for official delegates.

Sunday, August 13th

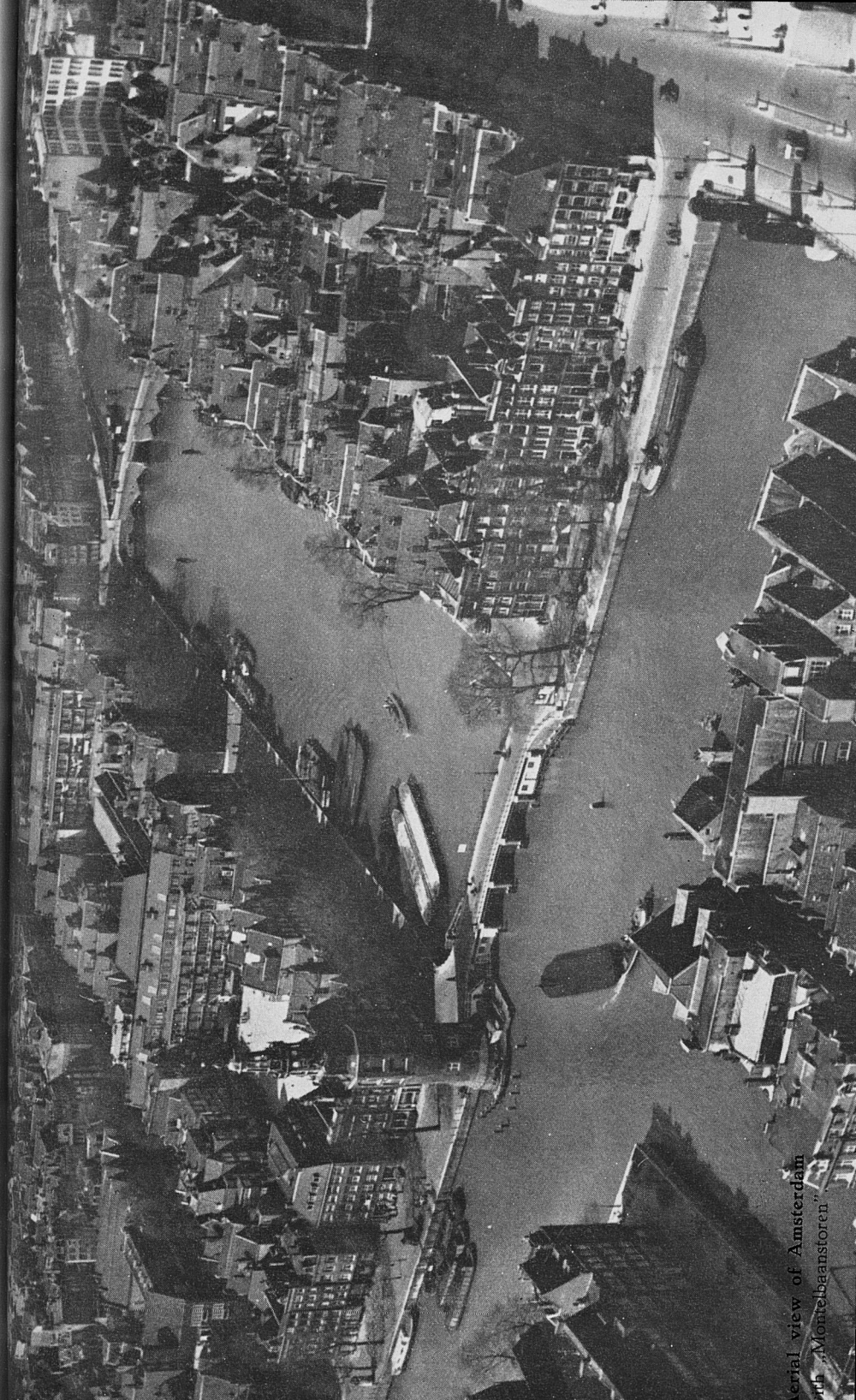
In the evening, congressists had the chance of becoming acquainted at a reception organized by the local committee in the Hall of Rolls of the Binnenhof.

Monday, August 14th

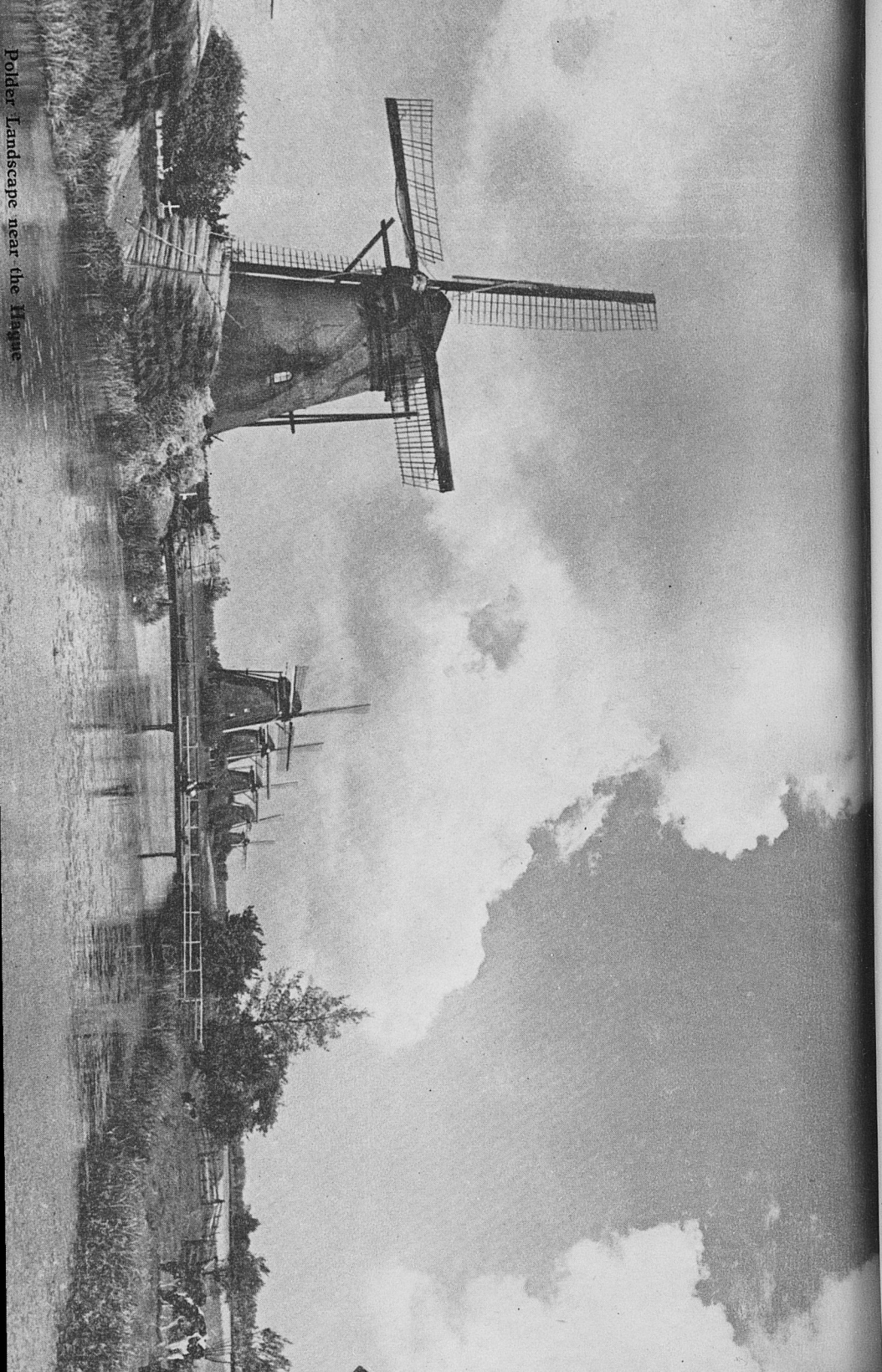
In the evening, the Government of the Netherlands gave a reception to the congressists at the hotel "Kasteel Oud-Wassenaar" at Wassenaar.

Wednesday, August 16th

In the evening, the Mayor and the Aldermen of The Hague received the congressists in the Municipal Museum, where they had the chance to admire the permanent collection of modern paintings and the garden exhibit of French sculpture.



erial view of Amsterdam
rth. "Montelbaanstoren"



Polder Landscape near the Hague

Thursday, August 17th

The Congress suspended its work on Thursday, and the whole day was devoted to a great excursion, combined with visits to penal institutions, an excursion in which most congressists with their wives took part. There were several alternatives to the visits to institutions, and the participants were divided into several groups which met in the evening in Amsterdam.

The excursion for *official delegates* followed this programme :

At 9.A.M., *visit to the prison and the special prison of The Hague* located at Scheveningen. The buildings consist of three more or less independent units. The first is a rather old wing prison, built on the principle of a strict cellular system; to-day a great part of the day of the inmate, especially during work, is spent in common. The second unit, the special prison, is built in a more modern style. It is used for the treatment of those suffering from tuberculosis and serious chronic diseases, sentenced psychopaths and prisoners over the age of sixty. The third unit is a jail for criminal and political prisoners. This prison which consists of barracks evokes sad and terrible memories from the period of the last war : Dutch patriots were imprisoned there and many of them were conducted from there to the execution squad. One of the cells has remained in its original state and has become a centre for pilgrimages. The President of the International Penal and Penitentiary Commission, Mr. Sanford Bates, placed a wreath there and spoke some words in memory of the patriots shot.

After this visit, motor coaches brought the official delegates to *Utrecht* where luncheon was served, followed by a tour of the *Psychiatric Observation Clinic of the House of Detention.* This clinic is installed in a brick house built on the grounds of the prison by the Germans during the war. Its transformation into an observation clinic for prisoners took place in 1949. The clinic has fifteen small rooms, each for a maximum of three persons, rooms for two physicians, a psychologist, the administration, a social worker, as well as for assistants, nurses, and guards, and a laboratory.

During the afternoon, Her Majesty Queen Juliana and His Royal Highness Prince Bernhard did the officers of the Congress the great honour of receiving them at the *Royal Palace of Soestdijk.*

While this reception occurred, the other delegates visited the *Educational Institution "Overberg" at Amerongen.*

After the reception the participants were brought to Amsterdam where, toward evening, a boat trip through the canals and the ports gave the congressists a striking impression of the unique atmosphere of that city.

After dinner, to which the Government had invited the official delegates, a reception was offered to the congressists by the Mayor and the Aldermen of Amsterdam at the *Rijksmuseum* which had been illuminated for the occasion, a reception in the course of which the participants could admire the treasures of Dutch painting and those of other countries from the great eras of European art which this museum contains.

Late in the evening the motor coaches carried the congressists back to The Hague and to Scheveningen.

The congressists who were not official delegates also had the chance, before joining the latter in Amsterdam, to make one of several excursions : a visit to the prisons of The Hague, the observation centre at Utrecht and the educational institution "Overberg" at Amerongen or the reformatory for young women at Zeist. There had also been organized a purely sight-seeing excursion, from the Hague by way of Leyden, the oldest university city in the Netherlands, and Aalsmeer, the horticultural centre, through the polders and along the lakes, rivers and canals, to Amsterdam where all the congressists made the boat trip and took part in the reception at the Rijksmuseum.

Saturday, August 19th

Thanks to the kindness of Miss C.S. van Ouwenaller, Director of the Observation Home of Amsterdam, an excursion was organised for persons interested in visiting the Observation Home for girls at Rotterdam as well as the Training School for Girls at Hollandse Rading.

The Government of the Netherlands, represented by His Excellency, the Minister of Justice Mr. Struycken, offered official delegates and their wives a dinner at the hotel "Huis ter Duin" at Noordwijk, where the participants were brought in motor coaches. This dinner, in a splendid setting, closed the long series of receptions and festivities offered the XIIth Penal and Penitentiary Congress by the Government of the Netherlands with unequalled generosity and hospitality.

Her Majesty Queen Juliana
and
His Royal Highness the Prince of the Netherlands
Speaking with
Mr. Sanford Bates: *President of the Congress.*
Dr J. P. Hooykaas *Honorary President of the Congress.*

The Officers of the Congress in front of the Soestdijk Palace

Her Majesty Queen Juliana
and
His Royal Highness the Prince of the Netherlands
Speaking with:

1. Dr Karl Schlyter, official delegate of Sweden
2. Dr J. P. Hooykaas, Honorary President of the Congress
3. Prof. Paul Cornil, official delegate of Belgium
4. Prof. M. H. van Rooy, official delegate of the Holy See
5. Mr. James Bennett, official delegate of the United States of America.

Her Majesty Queen Juliana
speaking with Mr. James Bennett
official delegate of the United States of America

The International Prison Exhibition

During the Congress, an exhibition giving a pictorial survey of prison work throughout the world, through books, prints, photographs and various objects, was held at the „Pulchri Studio", Lange Voorhout 15, in the immediate neighbourhood of the Binnenhof where the Congress met.

The Exhibition Committee, which organized this event under the direction of the local committee of organization of the Congress, consisted of the following persons: Dr. E. A. M. Lamers, Director-General of Prisons, Chairman; Messrs. H. F. Grondijs, W. P. C. Molenaar, D. Stelling, J. F. H. M. V. Mentrop, J. W. Chr. Dommerholt. The exhibition was under the patronage of an honorary committee consisting of Dr. E. A. M. Lamers, Dr. H. de Bie, Dr. N. Muller, Prof. W. P. J. Pompe, Dr. J. H. J. Schouten and Prof. M. P. Vrij.

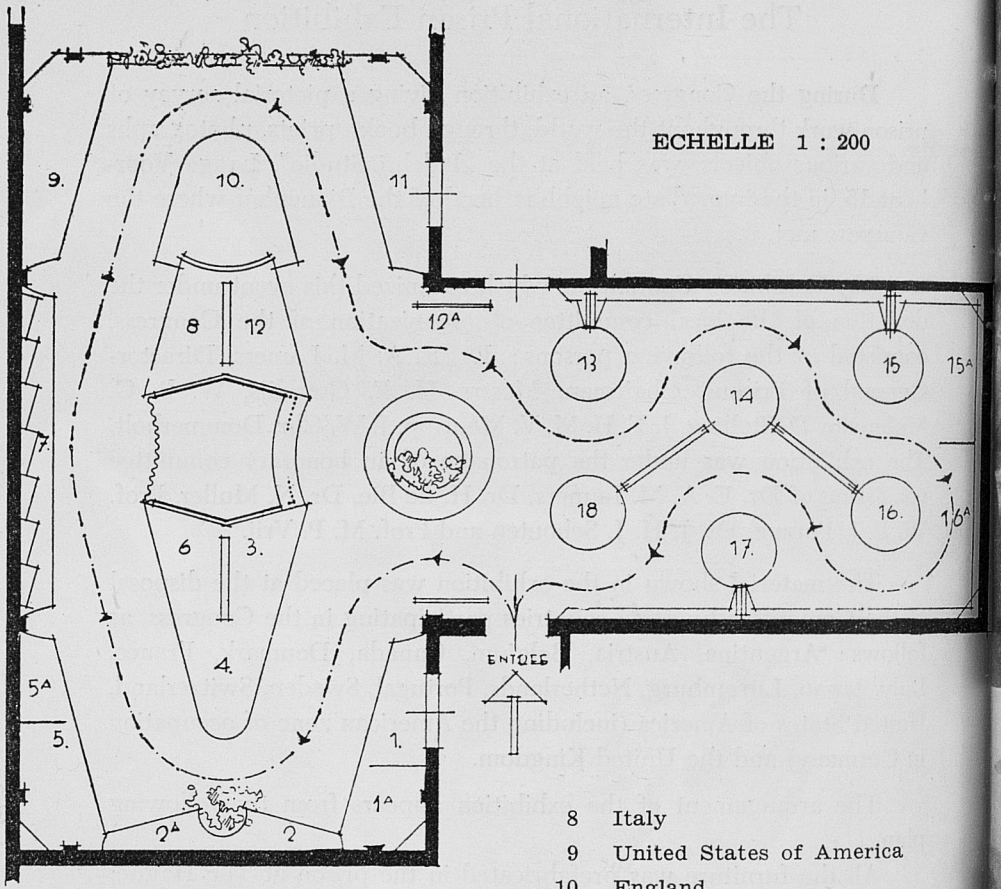
The material shown in the exhibition was placed at the disposal of the Committee by some countries participating in the Congress, as follows: Argentina, Austria, Belgium, Canada, Denmark, France, Italy, Japan, Luxemburg, Netherlands, Portugal, Sweden, Switzerland, United States of America (including the American zone of occupation in Germany) and the United Kingdom.

The arrangement of the exhibition appears from the following plan.

All the furniture was prefabricated in the prison at The Hague; the installation and the display were prepared on the spot with the help of prisoners. The flowers and plants had been grown in the vocational training section of the Doetinchem training school near Arnhem.

The objects exhibited were in the main made in prison workshops, either in industrial or in vocational training shops, or as hobby work by prisoners in the various parts of the world.

The above mentioned countries had sent a large collection of photographs showing various aspects of their prison system: buildings, rooms, chapels, medical services, prison labour, leisure-time occupation, vocational training, etc. Several countries had also sent, in addition to the photographs, some graphs or diagrams. France and Switzerland had sent models of some institutions,



1 Germany (American zone of occupation)

1a, 2 Austria

2a France

3, 4 Belgium (Prisons)

5 France

5a Denmark

6 Belgium (Young offenders)

7 Luxemburg

8 Italy

9 United States of America

10 England

11 United States of America

12 Portugal

12a Argentina

13 Switzerland

14 Netherlands (Young offenders)

15 Japan

15a Sweden

16 Netherlands (Young offenders)

16a Canada

17 Netherlands (Prisons)

18 Miscellaneous

Dinner offered by the Netherlands Government at „Huis ter Duin"

1 Prof. Paul Cornil
2 Mrs. Lamers
3 Prof. Thorsten Sellin
4 Mrs. Simon van der Aa
5 Dr A.A.M. Struycken, *Minister of Justice*

Dinner offered by the Netherlands Government at „Huis ter Duin"

1 Dr Karl Schlyter
2 Mrs. Thorsten Sellin
3 Lionel Fox
4 Dr J. Donner, *President of the Court of Cassation of the Netherlands*
5 Mrs. Cornil

Dinner offered by the Netherlands Government at „Huis ter Duin"
1 Mrs. Bennett
2 Dr E. A. M. Lamers
3 Mr. Charles Germain
4 Mrs. Bettiol
5 Mrs. Vry

Dinner offered by the Netherlands Government at „Huis ter Duin"
1 Mrs. Vry
2 Dr J. D. van den Berg
3 Mrs. Ragnhild Glöersen
4 Mr. John Ross

whereas the United States of America, England, Austria and the Netherlands had contributed some products of prison labour.

At the inauguration of the exhibition, on Saturday, August 12th at 5 P.M., the Director-General of Prisons of the Netherlands, Mr. *Ernest Lamers*, made the following speech of welcome:

"Ladies and Gentlemen,

It is a great privilege for me, as chairman of the Exhibition Committee, to be able to welcome all of you who have accepted the invitation to attend the official inauguration of the International Penitentiary Exhibition organized on the occasion of the XIIth International Congress. I rejoice to see here first of all, the members of the IPPC from many countries who are responsible for this Congress and who have been willing to support the idea, which we suggested, of attaching a modest exhibition to the Congress. I experience a strong need to thank you for the interest you have shown and for the aid you have been willing to lend us.

It is with no less pleasure that I salute the representative of the Mayor of The Hague, the judicial authorities and the officials of the Ministry of Justice and of the Prison Administration whose presence I greatly value.

And — last but not least — I address my welcome to the working committee which under the eminent direction of Mr. Grondijs, superintendent of industries in the Dutch prison system, has overcome tremendous obstacles to organize this exhibition. A thousand thanks to you and to all of you!

Ladies and Gentlemen, in the nature of things this exhibition cannot give you a complete picture of the evolution of the penitentiary systems applied in the entire world. For instance, this exhibition lacks all material relative to the history of penitentiary institutions and their régimes throughout the centuries. No matter how interesting such a survey might have been, we had neither time nor experts to accomplish that.

The exhibition has no other purpose than to present an average picture of what has been attained and what various countries have tried to attain and to arouse in the public a better comprehension of this great social work, in these days when the prison régime nearly everywhere finds itselfs in a phase of reform and renewal, and when all countries try to harmonize the execution of punishments

with modern scientific ideas in the field of psychology and psychiatry, in order thus to serve the interests of the community as well as those of the individual.

In fact — and here I repeat what I have already emphasized elsewhere — if one wants a reform or an innovation no matter what it is, to have a chance of success, it is necessary that it should find the approval of the entire population.

"A live people works at its future"! This proud motto you will find hewn on the imposing barrier dike in the north of our country.

A well organized and reformative prison régime will, like a powerful dike, be capable of protecting the country against the tides of criminality, and, even more, to reclaim lost ground and render it fertile again.

In working at one's future one must not leave such ground lying fallow.

May the picture which this exhibition presents evoke your interest and that of many others beyond this circle. I ask the chairman of the local committee of the XIIth International Penal and Penitentiary Congress, Dr. J. P. Hooykaas, Solicitor-General of the Court of Cassation of the Netherlands, to open the exhibition officially."

Mr. *J. P. Hooykaas* made the following speech:

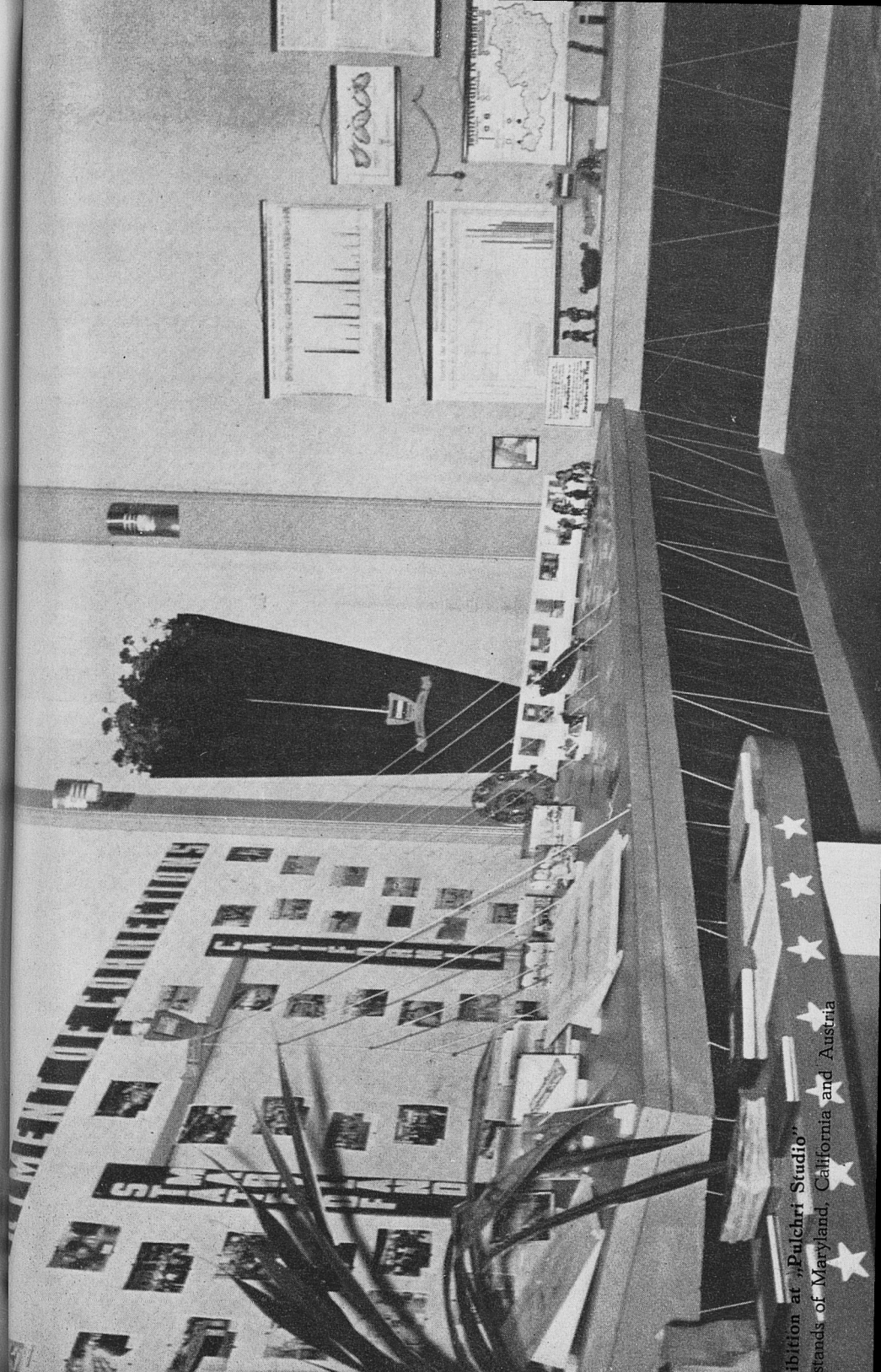
"Ladies and Gentlemen!

As president of the local Committee for the Organization of the XIIth International Penal and Penitentiary Congress it is my pleasant duty to open the international penitentiary exhibition being held here in the "Pulchri Studio" on the occasion of this Congress.

The idea of holding this exhibition originated with our American friends, in particular with Mr. Cass and with the Netherlands Director-General of Prisons, Dr. Lamers, to whom I wish to pay tribute on this occasion.

The idea was, I think, undoubtedly a happy one. In this way, members who follow the discussions in the various sections of the Congress can become conversant with the development of penal and penitentiary science and form an impression of the way penitentiary science is put into practice in the various countries, through seeing the pictures and diagrams on view in this exhibition.

Others too, as well as members of the Congress, will



ibition at „Pulchri Studio"
stands of Maryland, California and Austria

undoubtedly find the exhibition of interest, and I therefore anticipate that it will attract many visitors.

The local Committee of Organization of the XIIth International Congress is grateful for the interest and co-operation shown by so many countries through their sending of important and interesting material.

I now declare the exhibition officially open and invite you all to visit it."

The exhibition was visited by a total of 1160 persons, of which 259 were members of the Congress.

Film Presentations

On Friday, August 18th, the local committee had invited the congressists to a film evening at the Metropole-Tuschinsky Theatre at The Hague, where the following prison films were shown; they had been placed at the local committee's disposal by various countries:

1. Documentary film on the penal institution of Witzwil, Switzerland (this film had been made entirely by prisoners).
2. Documentary film on the prison system of Argentina.
3. Documentary film on the treatment of juvenile delinquents in the United States of America.
4. Documentary film on the prison system of Chile.
5. Documentary film on the prison system of the Netherlands (French version).

Moreover, the Metropole-Tuschinsky firm presented an entertainment film, "Odette" (English spoken).

On Sunday-morning, August 20th, the congressists were able to see, in the "Studio Theater" at The Hague, a documentary film on the Belgian education centres made under the auspices of the United Nations. Furthermore, a film on the treatment of psychopaths in Denmark was shown, and Dr. Stürup, chief medical officer of the institution of Herstedvester, gave running comments on it.

Below there is found a list of other films placed at the disposal of the Congress by the prison administrations of various countries, but which could not be shown for lack of time:

1. Documentary film on the education centres for girls in Greece.
2. Documentary film on the removal of prisoners detained in Tierra del Fuego, Argentina.
3. Documentary film on the federal prison system of the United States of America.
4. Documentary film on "Boys Clubs", an American film in technicolour.
5. Documentary film on the Chilean prison system (the treatment of a prisoner during his imprisonment).

The Belgian Days

August 21st and 22nd, 1950

Subsequent to The Hague Congress, the Belgian Government invited nearly two hundred congressists to participate in a two-day trip in Belgium.

These trips, organized in two groups, had a sight-seeing aspect apart from their scientific character. The programme of each of the two groups, whose travel and hotel expenses were graciously met by the Belgian Government, was as follows:

Group A

First day — Monday, August 21st.

At 8 A.M. the participants left The Hague in motor coaches, passing through Rotterdam — Dordrecht — Breda — Strijbeek — Hoogstraten — Wortel, arriving at Merxplas late in the morning.

The *Penal Colony of Merxplas* is located in a rural area in the north of the country, near the Dutch border and 28 miles from Antwerp. The institution, which was erected in 1818 to house beggars and tramps, is to-day an exclusively penal institution. It operates important industrial and agricultural plants. The large capacity of the institution (about 1800 prisoners) has allowed the construction of large workshops with up-to-date equipment. The farm extends over 3000 acres of cultivated land and forest. The institution also includes specialized sections for sick prisoners; there is a sanatorium, a hospital, a psychiatric annex and a section for physically disabled prisoners. Merxplas receives common law prisoners and sentenced collaborators or "incivists". Interesting experiments in self-government are tried in the institution.

After the tour of the institution, around noon, the group went to the Borstal institution (*prison-école*) of Hoogstraten, near Merxplas

(6½ miles). There luncheon was served, followed by a tour of the institution.

The *Prison-école of Hoogstraten* is established in a historic castle, surrounded by a moat which is traversed by a bridge leading to the entrance. The interior was renovated in 1930 to meet the requirements of a régime similar to that of the Borstal institutions of that period. The prison-école receives Flemish-speaking adolescent prisoners between 16 and 25 years of age, whose penalty does not exceed 20 years.

The prison administration uses a progressive section system. After a stay in the observation section in order to determine the individual's treatment, the prisoners pass to the first treatment section where they are under constant care of the staff. If their character develops favourably they are admitted to the second treatment section where self-government is applied.

The treatment especially includes vocational training. The prisoners work either in the shops or on the farm of the institution. Physical training is highly developed. Scouting has been introduced into the régime, like that organized at Marneffe, in order to lessen the inconveniences of the classical progressive system.

After the visit to Hoogstraten, the group was driven through Oostmalle, Lierre and Malines to Brussels.

Groups A and B spent the evening together in Brussels. A reception by the city authorities was given at the Hôtel de Ville of Brussels, followed by a tour of the magnificent historic building, and a banquet, presided over by Count H. Carton de Wiart, former Minister of Justice, given in honour of the congressists at the Palais des Beaux-Arts.

Second day — Tuesday, August 22nd.

This day was devoted to sight-seeing. After leaving Brussels at 8.45 A.M., the members of group A went through Ninove to Audenarde, and after a brief stop in front of the City Hall of that town, through Deynze and Aeltre to Bruges.

A reception took place in Bruges, at the City Hall, followed by a tour of the city. After lunch, the motor coaches brought the party through Eecloo to Ghent.

Hôtel: Banquet at the „Palais des Beaux Arts"
Count H. Carton de Wiart speaking

School Prison at Marneffe.
Lunch offered to the Congressists under the shelter used for visiting relatives of the prisoners.

The tour of the city of Ghent was followed by a dinner which marked the end of the journey for group A, but the participants were lodged in Ghent through the courtesy of the Belgian Government.

Group B

First day — Monday, August 21st.

At 8 A.M. the participants left The Hague in motor coaches, passing through Rotterdam - Dordrecht - Breda - Strijbeek - Oostmalle - Herenthals and Aerschot to Louvain where they arrived around noon.

The city was toured in the coaches. The participants will especially remember the famous University of Louvain, the library of which was burnt down during the wars in 1914 and 1940 and each time rebuilt thanks to the generosity of the Allies and especially of the United States of America. When lunch had been served to the congressists, they visited the Central Prison.

The *Central Prison of Louvain* is a prison of the star-shaped cellular type built in 1859 to serve as a setting, with a number of other establishments of the same type, for the system advocated by Ducpétiaux, namely constant isolation in individual cells.

This system has been thoroughly modified since 1920 : the classical cellular imprisonment has been progressively reduced to the point that nowadays most of the prisoners participate in joint activities especially of an industrial, educational, athletic and recreational nature.

Large workshops (for carpentry, blacksmith-work, printing, bookbinding, tailoring, shoe-making), equipped with modern machinery have been erected outside the cell-blocks. Some prisoners are working in their cells for private employers. The most typical of these occupations is the making of fishing-tackle.

A welfare organization has been set up by the prisoners themselves at their own cost. It plans the showing of films, orchestral and choral performances and other artistic or cultural events. On the spot of the old individual recreation stalls, playgrounds for the prisoners have been made.

These reforms have had a good influence on the inmates of this

institution which receives all common law prisoners serving a felony or misdemeanour sentence longer than five years.

After the tour of the Central Prison, the coaches took the group through Tervueren to Brussels. At Brussels, they participated, as has already been mentioned, in the reception at the Hôtel de Ville and in the banquet offered by the Ministry of Justice.

Second day — Tuesday, August 22nd.

At 8.45 A.M. the congressists left for Marneffe, by Wavre, Perwez, Bierwart and Lavoir, and visited the prison-école at Marneffe, where luncheon was served.

The *Agricultural Penal Centre of Marneffe* is established in the castle of Marneffe which stands in the middle of an estate near the picturesque valley of the Meuse, about seven miles from the city of Huy.

During the enemy occupation, the administration had to overcome numerous difficulties to feed the prison population which had considerably increased. Consequently, it was decided in 1941 to farm the estate of Marneffe with a group of first offenders, selected in view of minimum security which characterized this open institution.

At present, the penal centre of Marneffe receives young French-speaking prisoners, 16 to 25 years old, whose sentences do not exceed 20 years.

After a short observation period in the cellular prison of Huy, the prisoner is placed upon arrival, without any transition period, under the open régime of this institution where the classical progressive system has been abandoned. Methods of scouting are being used as a means for the social rehabilitation of the prisoners.

Other reforms have originated there. A recently erected open-air pavilion of rustic character is used for visits by the families of the prisoners. A camp with a hut gives the young inmates opportunity for scouting activities and of bringing them in frequent contacts with outside scout organizations.

In the afternoon, the group made an excursion to the Ardennes; it passed through Huy, Modave, Emptinne and Marche to Han where the famous caverns of Han on the Lesse were visited. Toward

the evening, the coaches brought the congressists through Rochefort, Beauraing and Dinant to Namur where they were served dinner and where the journey of group B ended, lodging for the night being provided by the Government.

With these Belgian Days, the XIIth International Penal and Penitentiary Congress, to which the Belgian Government contributed in this generous way, ended.

APPENDICES

A. Officers of the Congress

Honorary President:

J. P. Hooykaas
Solicitor-General, Court of Cassation of the Netherlands; Honorary Counsellor, Ministry of Justice; Honorary Vice-President of the IPPC.

President:

Sanford Bates
Commissioner, Department of Institutions and Agencies, State of New Jersey, United States; President of the IPPC.

Vice-Presidents:

Marc Ancel
Justice, Court of Appeals, Paris; Secretary-General, Institute of Comparative Law, Paris (France).

F. S. Angulo Ariza
Professor of Criminal Law, Central University of Venezuela, Caracas; Justice, Federal Supreme Court (Venezuela).

Samuel T. Barnett
Secretary of Justice, Wellington (New Zealand).

José Beleza dos Santos
Professor of Criminal Law, University of Coïmbra (Portugal).

J. M. van Bemmelen
Professor of Criminal Law and Criminology, University of Leyden (Netherlands).

James V. Bennett
Director, Federal Bureau of Prisons, Washington D.C. (United States).

Giuseppe Bettiol
Professor of Criminal Law, University of Padua; Member, Chamber of Deputies (Italy).

Chevalier Braas
Vice-Chancellor, University of Liege (Belgium).

Henry Carton de Wiart
Minister of Justice of Belgium.

Manuel Castro Ramirez
Professor, University of San Salvador.

François Clerc
Professor of Criminal Law, University of Neuchâtel (Switzerland).

Basile Corfiotakis
Director-General of Criminal Justice, Ministry of Justice, Athens (Greece).

Jean Louis Costa
Director of Correctional Education, Ministry of Justice, Paris (France).

Ernest Delaquis
Emeritus Professor of Criminal Law, University of Berne (Switzerland).

I. Drapkin
Director, Institute of Criminology, and Professor of Criminology, Chilean University, Santiago (Chile).

Jean Dupréel
Director-General of Prisons, Ministry of Justice, Brussels (Belgium).

Carlo Erra
Justice, Court of Appeals; Chief of Secretariat, General Administration of Preventive and Penal Institutions, Ministry of Justice, Rome (Italy).

G. H. A. Feber
Justice, Court of Cassation of the Netherlands; Professor, University of Amsterdam (Netherlands).

Luigi Ferrari
Prosecutor-General, Court of Appeals; Director-General of Preventive and Penal Institutions, Ministry of Justice, Rome (Italy).

Elie Gafos
Professor of Criminal Law, University of Athens (Greece).

Con. G. Gardikas
Professor of Criminology and Penology, University of Athens (Greece).

Charles Germain
Director, Prison Administration, Ministry of Justice, Paris (France).

Kyhn Glöersen
Director, Prison Administration, Oslo (Norway).

Hardy Göransson
Director-in-Chief, Prison Administration, Stockholm (Sweden).

W. F. C. van Hattum
Professor of Law; Representative of the University of Jakarta (Indonesia).

Stephan Hurwitz
Professor of Criminal Law, University of Copenhagen; President, Danish Association of Criminalists, Hellerup (Denmark).

Tomomutsu Ie
Inspector-General, Prison Administration, District of Tokyo (Japan).

Jacobus Abraham Jacobs Kachelhoffer
Director of Prisons, Pretoria (Union of South Africa).

Ferdinand Kadečka
Professor of Criminal Law, University of Vienna (Austria).

Shimon Kelly
Medical Advisor, Office of Attorney-General, Jerusalem (Israel).

José Agustín Martínez
National Institute of Criminology of Cuba.

Oscar Oneto Astengo
Envoy extraordinary and Minister plenipotentiary of the Argentine Republic in Switzerland.

Salvador E. Paradas
Acting Chargé d'Affaires of the Republic of San Domingo in the Netherlands.

Roberto Pettinato
Director-General of Penal Institutions, Buenos Aires (Argentina).

H. Pos
General Representative of Surinam in the Netherlands.

E. Stan. Rappaport
Chief Justice, Supreme Court of Poland; Professor, University of Lodz (Poland).

Jean Jacques Rey
Consul-General of Monaco, The Hague.

M. H. van Rooy
Professor; Private Docent, University of Utrecht (representing the Holy See).

John Ross
Assistant Under-Secretary of State, Department of Probation and Juvenile Delinquency, Home Office, London (United Kingdom).

Abdel Karim Safwat Bey
Envoy extraordinary and Minister plenipotentiary of Egypt in Switzerland.

Mahmoud Sarshar
Barrister, Teheran (Iran).

Jerzy Sawicki
Solicitor-General, National Supreme Court; Director, Bureau of International Co-operation, Ministry of Justice, Warsaw (Poland).

Karl Schlyter
Formerly Chief Justice, District Court of Appeals, Stockholm (Sweden).

Valentin Soine
Director-General, Prison Administration, Helsinki (Finland).

J. C. Tenkink
Secretary-General, Ministry of Justice of the Netherlands.

Senjin Tsuruoka
Chief, Liaison Section, Office of Attorney-General, Tokyo (Japan).

Giuliano Vassalli
Professor of Criminal Law, University of Genoa (Italy).

José Gabriel de la Vega
(Colombia).

Ferdinand Weiler
Counsellor of the Government, Ministry of Justice, Grand Duchy of Luxemburg.

Secretary-General:

Thorsten Sellin
Professor of Sociology, University of Pennsylvania, Philadelphia, Pa., United States; Secretary-General of the IPPC, Berne (Switzerland).

Assistant Secretaries-General:

J. D. van den Berg
Deputy President Judge of the Court Martial, The Hague; High official, Ministry of Justice of the Netherlands.

J. H. J. Schouten
Director-in-Chief of Correctional Education, Ministry of Justice of the Netherlands.

B. Section Chairmen

Section I:

Paul Cornil
Secretary-General, Ministry of Justice of Belgium; Professor of Criminal Law, University of Brussels; Treasurer of the IPPC.

Section II:

Lionel W. Fox, C.B., M.C.
Chairman, Prison Commission for England and Wales, Home Office, London; Vice-President of the IPPC.

Section III:

Ernest Lamers
Director-General, Prison Administration of the Netherlands; Member of the IPPC.

Section IV:

Andreas Aulie
Attorney-General of the Kingdom of Norway; Member of the IPPC.

C. Administrative Assistants

Miss Hélène Pfander
First Assistant, Permanent Office, IPPC, Berne (Switzerland).

Paul Berthoud
Private Docent; Second Assistant, Permanent Office, IPPC, Berne (Switzerland).

Miss Elizabeth Rezelman
Staff member, Ministry of Justice of the Netherlands.

Miss Josette Bois
Permanent Office, IPPC, Berne (Switzerland).

D. Interpreters

Emilio Stevanovitch, Argentina.
Miss Joy Bocownew, United Kingdom.

Gérard John, Switzerland.
Miss Marion Driesen, Netherlands.
Jacques Bédé, France.
Miss Hélène-Marie Wagner, Switzerland.

E. International Penal and Penitentiary Commission

Honorary President:

Ernest Delaquis, Zurich (Switzerland).

President:

Sanford Bates, Trenton, N.J. (United States).

Vice-Presidents:

Karl Schlyter, Stockholm (Sweden).
E. Stan. Rappaport, Lodz (Poland).
José Beleza dos Santos, Coïmbra (Portugal).
Lionel W. Fox, London (England).
Charles Germain, Paris (France).

Honorary Vice-President:

J. P. Hooykaas, Scheveningen – The Hague (Netherlands).

Treasurer:

Paul Cornil, Brussels (Belgium).

Secretary-General:

Thorsten Sellin, Berne (Switzerland).

Member States and Official Delegates:

Argentina:

His Exc. Oscar Oneto Astengo
Envoy extraordinary and Minister plenipotentiary of the Argentine Republic in Switzerland, Berne.

Roberto Pettinato
Director-General of Penal Institutions, Buenos Aires.

Austria:

Ferdinand Kadečka
Professor of Criminal Law, University of Vienna.

Belgium:

Paul Cornil
Secretary-General, Ministry of Justice of Belgium; Professor of Criminal Law, University of Brussels.

Jean Dupréel
Director-General of Prisons, Ministry of Justice, Brussels.

Bulgaria:

Delegate not yet appointed.

Denmark:

Stephan Hurwitz
Professor of Criminal Law, University of Copenhagen; President Danish Association of Criminalists, Hellerup.

Egypt:

His Exc. Abdel Karim Safwat Bey
Envoy extraordinary and Minister plenipotentiary of Egypt in Switzerland, Berne.

Finland:

Valentin Soine
Director-General, Prison Administration, Helsinki.

France:

Charles Germain
Director, Prison Administration, Ministry of Justice, Paris.

Marc Ancel
Justice, Court of Appeals, Paris; Secretary-General, Institute of Comparative Law, Paris.

Jean Louis Costa,
Director of Correctional Education, Ministry of Justice, Paris.

Greece:

Basile Corfiotakis
Director-General of Criminal Justice, Ministry of Justice, Athens.

Con. C. Gardikas
Professor of Criminology and Penology, University of Athens.

Ireland:

The Secretary, Department of Justice, Dublin.

Italy:

Luigi Ferrari
Prosecutor-General, Court of Appeals; Director-General of Preventive and Penal Institutions, Ministry of Justice, Rome.

Giuliano Vassalli
Professor of Criminal Law, University of Genoa.

Carlo Erra
Justice, Court of Appeals; Chief of Secretariat, General Administration of Preventive and Penal Institutions, Ministry of Justice, Rome.

Japan:

Tomomutsu Ie
Inspector-General, Prison Administration, District of Tokyo.

Senjin Tsuruoka
Chief, Liaison Section, Office of Attorney-General, Tokyo.

Luxemburg:

Ferdinand Weiler
Counsellor of the Government, Ministry of Justice, Grand Duchy of Luxemburg.

Netherlands:

J. P. Hooykaas
Solicitor-General, Court of Cassation of the Netherlands; Honorary Counsellor, Ministry of Justice, Scheveningen-The Hague.

Ernest Lamers
Director-General, Prison Administration of the Netherlands, The Hague.

Norway:

Kyhn Glöersen
Director, Prison Administration, Oslo.

Andreas Aulie
Attorney-General of the Kingdom of Norway, Oslo.

New Zealand:

Samuel T. Barnett
Secretary of Justice, Wellington.

Poland:

E. Stan. Rappaport
Chief Justice, Supreme Court of Poland; Professor, University of Lodz.

Jerzy Sawicki
Solicitor-General, National Supreme Court; Director, Bureau of International Co-operation, Ministry of Justice, Warsaw.

Portugal:

José Beleza dos Santos
Professor of Criminal Law, University of Coïmbra.

Rumania:

Delegate not yet appointed.

Sweden:

Karl Schlyter
Formerly, Chief Justice, District Court of Appeals, Stockholm.

Hardy Göransson
Director-in-Chief, Prison Administration, Stockholm.

Switzerland:

Ernest Delaquis
Formerly, Professor of Penal Law, University of Berne, Zurich.

François Clerc
Professor of Criminal Law, University of Neuchâtel.

Union of South Africa:

Jacobus Abraham Jacobs Kachelhoffer
Director of Prisons, Pretoria.

United Kingdom:

Lionel W. Fox, C.B., M.C.
Chairman, Prison Commission for England and Wales, Home Office, London.

John Ross
Assistant Under-Secretary of State, Department of Probation and Juvenile Delinquency, Home Office, London.

United States of America:

Sanford Bates
Commissioner, Department of Institutions and Agencies, State of New Jersey, Trenton, N.J.

Thorsten Sellin
Professor of Sociology, University of Pennsylvania, Philadelphia, Pa., p.t. Berne.

F. Local Committee of Organization

Dr. J. P. Hooykaas
Solicitor-General, Court of Cassation of the Netherlands, Honorary Counsellor, Ministry of Justice; Honorary Vice-President of the IPPC.

Dr. E. A. M. Lamers
Director-General, Prison Administration of the Netherlands; Member of the IPPC.

Dr. J. H. J. Schouten
Director-in-Chief of Correctional Education, Ministry of Justice of the Netherlands.

Dr. J. E. C. M. Hermans
Director of Finance, Ministry of Justice of the Netherlands.

Dr. J. D. van den Berg
Deputy President Judge of the Court Martial, The Hague; High official, Ministry of Justice; Secretary, Local Committee.

G. Daily Bulletin

A Bulletin was published by the General Secretariat of the Congress containing, from day to day, all news of interest to the members, especially summarized minutes of the meetings of the General Assembly and the Sections, including resolutions proposed during the debates and decisions taken. Six numbers of this Bulletin were published from the 14th to the 20th of August; they were printed at the National Printing Office, The Hague, which furnished a night service for this purpose.

H. Congress Regulations

Art. 1.

The Congress will open on August 14th 1950.

Art. 2.

The following persons will be admitted to take part in the work of the Congress:

a) Delegates sent by Governments;
b) Members of Parliaments, State Councils or equivalent bodies;
c) Members of National Academies;
d) Professors, Assistant Professors, Readers and Lecturers of Faculties and Universities;
e) High officials of the Ministries or Departments concerned;
f) Higher officials of prison administrations;
g) Members of the Courts and Tribunals;
h) Advocates regularly entered at a bar;
i) Delegates and members of penal and penitentiary societies and prisoners' after-care societies;
j) Members of the Committee which took part in the preparation of the Congress;
k) Persons who have become known by their scientific work in penal and penitentiary questions;
l) Persons invited for the purpose by the International Penal and Penitentiary Commission.

Art. 3.

No person shall be admitted to the public meetings of the General Assembly unless he holds a personal card issued at the entrance to the Congress Hall.

Art. 4.

The provisional Bureau shall consist of the members of the International Penal Penitentiary Commission.

Art. 5.

At its first meeting the Assembly shall verify the credentials of the members of the Congress, definitely appoint its Bureau and fix the order of its meetings.

Art. 6.

All the members shall receive a personal card on payment of a registration fee of 20 Dutch guilders.

This payment entitles them to a copy of the Proceedings of the Congress.

Art. 7.

The members shall divide up into four Sections for the preparatory work, which have to decide provisionally and to propose to the General Assembly the solutions of questions included in the programme of work.

Art. 8.

The division into Sections is made according to the nature of the questions to be dealt with.

Art. 9.

Each member shall choose the Section in which he desires to participate; the same member may, however, take part in the work of several Sections.

Art. 10.

The International Penal and Penitentiary Commission shall designate the President of each Section, preferably among the members of the Commission.

Each Section shall appoint its Bureau which shall direct its work in contact with the Bureau of the Congress.

The discussion of each question shall be introduced by a summary

of the reports, which shall be submitted together with conclusions by a general rapporteur, who shall be appointed in advance by the International Penal and Penitentiary Commission or its Executive Committee. If necessary, the Commission or its Executive Committee may appoint a second general rapporteur.

On the close of the discussion, the Bureau of the Section shall see that a report with motivated conclusions be prepared in good time for submission to one of the meetings of the General Assembly by a special rapporteur selected by the Section.

Art. 11.

All reports, documents, notes and proposals relating to the work of the Congress shall be distributed among the Sections concerned.

Art. 12.

The preparatory reports on the questions on the agenda of the Congress shall be entrusted to persons selected by the International Penal and Penitentiary Commission or its Executive Committee. The Executive Committee shall be entitled to add to these reports any papers due to private initiative which it considers proper to appear in the Proceedings of the Congress.

These reports and papers shall, if possible prior to the Congress, be printed and addressed to all the members who have paid their registration fee.

Art. 13.

The General Assembly and the Sections shall meet at the times and places mentioned in the programme of work.

The President of the Congress has power to make changes in the programme if necessary.

Art. 14.

The members shall sign the attendance sheet at the entrance of the premises.

Art. 15.

The President shall direct the discussion and the order of the meeting; he shall fix the agenda on behalf of the Bureau.

Art. 16

After discussion, the Assembly shall vote on the conclusions reached by the Sections and submitted by their rapporteurs.

Any draft amendments to these conclusions must be handed in, written and signed by the author and supported by not less than twenty members, to the Bureau which shall submit them to the Assembly.

Art. 17.

The vote shall be taken by roll call in all cases where this is requested by not less than six members in the Sections and by not less than twenty members in the General Assembly.

In such case, no vote will be recorded as policy of the Congress unless it gets both a majority of persons and a majority of countries.

Each national vote will be expressed by the first official delegate of the country or by a person empowered to this end by the first delegate.

In such case, the vote will be postponed to the next day, so as to enable the designation by the first official delegate of a person entitled to express the national vote.

Art. 18.

Members may be excluded from voting, both in the General Assembly and in the Sections, if they have not signed the attendance sheet before the close of the discussion.

Art. 19.

The Secretaries, both of the General Assembly and of the Sections, shall keep minutes recording the order and subject of discussion and the result of the voting.

Art. 20.

No proposal may be made outside the subjects on the programme and no memorandum or note may be read to the General Assembly or Sections without the permission of the Bureau.

Art. 21.

A request may always be made to proceed with the agenda or to move the previous question as against any incidental proposal.

Art. 22.

No speech may exceed ten minutes in length. Speakers may not speak more than twice on the same subject unless the Section or Assembly, after being consulted by the President, decides to the contrary.

Art. 23.

French and English are the official languages of the Congress.

Speeches made in one of these languages shall be translated into the other language unless the assembly unanimously decides not to require translation.

Any speaker may speak in another language if he is able to provide for the immediate translation of his speech into French or English.

Art. 24.

In order to ensure the accuracy and to facilitate the prompt publication of the Proceedings, speakers are requested to hand in to the Bureau as early as possible a summary of their speeches or at any rate notes for the guidance of the persons having to prepare the material for printing.

Art. 25.

The Bureau of the Congress shall in the last resort decide on any matter not provided for in the regulations.

I. Daily Programme

Sunday, August 13th, 1950

8.30 P.M.	Informal meeting of members in the Hall of Rolls.

Monday, August 14th, 1950

10 A.M.–12 noon	Opening session of the Congress in the "Ridderzaal" (Hall of Knights).
2.30 P.M.– 5 P.M.	Section meetings.
8.30 P.M.	Reception by the Netherlands government in the hotel "Kasteel Oud-Wassenaar".

Tuesday, August 15th, 1950

9 A.M.– 9.45 A.M.	General lecture.
10 A.M.–12.30 P.M.	Section meetings.
2.30 P.M.– 5 P.M.	Section meetings.

Wednesday, August 16th, 1950

9 A.M.– 9.45 A.M.	General lecture.
10 A.M.–12.30 P.M.	Plenary session.
2.30 P.M.– 5 P.M.	Section meetings.
9 P.M.	Reception by the municipality of the Hague in the Municipal Museum.

Thursday, August 17th, 1950

9 A.M.	Excursions to penal institutions and other excursions for congressists and their ladies. Reception of the Committee of the Congress by H.M. Queen Juliana and His Royal Highness the Prince of the Netherlands at the "Soestdijk" palace.

8.30 P.M.	Reception by the municipality of Amsterdam in the "Rijksmuseum" (State Museum) in Amsterdam.

Friday, August 18th, 1950

9 A.M.– 9.45 A.M.	General lecture.
10 A.M.–12.30 P.M.	Section meetings.
2.30 P.M.– 5 P.M.	Plenary session.
8 P.M.	Film evening at the "Metropole-Tuschinsky" theatre in The Hague, offered by the management of the "Maatschappij Tuschinsky N.V.".

Saturday, August 19th, 1950

10 A.M.– 1 P.M.	Plenary and final session.
8 P.M.	Dinner offered to the official delegates by the Netherlands government.

Sunday, August 20th, 1950

9 A.M.	Film performance at the "Studio Theater" in The Hague.

Meeting Rooms:

Hall of Knights:	Opening and closing sessions of the Congress; general lectures and plenary sessions.
De Lairesse Hall:	Meetings of Section I.
Orphan's Hall:	Meetings of Section II.
Hoogerbeets Room:	Meetings of Section III.
Trèves Hall:	Meetings of Section IV.

J. Members of the Congress[1])

Argentina

ABRINES, Dr. Hector A.
Médecin légiste, Professeur, *Buenos Aires*

* BASALO, Dr. Jean Carlos Garcia
Fonctionnaire de la Direction générale des Prisons, *Buenos Aires*

* BERNARDI, Don Humberto P. J.
Professeur adjoint de droit pénal à l'Université de *Buenos Aires*

JIMENEZ DE ASUA, Luis
Professeur de droit pénal, *Buenos Aires*

MARGENAT, Manuel J.
Secrétaire de la Légation d'Argentine, *Berne*

* MOLINA, José Domingo
Directeur général de la gendarmerie nationale, *Buenos Aires*

MOLINARIO, Alfredo J.
Professor of Penal Law and Director of the Institute of Penal Law and Criminology, University of *Buenos Aires*

* ONETO ASTENGO, Oscar
Envoyé extraordinaire et Ministre plénipotentiaire de la République Argentine en Suisse, *Berne*

PESSAGNO, Dr. Herman Abel
Juge pénal, *Buenos Aires*

* PETTINATO, Roberto
Directeur général des Institutions pénales, *Buenos Aires*

PORTO J. E.
Professeur de droit pénal à l'Université de *La Plata*

Austria

HORROW, Dr. Max
Professeur à la Faculté de Droit de l'Université de Graz, *Graz–Post Mariatrost*

1) The names of the official delegates of the governments and the intergovernmental organisations have been indicated by an asterisk.
This list contains not only the names of the persons who attended the congress but also of some absent persons who have sent in their communications.

* KADECKA, Dr. Ferdinand
Professeur de droit pénal à l'Université de *Vienne*

Belgian Congo

MOREAU, M.
Attaché juridique principal au Congo Belge, *Leopoldville*

Belgium

* ALEXANDER, Prof. Dr. Marcel
Directeur du Service d'Anthropologie pénitentiaire, *Bruxelles*

BOLLIS, E. J.
Substitut du Procureur du Roi, *Liège*

BOSSCHE, Prof. Jean van den
Avocat à la Cour, Chef de travaux à l'Ecole de criminologie de *Liège*

* BRAAS, Chevalier A.
Pro-Recteur de l'Université de Liège, *Celles par Waremme*

* BRAY, Mme L. de
Inspectrice du Service social au Ministère de la Justice, *Bruxelles*

CHEVALIER, Léo
Ancien bâtonnier de l'Ordre des avocats, *Tournai*

CNIJF, Maurice I. de
Magistrat délégué au Ministère de la Justice, *Gand*

COLLARD, Raymond
Directeur de la prison de Forest, *Bruxelles*

COMBLEN, Jean
Juge des enfants, Secrétaire général de l'Association internationale des juges des enfants, *Liège*

CONSTANT, Jean
Avocat général à la Cour d'appel de Liège, Professeur à l'Université de Liège, *Tilff*

* CORNIL, Paul
Professeur de droit pénal à l'Université, Secrétaire général du Ministère de la Justice, Trésorier de la C.I.P.P., *Bruxelles*

DECLERCQ, Raoul
Substitut du Procureur du Roi à Louvain et Assistant chargé de Cours à l'Université de *Louvain*

DROOGHENBROECK, Pierre van
Juge au Tribunal de Première Instance de Charleroi, Auditeur militaire honoraire, *Montigny-le-Tilleul*

* DUPREEL, Jean
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FETTWEIS, Albert
Assistant à l'Université de Liège, Avocat près la Cour d'appel, *Tongres* (Limbourg)

* GHELLINCK D'ELSEGHEM, Chevalier J. de
Avocat près la Cour d'appel, Secrétaire de la Commission royale des Patronages, *Bruxelles*

* GUNZBURG, Nico
Président de l'Institut de Criminologie, Professeur à la Faculté de droit de l'Université de Gand, *Anvers*

HANSSENS, William
Conseiller à la Cour d'appel, *Bruxelles*

HENDRICKX, Louis
Président de la Commission Psychiatrique de Bruxelles, Conseiller à la Cour d'appel, *Bruxelles*

HENDRICKX, Mme
Membre Visiteuse du Comité de Patronage de *Bruxelles*

HEUSKIN, Mlle Lucie
Docteur en droit, *Chenée* (Liège)

* HUYNEN, Mlle Simone
Chef de la Protection de l'Enfance au Ministère de la Justice, *Bruxelles*

KOECKELENBERG, Raymond
Chef du Service postpénitentiaire à l'Office de Réadaptation sociale de *Bruxelles*

LECLEF, Dr. Joseph
Docteur en droit, *Anvers*

LOX, Florimond A. M. J.
Licencié en criminologie, Juge d'Instruction, *Malines*

MATHIEU, Henri
Directeur au Ministère de la Justice, *Bruxelles*

MATTON, Michel
Directeur de la Prison-école de *Hoogstraten*

RUBBRECHT, J. M. L. G.
Professeur à la Faculté de droit à l'Université de Louvain, *Héverlé* (Louvain)

* SASSERATH, P.
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* Van HELMONT, Marcel
Inspecteur général des Prisons belges, *Bruxelles*

VERHEVEN, Mme Anne-Louise
Chef du Service post-pénitentiaire à l'Office de réadaptation sociale, *Bruxelles*

VYVER, Marcel van de
Avocat près la Cour d'appel de *Gand*

Brazil

AZEVEDO, Noé
Professeur de droit pénal à l'Université de *Sao Paulo*

Chile

* DRAPKIN, Prof. Dr. I.
Director Chilean Institute of Criminology, *Santiago*

KLIMPEL ALVARADO, Mlle Felicitas
Avocate, *Santiago*

Colombia

HERNANDEZ, Isaac
Lawyer, *Bogota*

* VEGA, José Gabriel de la
Légation de Colombie, *La Haye*

Cuba

* MARTINEZ, José Agustín
Président de l'Institut national de Criminologie de Cuba, *La Habana*

Denmark

AMMUNDSEN, Peter
Chief Probation Officer, *Birkerød*

AUDE-HANSEN, Carl
Chief of Prison Industries, *Copenhagen*

BENTZEN, A. X.
Prison Commissioner for the local prisons in Denmark, *Copenhagen*

BORGSMIDT-HANSEN, Kaj
Governor of State Prison, *Vridsløselille pr. Glostrup*

HERTEL, Axel Harald C.
Directeur de la Maison de travail de l'Etat, *Sønder Omme*

HINDSE-NIELSEN, E.
Chaplain, Statsfaengslet i *Nyborg*

* HURWITZ, Stephan
Professeur de droit pénal à l'Université de Copenhague, Président de l'Association des criminalistes danois, *Hellerup*

JENSEN, Cai
Prison Governor, *Copenhagen*

KJAER, S. Aa.
Governor, State Prison of *Nyborg*

LEUDESDORF, Knud
General manager of prisoners aid and Head of the National Prisoner's Aid Association, *Copenhagen*

RAFAEL, Carsten
Governor State Prison Camp at Kragskovhede, *Jerup*, Jutland

* STUERUP, Dr. Georg K.
Psychiatrist in chief, Asylum for Psychopathic Criminals at Herstedvester, *Copenhagen*

* TETENS, Hans
Director General, Prison Administration, Ministry of Justice, *Copenhagen*

WORM, Aage A.
Governor State Prison, *Horsens*

WORSAAE PETERSEN, H.
Governor, State Prison, *Nørre Snede*, Jutland

Dominican Republic

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* SOINE, Karl Valentin
Director General, Administration of Public Prisons, *Helsinki*

France

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Professeur de droit pénal à l'Université de Rennes, Secrétaire général adjoint de l'Association Internationale de droit pénal, *Rennes* (Ille et Vilaine)

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CHADEFAUX, Robert
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DELMAS, Louis
Juge des Enfants, *Soissons*

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Germany (Federal Republic of)

BLEIBTREU, Otto
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GALLAS, Dr. Wilhelm
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HIETE, Dr. Gerd
Conseiller d'Etat au Ministère de la Justice, *Hannover*

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Conseiller du Gouvernement, *Bendorf/Rhein*

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NEUMANN, Dr. Richard
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Holy See

ROOY, Prof. Dr. M. H. van
Privat-docent à l'Université d'*Utrecht*

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BETTIOL, Mme Giuseppe
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VEDOVATO, Giuseppe
Professeur à l'Université de *Florence*

Japan

* IE, Tomomutsu
Inspecteur général de l'Administration pénitentiaire, *Tokio*

* TSURUOKA, Senjin
Chef de la Section de la Liaison du Bureau du Procureur général, *Tokio*

Luxemburg

* FABER, Paul
Président de la Cour supérieure de Justice, *Luxembourg*

* HUSS, Alphonse
Conseiller à la Cour supérieure de Justice, *Luxembourg*

* WEILER, Dr. Ferdinand
Conseiller du Gouvernement, Commissaire aux Etablissements de Détention, *Luxembourg*

Monaco

* REY, Jean Jacques
Consul général de Monaco, *La Haye*

Netherlands

AALDERS, Dr. C. A. V.
Secrétaire de l'Aumônier-en-chef des Prisons, *La Haye*

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Fonctionnaire au Ministère de la Justice, *La Haye*

ARIENS, Dr. W. H.
Conseiller à la Cour d'appel, *Vught*

ARNOLDUS, B. G.
Haut fonctionnaire de l'Administration pénitentiaire, *La Haye*

ARNOLDUS, Chr. A.
Directeur de l'Institution pénale „Mijnstreek", *Heerlerheide* (Z.-L.)

ASCH VAN WIJCK, Jhr. Dr. J. M. M. van
Secrétaire de la Société „Het Hoogeland", *La Haye*

BAAN, Dr. P. A. H.
Psychiatre, Professeur libre à l'Université d'*Utrecht*

BAL, Mlle Dr. C. E. E.
Secrétaire de la Société „Pro Juventute" à *Amsterdam*

BEENS, A. R.
Director adjoint des asiles pour psychopathes de l'Etat, *Balkbrug*

BEKKER, Dr. J. H. G.
Avocat, *La Haye*

BELINFANTE, Dr. A. D.
Conseiller au Ministère de la Justice, *Voorburg*

* BEMMELEN, Dr. J. M. van
Professeur de droit pénal et de criminologie à l'Université de Leyde, Représentant de la Société Internationale de Criminologie, *Leyde*

BERG, Dr. J. D. van den
Président suppléant de la Cour martiale à La Haye, Haut fonctionnaire au Ministère de la Justice, *La Haye*

BERGER, Dr. L. H. M.
Directeur au Ministère de la Justice, *La Haye*

BESANCON, Mlle Dr. C. W.
Greffier d'un Tribunal, *Scheveningue*

BEYERINCK, J. F.
Membre de la Commission ministérielle consultative pour l'Administration pénitentiaires, *La Haye*

BOASSON, Dr. C.
Avocat, *Amsterdam*

BONDAM, Dr. P. A. C.
Fonctionnaire au Ministère de la Justice, *La Haye*

BOSZ, Dr. P. G. G.
Sous-Directeur de l'Education surveillée, *La Haye*

BRAKE, J. H. ter
Commis attaché à la Direction près l'Etablissement pénitentiaire, *Winschoten*

BRANTJES, Dr. L. H. J.
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BRUINING-DARLAY, Mme A. R. C.
Docteur en droit, *La Haye*

BUUREN, Dr. H. van
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COFFRIE, Dr. P. J.
Chef de la Section des statistiques judiciaires, Bureau Central de Statistique des Pays-Bas, *La Haye*

COOPMAN, Dr. I.
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DEUTSCH, Mlle Dr. S. V.
Fonctionnaire au Ministère de la Justice, *La Haye*

DIJCKHOFF-VAN RIJN, Mme M.
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DIJK, Dr. F. G. van
Administrateur au Ministère de l'Agriculture, *La Haye*

DOMMERHOLT, J. W. Ch.
Directeur au Ministère de la Justice, *Scheveningue*

DONKER, S. J.
Officier de l'Armée du Salut, *La Haye*

DUK, Dr. W.
Fonctionnaire au Ministère de la Justice, *La Haye*

DULLEMEN, Dr. A. A. F. van
Président de la Société Psychiatrique et Juridique, *Amsterdam*

DUVEKOT, Mlle M. A.
Directrice de l'établissement public d'éducation surveillée pour jeunes filles, *Zeist*

ECK, Dr. D. van
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Directeur de la Société „Pro Juventute", *La Haye*

EEKEN, J. E. van
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FEBER, Dr. G. H. A.
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FICK, Dr. W. A. J. M.
Président suppléant de la Cour de Cassation, *La Haye*

GELEYNSE, B.
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GILSE, Dr. J. van
Procureur général près la Cour d'appel, *La Haye*

GRONDIJS, H. F.
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HARTSUIKER, Dr. J. F.
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K. Questions and Resolutions

SECTION I

First Question

Is a pre-sentence examination of the offender advisable so as to assist the judge in choosing the method of treatment appropriate to the needs of the individual offender?

Commentary

It is to-day generally admitted that the aim of the penal sanction is not only to punish the delinquent, but also as far as possible to further his reformation and his re-adaptation to normal conditions of social life, so as to prevent recidivism.

This fundamental principle involves a renovation of the traditional course of criminal procedure.

Is is therefore no longer sufficient to state the material facts, evaluate the seriousness, both objective and personal, of the offence, and then impose a more or less severe penal sentence. It is necessary, in addition, to get information on the delinquent, on his personality and surroundings, so as to foresee his probable reactions to penitentiary treatment and choose the mode of treatment likely to be the most efficient. That is the reason justifying a pre-sentence examination of the personality of the accused, in respect of cases of a certain gravity which are not easy to explain.

As a remedy for the discontinuity which is noticeable between the imposition of the sentence and its enforcement — the prison administration is not aware of the reasons which have actuated the judge in imposing the penalty concerned — it is recommended to examine the accused and to establish, before the sentence, a 'personality dossier' allowing the judge, on the basis of the observation of the case, better to adapt the sentence to the individual needs of the offender. Such examination ought not, however, to delay unduly the passing of the sentence since it also has to fulfil general preventive purposes.

Resolution

1. In the modern administration of criminal justice, a pre-sentence

report covering not merely the circumstances of the crime but also the factors of the constitution, personality, character and socio-cultural background of the offender is a highly desirable basis for the sentencing, correctional and releasing procedures.

2. In the countries of Latin law, the personal examination should be optional in the cases where the law permits the provisional release of the accused. In the cases where the law does not permit the provisional release of the accused, the personal examination should be compulsory.
3. The scope and intensity of the investigation and report should be adequate to furnish the judge with enough information to enable him to make a reasoned disposition of the case.
4. In this connection, it is recommended that criminologists in the various countries conduct researches designed to develop prognostic methods ("prediction tables", etc.).
5. It is further recommended that the professional preparation of judges concerned with peno-correctional problems include training in the field of criminology.

Second Question

How can psychiatric science be applied in prisons with regard both to the medical treatment of certain prisoners and to the classification of prisoners and individualization of the régime?

Commentary

Since penitentiary science adopted modern conceptions, tending to re-educate and not only punish the delinquent, the duties of prison officials are not as simple as they used to be. It is above all the psychiatrist who will be able to comment with reasonable certainty on the probable genesis of anti-social behaviour and to indicate measures proper to bring about a change in the mind of the delinquent.

Psychiatric services are therefore called upon to play an important part in prison life. Their functions are manifold as may be seen from the above question.

How will co-operation between the psychiatrist and the director of the establishment have to be organized? How will the psychiatrist obtain the prisoner's confidence, as an indispensable condition for the success of his efforts? What about abnormals, as well as certain psychopathic delinquents, whose penal liability and susceptibility to the psychological action of punishment are not clear?

These are some of the points keenly discussed to-day and on which a Penitentiary Congress may well define its position.

Resolution

1. The purpose of prison psychiatry is to contribute by the co-operation of the prison psychiatrist with other members of the staff towards a more efficacious treatment of the individual prisoner and to the improvement of the morale of the institution thereby attempting to decrease the probability of recidivism, whilst at the same time affording society a better protection.
2. The psychiatric treatment should be extended to include: (1) the recognized mentally abnormal prisoners; (2) a number of borderline cases (including those with disciplinary difficulties) who may, possibly for comparatively short periods only, require special treatment; (3) prisoners with more or less severe disturbances resulting from prison life: lack of treatment would lessen their chances of rehabilitation.
3. It is desirable, and would be highly advantageous, to have prisoners classified and separated into groups for special treatment, e. g. groups of feeble-minded persons and groups of inmates with abnormal personalities. An establishment for the treatment of inmates with abnormal personalities should have facilities for dealing only with a suitably homogeneous group, not exceeding about two hundred persons. It is of decisive importance that the treatment be not limited to a previously fixed period, and that the end of detention should not mean cessation of treatment – this should continue after discharge until adequate rehabilitation is obtained. It is desirable that social psychiatric after-care facilities be provided.
4. The general methods of psychiatric treatment – e.g. shock treatment, psychotherapy (including group therapy)–may advantageously be applied to criminals with due regard to occupation and prison routine. For prisoners with abnormal personalities it is necessary to work out indirect forms of treatment, not attempting to force upon them definite patterns of response. Direct and active co-operation on the part of the prisoner is of decisive importance, and his readiness to be treated is, therefore, a necessary condition. This state of readiness is stimulated under a system of indeterminate sentence which is morally justified on the grounds of public safety.

The indefinite term element must, in all cases, be utilized with due regard to the risk to society which the prisoner would constitute if at large.

5. The assistance of the psychiatrist is essential in the classification of prisoners and in the training of the staff. Only when psychiatric centres are established within the prisons, permanently employing skilled forensic psychiatrists, is it possible to direct the special treatment of personality problems ascertained at the general classification, besides those spontaneous nervous reactions that may manifest themselves in prisoners previously classified as fully normal.
   The forms of psychiatric treatment would, of course, depend on the degree and nature of the development of the general correctional system in the country or locality in question as well as on the number of psychiatrists available.

6. By his own example and in collaboration with the other members of the staff, the psychiatrist can contribute towards making individualized treatment a reality. In his guidance and teaching, the psychiatrist should build on careful analyses of individual cases actually encountered, and he should avoid all temptations to dogmatize.

Third Question

What principles should underlie the classification of prisoners in penal institutions?

Commentary

Since modern penal treatment, in which the repressive element has become secondary, is chiefly re-educative, it is no longer possible to be content with a rough distinction of prisoners according to sex and the legal nature of their sentence, which was related primarily to the gravity of the offence committed. The individualization of treatment, in addition to that of the sentence, has become imperative. It would be interesting to learn the present status of methods applied by various countries for placing prisoners in different categories and distributing them either in distinct establishments or within one and the same establishment.

Classification in prisons seems to offer numerous advantages: possibility of grading custodial and security requirements; effects upon discipline and behaviour of the prisoners as also on the individual treatment programme; specialization of the personnel of each institution. On the other hand, this system results often in

removing the prisoners from their place of residence, thereby making family visits more difficult.

What are the criteria to be adopted for this sifting? The necessity is generally recognized of segregating persistent criminals, whose chance of improvement is minimal, to prevent them from morally contaminating the less perverted prisoners. But there are many other controversial questions, as for instance the suitability of providing special establishments for psychopathic prisoners.

Resolution

1. The term classification in European writings implies the primary grouping of various classes of offenders in specialized institutions on the basis of age, sex, recidivism, mental status, etc., and the subsequent subgrouping of different classes of offenders within each such institution. In other countries, however, notably in many jurisdictions of the U. S. A., the term "classification" as used in penological theory and practice lacks philological exactitude. The term should be replaced by the words "diagnosis (or, if desired, classification), guidance and treatment", which more adequately portray the meanings now inaccurately included in the *one* term "classification".

2. In view of the foregoing, it is concluded that for the purpose of distributing offenders to the various types of institutions and for sub-classification within such institutions the following principles be recommended:
   a) While a major objective of classification is the segregation of inmates into more or less homogeneous groups, classifications should be flexible;
   b) Apart from the imposition of the sentence further classification is essentially a function of institutional management.

3. For the purpose of individualizing the treatment programme within the institution, the following principles are recommended:
   a) Study and recommendations by a diversified staff of the individual's needs and his treatment;
   b) The holding of case conferences by the staff;
   c) Agreement upon the type of institution to which the particular offender should be sent and the treatment plan therein;
   d) Periodic revision of the programme in the light of experience with the individual.

SECTION II

First Question

To what extent can open institutions take the place of the traditional prison?

Commentary

In prison buildings of the classical 19th century type, all categories of prisoners had to be detained under maximum security conditions so as to prevent escape.

Experiments during this century have shown that it is possible to lodge certain categories of prisoners in so-called open institutions, which permit a more truly educative and individualized régime to be applied to them.

In the light of experience gained in various countries, the question now is to define the categories of prisoners for whom an open institution régime should replace the ordinary prison.

Resolution

1. a) For the purposes of this discussion we have considered the term "open institution" to mean a prison in which security against escape is not provided by any physical means, such as walls, locks, bars, or additional guards.
   b) We consider that cellular prisons without a security wall, or prisons providing open accomodation within a security wall or fence, or prisons that substitute special guards for a wall, would be better described as prisons of medium security.
2. It follows that the primary characteristic of an open institution must be that the prisoners are trusted to comply with the discipline of the prison without close and constant supervision, and that training in self-responsibility should be the foundation of the régime.
3. An open institution ought so far as possible to possess the following features:
   a) It should be situated in the country, but not in any isolated or unfavourable location. It should be sufficiently close to an urban centre to provide necessary amenities for the staff and contacts with educational and social organizations desirable for the training of the prisoners.

   b) While the provision of agricultural work is an advantage, it is desirable also to provide for industrial and vocational training in workshops.
   c) Since the training of the prisoners on a basis of trust must depend on the personal influence of members of the staff, these should be of the highest quality.
   d) For the same reason the number of prisoners should not be high, since personal knowledge by the staff of the special character and needs of each individual is essential.
   e) It is important that the surrounding community should understand the purposes and methods of the institution. This may require a certain amount of propaganda and the enlistment of the interest of the press.
   f) The prisoners sent to an open institution should be carefully selected, and it should be possible to remove to another type of institution any who are found to be unable or unwilling to co-operate in a régime based on trust and self-responsibility, or whose conduct in any way affects adversely the proper control of the prison or the behaviour of other prisoners.
4. The principal advantages of a system of this type appear to be the following:
   a) The physical and mental health of the prisoners are equally improved.
   b) The conditions of imprisonment can approximate more closely to the pattern of normal life than those of a closed institution.
   c) The tensions of normal prison life are relaxed, discipline is more easy to maintain, and punishment is rarely required.
   d) The absence of the physical apparatus of repression and confinement, and the relations of greater confidence between prisoner and staff, are likely to affect the anti-social outlook of the prisoners, and to furnish conditions propitious to a genuine desire for reform.
   e) Open institutions are economical both with regard to construction and staff.
5. a) We consider that unsentenced prisoners should not be sent to open institutions, but otherwise we consider that the

criterion should not be whether the prisoner belongs to any legal or administrative category, but whether treatment in an open institution is more likely to effect his rehabilitation than treatment in other forms of custody, which must of course include the consideration whether he is personally suitable for treatment under open conditions.

b) It follows that assignment to an open institution should be preceded by observation, preferably in a specialized observation institution.

6. It appears that open institutions may be either
   a) separate institutions to which prisoners are directly assigned after due observation, or after serving some part of their sentence in a closed prison, or
   b) connected with a closed prison so that prisoners may pass to them as part of a progressive system.

7. We conclude that the system of open institutions has been established in a number of countries long enough, and with sufficient success, to demonstrate its advantages, and that while it cannot completely replace the prisons of maximum and medium security, its extension for the largest number of prisoners on the lines we suggest may make a valuable contribution to the prevention of crime.

The rules and regulations obtaining in open institutions should be framed in accordance with the spirit of point 4 above.

Second Question

The treatment and release of habitual offenders.

Commentary

The International Penal and Penitentiary Commission, already before the war, dealt with the problem of habitual offenders. In 1946, while reserving the discussion of the problem for the next Congress, an enquiry was instituted and a committee set up to study this important matter. The comprehensive documentation which will be ready at the time of the Congress will be usefully complemented by the preparatory reports from various countries stating experiences made with the special treatment provided for habitual offenders by a certain number of modern legislations.

It would be interesting to compare the operation of the systems in use which, under the name of either 'penalty' or 'security measure', prolong the

detention of these delinquents beyond the term of the ordinary penalty, or replace the latter.

More particularly, it would be proper to describe the categories for which special treatment is intended (hardened recidivists, professional delinquents and other dangerous and anti-social criminals, a-social delinquents relapsing into crime or petty delinquency through lack of will-power, psychopathic tendencies, etc.), and to state practical results of the treatment. Questions which at present are of special interest to penologists are, whether to apply the progressive system to habitual delinquents, including conditional release as its last stage, and whether to restore full civil rights to the habitual offender when he appears to be reformed. It is in fact admitted now that the primary aim with habitual offenders – elimination from society for a long time – cannot be pursued alone, but that it is necessary, even in their respect, to make a serious effort of re-education: since this effort will not always be useless it is in itself justified.

Resolution

1. Traditional punishments are not sufficient to fight effectively against habitual criminality. It is, therefore, necessary to employ other and more appropriate measures.
2. The introduction of certain legal conditions so that a person can be designated an habitual criminal (a certain number of sentences undergone or of crimes committed) is recommended. These conditions do not prevent the giving of a certain discretionary power to authorities competent to make decisions on the subject of habitual offenders.
3. The 'double track' system with different régimes and in different institutions is undesirable. The special measure should not be added to a sentence of a punitive character. There should be one unified measure of a relatively indeterminate duration.
4. It is desirable, as regards the treatment of habitual offenders who are to be subject to internment, to separate the young from the old, and the more dangerous and refractory offenders from those less so.
5. In the treatment of habitual offenders one should never lose sight of the possibility of their improvement. It follows that the aims of the treatment should include their re-education and social rehabilitation.
6. Before the sentence, and thereafter as may be necessary, these offenders should be submitted to an observation which should

pay particular attention to their social background and history, and to the psychological and psychiatric aspects of the case.

7. The final discharge of the habitual offender should, in general, be preceded by parole combined with well-directed after-care.
8. The habitual offender, especially if he has been subjected to internment, should have his case re-examined periodically.
9. The restoration of the civil rights of the habitual offenders – with the necessary precautions – should be considered, particularly if the law attributes to the designation of a person as an habitual criminal special effects beyond that of the application of an appropriate measure.
10. It is desirable
    a) that the declaration of habitual criminality, the choice, and any change in the nature of the measure to be applied, should be in the hands of a judicial authority with the advice of experts;
    b) that the termination of the measure should be in the hands of a judicial authority with the advice of experts, or of a legally constituted commission composed of experts and a judge.

Third Question

How is prison labour to be organized so as to yield both moral benefit and a useful social and economic return?

Commentary

The importance of prison labour is generally recognized. Prisoners must be kept busy with useful work under conditions that will make it as similar as possible to free labour.

Conditions of prison life and particularly the demands of prison discipline are also a hindrance to the rational organization of work in prisons.

It is generally admitted that between the prisoner and the prison administration there is no real labour contract and that the remuneration paid to the prisoner can therefore in no way be considered as a wage.

This has consequences, for instance as to the application of various laws of social security, in case of labour accidents, and also in respect of unemployment insurance, family allocations, old age pensions, etc.

Furthermore, if the inmate carries out remunerative work in his spare time, should he be allowed to sell the product for his own benefit and under what conditions can this be done?

To sum up, the question is how to organize prison labour so as to obtain the results hoped for.

Finally, it would be useful to examine how this work should be organized in accordance with the general laws of the country governing free labour and the social protection of workers.

Resolution

1. a) Prison labour should be considered not as an additional punishment but as a method of treatment of offenders;
   b) All prisoners should have the right, and prisoners under sentence have the obligation to work;
   c) Within the limits compatible with proper vocational selection and with the requirements of prison administration and discipline, the prisoners should be able to choose the type of work they wish to perform;
   d) The State should ensure that adequate and suitable employment for prisoners is available.
2. Prison labour should be as purposeful and efficiently organized as work in a free society. It should be performed under conditions and in an environment which will stimulate industrious habits and interest in work.
3. The management and organization of prison labour should be as much as possible like that of free labour, so far as that is at present developed, in accordance with the principles of human dignity. Only thus can prison labour give useful social and economic results; these factors will at the same time increase the moral benefits of prison labour.
4. Employer and labour organizations should be persuaded not to fear competition from prison labour, but unfair competition must be avoided.
5. Prisoners should be eligible for compensation for industrial accidents and disease in accordance with the laws of their country. Consideration should be given to allowing prisoners to participate to the greatest practicable extent in any social insurance schemes in force in their countries.
6. Prisoners should receive a wage. The Congress is aware of the practical difficulties inherent in a system of paying wages calculated according to the same norms that obtain outside the

prison. Nevertheless, the Congress recommends that such a system be applied to the greatest possible extent. From this wage there might be deducted a reasonable sum for the maintenance of the prisoner, the cost of maintaining his family, and, if possible, an indemnity payable to the victims of his offence.

7. For young offenders in particular, prison labour should aim primarily to teach them a trade. The trades should be sufficiently varied to enable them to be adapted to the educational standards, aptitudes, and inclinations of the prisoners.

8. Outside working hours, the prisoner should be able to devote himself not only to cultural activities and physical exercises but also to hobbies.

SECTION III

First Question

Short term imprisonment and its alternatives (probation, fines, compulsory home labour, etc.).

Commentary

The inefficiency of short term imprisonment from the point of view of reforming the prisoner and preventing recidivism has for a long time induced penologists to look for other means of fighting petty delinquency. This problem was already on the agenda of the last meetings of the International Penal and Penitentiary Commission who voted, in 1946 and 1948, two resolutions stating the harm done by short term imprisonment, which does not make an educational programme possible while, on the other hand, materially and morally it affects the future of petty offenders and their families; these resolutions stress the advisability of measures, not privative of liberty, proper to replace short imprisonment and, where the latter is indispensable, the provison of better places of detention and a more appropriate treatment of the sentenced offender.

As regards alternatives to short term sentences, many legislations have enlarged the scope of imposition of fines, duly reorganized so as to adapt the amount and conditions for payment to the financial means of the delinquent and to avoid too frequent conversions of unpaid fines into imprisonment; broad provisions are given for the suspension of sentences of imprisonment and probation; other measures also enter into account, such as reprimand, abstention

from punishment or even from prosecution; some countries at present consider making compulsory home labour an alternative to short sentences.

Wherever short term imprisonment cannot be dispensed with, the problem is to reorganize its practical enforcement so as to obtain more healthful effects and counteract as much as possible its imperfections through hygienic installations, experienced personnel, a brief social investigation, steps with a view to social rehabilitation, etc. It would also be of interest to examine if preference should be given to open establishments.

Resolution

1. Short term imprisonment presents serious inconveniences, from a social, economic and domestic point of view.

2. The conditional sentence is without doubt one of the most effective alternatives to short term imprisonment.
   Probation conceived as suspended pronouncement of sentence or as suspension of execution of sentence, appears also to be one of the solutions much to be recommended. The granting of suspended sentence or of probation to the offender should not necessarily prevent a later grant of a similar measure.

3. Fines are quite properly suggested as a suitable substitute for short prison terms. In order to reduce the number of those imprisoned in default of fines it seems necessary that :
   a) the fine be adjusted to the financial status of the defendant;
   b) he be permitted, if need be, to pay the fine in instalments and be granted a suspension of payments for periods when his income is inadequate;
   c) unpaid fines be converted into imprisonment not automatically but by a court decision in each individual case.

4. It is suggested also that recourse should be had to judicial reprimand, compulsory labour in liberty, the abstention from prosecution, or a ban in certain cases against exercising certain professions or activities.

5. In the exceptional cases when a short term imprisonment is pronounced, it should be served under conditions that minimize the possibility of recidivism.

To summarize :

The 12th Penal and Penitentiary Congress once more notes the

serious and numerous disadvantages of short term imprisonment. It condemns the all too frequent and indiscriminate use of short term imprisonment.

It expresses the wish that the legislator have as little recourse as possible to this type of imprisonment and that the judge be encouraged to the greatest possible degree in the use of alternative measures, such as already exist in certain countries, e. g. conditional sentences, probation, fines and judicial reprimand.

Second Question

How should the conditional release of prisoners be regulated? Is it necessary to provide a special régime for prisoners whose sentence is nearing its end so as to avoid the difficulties arising out of their sudden return to community life?

Commentary

In what manner is conditional release to be decided upon? Which shall be the authority empowered to make these decisions? Upon what factors should it base its appreciation? Among others, the question may be raised whether the magistrate who passed the sentence should be consulted. Should the conduct of the prisoner and his prospects of social rehabilitation prevail over the necessity of a severe repression of the offence committed?

Besides, experience has for a long time shown the serious difficulties resulting from a sudden discharge of prisoners on completion of a prison term of a given length and has led to a rather wide use of conditional release. To-day, the question is whether conditional release, considered as the last stage of the progressive system, should not become compulsory, to a certain extent at least. It might also be interesting to hear of the manner in which conditional release, whether in the discretion of the authority or compulsory, is applied to-day in various countries (minimum portion of sentence to be served, conditions attached, etc.).

A special penitentiary treatment might perhaps be advisable for prisoners nearing discharge and showing sufficiently positive signs of reformation as to be worthy of help. This régime, without, however, overlooking the legal status of the prisoner, will enable him, already while still in prison surroundings, from which he must begin to free himself definitely, to undertake again the control over his own life and future.

Resolution

1. The protection of society against recidivism requires the integration of conditional release in the execution of penal imprisonment.
2. Conditional release (including parole) should be possible, in an individualized form, whenever the factors pointing to its probable success are conjoined:
   a) The co-operation of the prisoner (good conduct and attitudes);
   b) The vesting of the power to release and to select conditions in an impartial and competent authority, completely familiar with all the aspects of the individual cases presented to it;
   c) The vigilant assistance of a supervising organ, well trained and properly equipped;
   d) An understanding and helpful public, giving the released prisoner 'a chance' to rebuild his life.
3. The functions of prisons should be conceived in such a way as to prepare, right from the beginning, the complete social re-adjustment of their inmates.
   Conditional release should preferably be granted as soon as the favourable factors, mentioned under 2, are found to be present.
   In every case, it is desirable that, before the end of a prisoner's term, measures be taken to ensure a progressive return to normal social life. This can be accomplished either by a pre-release programme set up within the institution or by parole under effective supervision.

Third Question

To what extent does the protection of society require the existence and publicity of a register of convicted persons *"casier judiciaire"*), and how should both this register and the offender's restoration to full civil status be organized with a view to facilitating his social rehabilitation?

Commentary

It is necessary to inform the penal judge of the criminal record of the person he has to judge. This alone justifies the existence of a register of convicted

persons from which information may be got in case of a new prosecution.

Furthermore, several countries consider that certain public administrations, or even private persons sometimes, may be informed on the criminal record of an individual, especially when he applies for a job or when he asks to benefit by certain advantages.

To what extent is it justified to give such restricted publicity to convictions, and can it be reconciled with the endeavour to allow a delinquent to re-adjust himself socially once his sentence is served?

Would it be expedient to expunge sentences from the register of convicted persons, either after a fixed period has elapsed or upon a special procedure of restoring the former offender to full civil status?

Resolution

1. In the data about a defendant which appear to be useful to the sentencing judge at some phase of the penal procedure, information regarding his previous criminal record must be considered as indispensable in indictable offences at least. Information regarding his police record ought to be added, whenever this can be done without great inconvenience. All this information should be accumulated in a penal register according to a system involving the most effective centralization.
2. The copy of the *penal register* should not be read publicly in court. After sentence this copy should be returned to the authority in charge of the register. Any unauthorized disclosure of the contents of this register or extracts therefrom should be punished.
3. Inasmuch as it may be impossible for certain countries to abandon the communication of data from the penal register to public officials as well as to private persons and to the person concerned, this communication ought not to mention these data once a period of time which should be fixed by law has elapsed. This communication should not be effected through the direct delivery of a document by the authority in charge of the register. It is the local or regional administrative authority which would issue a *social certificate* on the advice of a commission, composed of persons conversant with various aspects of social life. This certificate, while being based on the extract of the register and on other admissible information, would take acount, as the case may be, of the needs for the *moral and social rehabilitation* of the person concerned.

4. Means for the convicted person's *restoration to full civil status*, founded on a moral improvement, must tend towards individualization. Their advisability and structure require renewed study.
5. The penal register, the delivery of extracts and of social certificates as well as the restoration to full civil status ought to be regulated by the legislator.
6. Uniform standards for the organization of the penal register should form the subject of a world convention to be followed by regulations concerning the exchange of extracts and of other information.

SECTION IV

First Question

What developments have there been in the penal treatment of juvenile offenders (Reformatory, Borstal Institution, *"Prison-Ecole"*, etc.)?

Commentary

Penal law has made a particularly vigorous effort in the field of juvenile delinquency to free itself from certain traditional ideas and develop a legislation, taking into account above all the practical and psychological needs of the treatment of juvenile offenders. It is with the treatment of delinquent youth that penal reform started some seventy years ago and the first experience with re-education and individualization was gained.

This development was achieved in the Reformatories in the United States and Borstal Institutions in England, followed by the Belgian and Swedish *Prison-école* and the *Maison d'éducation au travail* (Labour training institution) in Switzerland. Of course, these institutions can be still more improved, but it has even now been ascertained that the percentage of recidivism after treatment in a Borstal or other similar institution is very low, and that 55 to 60 per cent of the inmates, or even more, are truly reformed on discharge.

While a great deal remains to be done, there is no doubt that prosperous ways have been opened up. The moment seems favourable for describing progress accomplished in this respect in various countries.

Resolution

The Congress notes the developments in the penal treatment of juvenile offenders and the evidence that although progress is slow, re-education is replacing repression and punishment.

The Congress recommends that scientific enquiry should be keenly continued into the causes of juvenile delinquency, and into the methods of classification and treatment and into the results. Meanwhile on present knowledge, the Congress forbears to dogmatize. It recognizes the contribution which is made by the sociologists, the anthropologists, the psychologists and the psychiatrists, working in co-operation with those who have gained valuable experience in the field.

The Congress stresses the continuing need for classification into homogeneous groups, for small establishments, for intelligent after-care, and particularly for the employment of the right men and women to carry out the work of training and reform.

Second Question

Should the protection of neglected and morally abandoned children be secured by a judicial authority or by a non-judicial body? Should the Courts for delinquent children and juveniles be maintained?

Commentary

At the Congress on Menthal Health, London, August 1948, a resolution was voted in favour of replacing courts for children by non-judicial bodies. It is obvious that juvenile courts on the one hand, and various social and educational institutions on the other, have certain tasks in common, but they also differ widely in character. As the measures applied by juvenile courts are mainly re-educational and not repressive, the question is whether a non-judicial agency (of guardianship, welfare, education) would not, hence, be more appropriate and in a better position to provide for the needs of morally and materially abandoned children. One more step would thus be made towards the elimination of traditional penal concepts in the treatment of delinquent minors. No distinction would be left between those minors who have violated penal law and those who for quite different reasons appear to be in need of measures of education or protection.

Assuming that sanctions in respect of delinquent youth were of an administrative nature, would their place still be in the penal law, or would it be desirable to take them out of it?

On the contrary, the judicial character of the procedure against delinquent youth implies certain guarantees (individual liberty, defence, etc.), the ground

for the intervention of the juvenile courts being a specific offence against penal law, whereas the grounds for the intervention of an administrative agency are far more numerous and less accurately defined.

It would be interesting to compare the experience gained in various countries with the one or the other system, either the exclusive authority of a special court to judge delinquent children and juveniles, a court which may have other functions also in respect of minors; or a non-judicial body (of guardianship, protection, educational and psycho-therapeutic guidance, etc.) called upon to intervene as soon as the child or juvenile shows signs of anti-social behaviour.

Resolution

Convened to examine the wish expressed in 1948 by the Mental Health Congress in London, in favour of abandoning the system of courts for delinquent children and of replacing it by a system of administrative authorities, along the lines of the 'councils for the protection of youth' in Scandinavia,

The XIIth International Penal and Penitentiary Congress holds that :

1. At present it does not feel that it should express a preference for any specific judicial or administrative system of handling juvenile delinquency; the structure of the respective institutions must depend on the legal order and customs of the country concerned.
2. Whatever be the system in any particular State, the following principles should be observed :
   a) The handling of juvenile delinquents shall be entrusted to an authority composed of people who are experts in legal, social, medical and educational matters, or, if this is impossible, the authority shall, before pronouncing a judgment, seek the advice of experts in medico-educational matters;
   b) The law concerning juvenile delinquents, both in respect to subject matter and its form, must not be patterned after the norms applied to the adults, but shall especially take into consideration the needs of juvenile delinquents, their personality, as well as the importance of not endangering their adjustment in later life;
   c) The special laws applying to juvenile delinquents shall guarantee to parents an impartial examination of their rights

concerning the education of their child and shall protect the minor against any arbitrary infringement of his individual rights.

3. As the present Congress is not in possession of the necessary data in order to propose a solution of this problem of co-ordination between the judicial and the administrative authorities, the problem of dividing work between the judicial and the administrative authorities concerning the selection and the supervision of the treatment prescribed for the juvenile delinquent should be made the subject of a special study by the International Penal and Penitentiary Commission.
4. The same wish is expressed concerning the question of whether neglected and abandoned children shall be referred to authorities having jurisdiction in matters of juvenile delinquency.

Third Question

Should not some of the methods developed in the treatment of young offenders be extended to the treatment of adults?

Commentary

In several countries, the law clearly states that the offender should not only pay for his deed, but also, and above all, be subjected to positive influences remodelling his character. Since it is admitted that criminality is nearly always the consequence of a deviant development due to biological as well as psychological and social factors, the principal aim of modern penal reform consists in applying therapeutic measures to the offender. In his connection, the experiences made in a rather general way in the field of the treatment of young offenders are of particular interest with a view to their utilization in the treatment and social re-adjustment of adult offenders. Thus, in the procedure against minors, the concept of responsibility *(discernement)* no longer plays a determining part; an appropriate treatment has become essential. As regards individualization, several legislations provide for the possibility of modifying the treatment of the minor according to the needs of each case, while this is not admitted for adults to the same extent.

In order to prepare the discussion at the Congress, it would be helpful if in each country a competent person were entrusted with preparing a statement on experiences with educational and therapeutic treatment of prisoners of different age groups.

Resolution

The Congress agrees that both fields, that of the control of adult crime and that of the control of juvenile delinquency, are involved in the gradual change from crime and delinquency control through punishment to control through correction. For varying reasons much more progress in that direction has been made in the juvenile field and it is therefore advantageous to look to that field for suggestions and leads for further developments in adult crime control.

The Congress considers that many adults are capable of response to the kind of training and conditions which in several countries are applied only to juveniles. Because a young man or woman is legally an adult, it should not mean that he or she must be condemned to a form of imprisonment which is shorn of all chances for education, training and reformation.

More specifically, the Congress suggests that the experiences acquired in the field of juvenile delinquency with regard to preparation of case histories, probation and parole and judicial pardon should be utilized also in the adult field.

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