

SUMMARY RECORD OF THE 31st MEETING

Chairman: Mr. SOBHY (Egypt)

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ORGANIZATION OF WORK

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The meeting was called to order at 10.40 a.m.

AGENDA ITEM 87: ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (continued) (A/34/398 and Corr.1, A/34/196, A/34/357, A/34/389 and Corr.1, A/34/542, A/34/614 and Corr.1 (French only); A/C.3/34/L.15 and Rev.1, L.16, L.18, L.23, L.25 and L.26)

AGENDA ITEM 88: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (continued) (A/34/146, A/34/273, A/34/389 and Corr.1 and A/34/566; A/C.3/34/L.24)

- (a) QUESTIONNAIRE ON THE DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A/34/144)
- (b) UNILATERAL DECLARATIONS BY MEMBER STATES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A/34/145 and Add.1 and 2)
- (c) DRAFT CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS (A/34/431)

1. Miss CAO-PINNA (Italy) said that torture was one of the issues to which the competent bodies of the United Nations had been devoting increased attention over the last five years. It was therefore to be hoped that in the not-too-distant future the international community would have a larger number of analytical standards than those already established in the existing instruments on the subject. Those new standards would provide guidance in preventing, punishing and combating torture. There was an urgent need to take action at the political level to achieve the total eradication of torture. Her delegation would support any method of expanding political action to put an end to that cruel, inhuman and degrading practice.

2. Her delegation attached particular importance to the elaboration of a draft convention against torture; its ratification by all Member States would be an unequivocal sign of their willingness to banish any violation of the fundamental right of every human being to physical, mental and psychological integrity. In that connexion, her Government had recently submitted its observations on the revised text proposed by the delegation of Sweden in the Commission on Human Rights and it proposed that the commitments to be undertaken by States parties to that Convention should have priority over those commitments previously undertaken under other conventions and that the link between any act of torture and the initiation of penal proceedings against the offenders should be made legally automatic.

3. In view of the limited number of States which had made unilateral declarations against torture, her delegation suggested that a new draft resolution should be submitted in which the General Assembly would express its disappointment about that situation.

(Miss Cao-Pinna, Italy)

4. Since persons under any form of detention or imprisonment were more exposed than others to torture and similar treatment, it was understandable that the General Assembly should be asked to finalize a draft code of conduct for law enforcement officials and consider a draft body of principles for the protection of all persons under any form of detention or imprisonment. Her delegation hoped that both those instruments would be finalized and adopted as soon as possible.

5. In connexion with the questionnaire sent out to Member States in implementation of General Assembly resolution 32/63, it should be noted that requests to Governments for periodic and non-periodic information were continuing to increase. More than 100 Member States were parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and more than 60 States were parties to the International Covenants on human rights: thus Governments had to submit comprehensive reports to the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Economic and Social Council. That situation placed an increasing burden not only on Governments but also on the various administrative units of the Secretariat, and in particular the Division of Human Rights, which Italy had proposed should be upgraded to the status of Centre. Her delegation would welcome comments on the situation in order to decide whether that proposal should be discussed again under item 12 of the agenda or at the next sessions of the Economic and Social Council.

6. Mr. HEINEMANN (Netherlands) said that not all the documents before the Committee in connexion with item 88 were concerned with torture per se: the one common element of those documents was the rights of persons under detention or imprisonment. It might be appropriate to change the title of the agenda item, retaining the existing title as a subtitle, so as to indicate that the aim was not only the total eradication of torture but also the realization and safeguarding of all the rights of persons under any form of detention or imprisonment. In that respect, the Netherlands was greatly concerned not only about the rights of persons imprisoned in normal situations but also the rights of those who were detained or imprisoned under exceptional circumstances such as civil war, war-like situations and emergency situations.

7. One of the major infringements of the rights of detainees was the practice of torture and other cruel, inhuman or degrading treatment or punishment. The General Assembly, at its thirty-second session, had adopted three resolutions on the subject (General Assembly resolutions 32/62, 32/63 and 32/64), inspired by the main instrument of the United Nations in that field, the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Up to the present, some 50 Member States had replied to the questionnaire sent out under General Assembly resolution 32/63, but a number of them had shown a tendency to limit themselves to a purely legalistic approach. Torture could not be eliminated simply by enacting laws: the letter and spirit of the law must be enforced. Torture could occur even in countries with a refined system of safeguards to prevent it.

8. The Committee had before it a report of WHO on the development of codes of medical ethics (A/34/273), prepared by the Council for International Organizations

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(Mr. Heinemann, Netherlands)

of Medical Sciences (CIOMS). It was proposed in the report that the draft principles of medical ethics for physicians who were in a clinical relationship with prisoners or detainees should supplement the Tokyo Declaration of the World Medical Association and the United Nations Standard Minimum Rules for the Treatment of Prisoners. The draft principles on medical ethics should therefore be circulated among Member States and their comments should be requested on the subject so that the General Assembly, at its thirty-fifth session, would be able to consider them and conclude its work. His delegation was concerned that the sixth principle, after stating that there could be no derogation from the foregoing principles for any reason, continued with an ominous "however" in the part which stipulated that, in situations in which physicians were compelled under duress to become involved in the maltreatment of prisoners, they should try to minimize the noxious effects. The prohibition of the participation by physicians in any way in the maltreatment of prisoners and detainees should be absolute and unequivocal, without any exceptions.

9. In order to ensure that the draft body of principles for the protection of all persons under any form of detention or imprisonment could be completed at the thirty-fifth session, an open-ended working group should be set up, as had been done in relation to the draft code of conduct for law enforcement officials.

10. Torture continued to be practised on a large scale in the world. Even if the Committee succeeded in finalizing a convention against torture, its implementation would have to be guaranteed; thus the Committee should continue to allot to the subject of persons under any form of detention or imprisonment the high priority it deserved.

11. Mr. HOLLOWAY (Australia) said that the Committee's work on the item under discussion related for the most part to the continuation of standard-setting activities and efforts to encourage the more effective application of existing standards.

12. Torture was widely regarded as a crime against humanity and its condemnation was a firm principle of international law based on article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. His Government noted with satisfaction the growing number of international instruments which condemned torture and other cruel, inhuman or degrading treatment or punishment.

13. One of the most important initiatives in that field in recent times had been the proposal made by Sweden at the thirty-second session of the General Assembly for the drafting of a convention against torture which was currently under study in the Commission on Human Rights. His delegation supported the idea of drafting the convention and had been a sponsor of General Assembly resolution 32/62 which had set the drafting process in motion.

14. His delegation also attached priority to the completion of the Code of Conduct for Law Enforcement Officials and would support efforts to ensure the adoption of the Code at the current session. It was to be hoped that work on the draft body of

(Mr. Holloway, Australia)

principles for the protection of all persons under any form of detention or imprisonment and work on the development of codes of medical ethics would also soon be completed. The latter code should, as the next stage, be examined by Governments.

15. Although the international instruments against torture and other similar practices were extremely important, they were not in themselves sufficient. There was an enormous gap between the establishment of standards through international instruments and the implementation of those standards in practice. Much needed to be done in the area of implementation, both at the national and the international levels. The international community could help by ensuring that the international standards were translated to the national level, where the ultimate responsibility for ensuring the elimination of torture and similar practices inevitably resided. In that connexion, General Assembly resolution 32/64 was relevant, as it established the system of unilateral declarations by Member States against torture and other cruel, inhuman or degrading treatment or punishment. He also referred to the questionnaire asking States to report on the extent to which their national law complied with the 1975 United Nations Declaration on the subject of torture.

16. He also stressed the responsibility of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities with regard to the widespread instances of enforced or involuntary disappearance and the abuse of psychiatric practices. His delegation urged more rapid progress along the existing lines of work, an area in which it pledged its active participation.

17. Mr. EDIS (United Kingdom) said that the abhorrent practice of torture continued in many countries, as could be seen from the moving accounts by the victims of torture contained in the reports of Amnesty International, despite the fact that torture had been banned under the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. His delegation felt that the Declaration was an important instrument and guide for all States in the setting of standards of human behaviour and hoped that Member States would put its principles into practice. Furthermore, those States which have not yet replied to the Secretary-General's questionnaire on the matter should do so as soon as possible.

18. His delegation strongly supported the idea of building, on the basis of the Declaration, an international convention which would contain essential and fundamental guarantees against the practice of torture. It was to be hoped that the Working Group of the Commission on Human Rights would continue to make satisfactory progress towards that goal.

19. With regard to the draft Code of Conduct for Law Enforcement Officials, his delegation felt that the final text should reflect the comments of Governments, although the general principles and format, carefully elaborated by experts in the field of criminal justice, should be retained. He welcomed the progress made by the Working Group and hoped that its task would be completed at the current session.

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(Mr. Edis, United Kingdom)

20. The draft body of principles for the protection of all persons under any form of detention or imprisonment was a valuable attempt to focus on the situation in countries where, despite apparent legal safeguards, people were held under detention for long periods of time without adequate regard for their fundamental rights. The drafters of the principles had usefully tackled the difficult task of defining standards in sufficiently general terms to be capable of application to different conditions and legal systems throughout the world. Although the principles could not be applied in all places and at all times, they demonstrated the need to strike a genuine balance between the rights of the individuals and the interests of justice.

21. The draft code of medical ethics should be refined one more time, since it was capable of interpretation in different ways. Furthermore, principle XI seemed to be at variance with well-established international standards. The relationship between the principles, the Standard Minimum Rules on the Treatment of Prisoners and the draft convention against torture should be studied further. A possibility would be to transmit the draft code to the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders to be held in 1980.

22. Mr. RIOS (Panama) said that his delegation was deeply concerned by the continued existence of torture despite the enormous efforts of the United Nations. The situation was aggravated by the fact that scientific and technological progress had made it possible to apply more sophisticated and diabolical methods of oppression.

23. The torture of defenceless human beings was cowardly, repulsive and heinous. However, the worst tyrants, while practising torture, proclaimed their adherence to human rights instruments condemning and prohibiting the use of inhuman, cruel or degrading punishment. Often political prisoners were the most abused, for the sole reason that they dissented from the political ideas of those in power. It was encouraging to see the recent overthrow of some rulers of that type.

24. It was absolutely essential to develop, in the United Nations system, new means for ensuring the observance of the Universal Declaration of Human Rights and the International Covenants on Human Rights, so that private persons would not be deprived of their freedom by government forces and subjected to torture and cruel treatment. In that connexion, he found that the questionnaire sent to Governments under General Assembly resolution 32/63 was of great merit. General Assembly resolution 34/52 (XXX) and the principles contained in the Declaration were positive, but the question remained whether they would help to reduce the suffering of detained persons in countries dominated by despotic régimes.

25. New machinery and different procedures must be put into operation against torture and other cruel, inhuman and degrading treatment. His delegation therefore felt that the establishment of a post of United Nations High Commissioner for Human Rights was a valid idea, because, without prejudice to the principle of non-intervention in the internal affairs of States, judgements could be passed and solutions could be sought in full impartiality in the increasing number of cases of human rights violations.

26. Mr. WASILEWSKI (Poland) drew attention to efforts on the part of the United Nations, the Congresses on Crime Prevention and the Treatment of Offenders, and the Commission on Human Rights and other bodies to eradicate torture, and other cruel, inhuman or degrading treatment or punishment. However, despite the resolute condemnation of the practice of torture by the international community and despite the clear provisions of international law of the subject, the international community frequently received reports of tortures being inflicted on heroic fighters for national liberation, democracies and social progress.

27. It was well known that torture was a common practice inflicted on political prisoners under régimes characterized by colonialism, racism and apartheid. Reports on torture in Chile and South Korea had also been received. The cruel, inhuman and degrading treatment employed often led to the death of the victim. He cited the events in Kampuchea before the fall of the genocidal Pol Pot régime and the proclamation of the People's Republic of Kampuchea. A school in Phnom Penh had been transformed into an execution yard where thousands of persons had been murdered. There had also been reports of torture and similar practices in the occupied Arab territories.

28. Poland was firmly against the use of torture, and other cruel, inhuman or degrading treatment or punishment. Polish criminal legislation provided sufficient guarantees in that connexion. He stressed that torture was completely alien to the ideals of socialist humanism and that Poland had undertaken international treaty obligations against torture by ratifying, inter alia, the International Covenant on Civil and Political Rights.

29. Poland, which had experienced the inhuman practices perpetrated by the Nazi invaders during the Second World War, had always opposed torture. The practice of torture, terror, massive repression and violations of fundamental human rights and freedoms ran counter to the United Nations Charter and many international instruments. His delegation was therefore convinced that the United Nations should adopt effective measures to put an end to such practices. The current United Nations Decade for Action to Combat Racism and Racial Discrimination would contribute decisively to that end. His country was ready to co-operate at the international level to eliminate torture from the entire world, primarily through the legally binding obligations assumed by States under international treaties.

30. Mr. O'DONOVAN (Ireland) said that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment had been established in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. That had not been sufficient to prevent torture from continuing to be a widespread phenomenon in the world. The international community must continue to consider ways of eliminating torture; for that reason Ireland had supported the initiative aimed at the preparation of a convention on the matter and urged the Commission on Human Rights to give the highest priority to that question. The measures adopted by the Economic and Social Council in that connexion would enable the Commission on Human Rights to give more time to the task during its following session.

(Mr. O'Donovan, Ireland)

31. He stressed the importance of the work on the formulation of a body of principles for the protection of all persons under any form of detention or imprisonment (E/CN.4/1296, para. 109).

32. With regard to the code of conduct for law enforcement officials, he hoped that the Working Group would be able to complete preparation of the relevant draft and that the General Assembly would be able to adopt it during the current session.

33. The WHO report on the development of codes of medical ethics (A/34/273), which was the result of several years' work, was another important contribution to international efforts to combat practices of torture and cruel, inhuman or degrading treatment or punishment, although the proposed text could be improved.

34. He commended the action taken by the Sub-Commission on Discrimination and Protection of Minorities at its thirty-second session to investigate the implications for the enjoyment of human rights of situations known as states of siege or emergency, and also to consider the question of the enforced or involuntary disappearance of persons related to excesses on the part of law-enforcement or security authorities or similar organizations. Those actions of the Sub-Commission should be borne in mind by the Secretariat if the General Assembly adopted the proposal in paragraph 10 of draft resolution A/C.3/34/L.15/Rev.1.

35. Protection against torture was a basic right and did not depend on different economic, social and cultural systems; the same standards must be applied to protection of that right everywhere. It was closely related to other rights and would be best protected when economic, social and cultural rights were fully enjoyed. However, protection against torture must not be diminished when other rights were not fully enjoyed. It was a right that was to be enjoyed absolutely, without limitations as to degree or scope.

AGENDA ITEM 84: INTERNATIONAL COVENANTS ON HUMAN RIGHTS (A/34/491, A/34/559, A/34/566, A/34/568, A/34/614; A/C.3/34/1, A/C.3/34/3).

(a) REPORT OF THE HUMAN RIGHTS COMMITTEE (A/34/40)

(b) STATUS OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: REPORT OF THE SECRETARY-GENERAL (A/34/440).

36. Mr. VAN BOVEN (Director, Division of Human Rights) said that the International Covenants on Human Rights and the Optional Protocol to the International Covenant on Civil and Political Rights, which had entered into force in 1976, formed part of a series of international instruments, the elaboration of which had been decided upon by the United Nations at the inception of its activities in the field of human rights. The General Assembly had consistently stressed the importance of universal acceptance of the International Covenants and of strict compliance by States parties.



37. Since the preceding session of the General Assembly, seven more States had ratified or acceded to both Covenants, and one had also ratified the Optional Protocol. Currently, there were 62 States parties to the International Covenant on Economic, Social and Cultural Rights, 60 States parties to the International Covenant on Civil and Political Rights and 22 States parties to the Optional Protocol.

38. During the past year, the Human Rights Committee had continued consideration of reports submitted by States under article 40 of the International Covenant on Civil and Political Rights; it had considered the reports of Chile, Bulgaria, Romania, Spain, the United Kingdom, the Ukrainian SSR, the Syrian Arab Republic, Cyprus and Finland. During one of its future sessions, the Committee would consider the method that was to be used for making the general comments required in article 40, paragraph 4, of the Covenant.

39. The Committee had also continued consideration of communications submitted to it under the Optional Protocol. For the first time, the Committee had concluded consideration of one of those communications by adopting its final views, which it had transmitted to the State party concerned and to the author of the communication. In the Committee's view, the communication revealed serious violations by the State party of various provisions of the Covenant. The final views of the Human Rights Committee with regard to that communication were reproduced in annex VII to its report. In that connexion, he drew the Committee's attention to document A/C.3/34/3, containing a letter from the Permanent Representative of Uruguay pertaining to the views expressed by the Committee under article 5, paragraph 4, of the Optional Protocol.

40. The Human Rights Committee had also adopted further rules of procedure covering article 41 of the Covenant, on inter-State complaints. Those rules were reproduced in annex III to the Committee's report (A/34/40). The Human Rights Committee had also dealt with the question of the publicity to be given to its work and the possibility of including a record of it in the United Nations Yearbook on Human Rights, the periodicity, content and format of which had been the subject of an Economic and Social Council resolution. During its eighth session, held from 15 to 26 October 1979, the Human Rights Committee had requested the Secretariat to inform the General Assembly of its wish to hold some of its sessions in developing countries in order to publicize the Covenant and its own activities in different regions of the world.

41. With regard to the International Covenant on Economic, Social and Cultural Rights, he recalled that the Economic and Social Council had set up a Working Group to consider the reports of States parties. The Council had adopted the methods of work proposed by the Working Group for the discharge of its functions (resolution E/1979/43). Under that resolution, the Working Group would consider reports of States in accordance with the programme established by the Economic and Social Council in resolution 1988 (LX) of 11 May 1976, in other words, in biennial stages. Representatives of reporting States might attend the meetings of the Working Group at which their respective reports were considered, make statements on them and answer questions that might be put to them by the members

(Mr. Van Boven)

of the Working Group. The Working Group would also consider the reports of the specialized agencies submitted to the Economic and Social Council in accordance with article 18 of the Covenant and would submit to the Economic and Social Council proposals concerning the general recommendations referred to in article 21 of the Covenant. It might also make suggestions with reference to articles 19, 22 and 23.

42. With regard to the staffing needed to service the Covenants, he said that in the budget proposals for 1980-1981 the Secretary General had requested one additional post for the International Instruments Unit. That would alleviate the situation slightly, although the staff available would continue to be less than had originally been considered necessary; the difficulties would become more acute owing to the increase in the number of States parties to the Covenants since their entry into force.

#### ORGANIZATION OF WORK

43. Following an exchange of views in which Miss OBAFEMI (Nigeria) and Mr. CARDWELL (United States of America) took part, the CHAIRMAN suggested that the list of speakers on item 84 should be closed at 6 p.m. that same day, Wednesday, 31 October, which should also be the deadline for the submission of draft resolutions under item 82; he also suggested that the deadline for the submission of draft resolutions under item 83 should be 6 p.m. on Thursday 1 November.

44. It was so decided.

The meeting rose at 12.15 p.m.