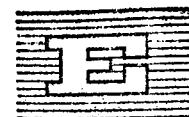
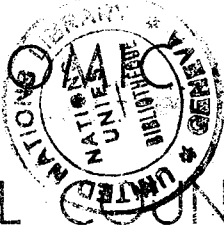


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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF  
A LONG-TERM PROGRAMME OF WORK OF THE COMMISSION

Discussions and recommendations of the Fifth United Nations Congress on  
the Prevention of Crime and the Treatment of Offenders relating to the  
various aspects of human rights, with particular reference to General  
Assembly resolution 3218 (XXIX), as well as the decisions of the General  
Assembly on the matter

Report prepared by the Secretary-General under paragraph 3 (b)  
of Commission resolution 10 (XXXI)

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## INTRODUCTION

1. The present report is submitted in accordance with paragraph 3 (b) of Commission resolution 10 (XXXI), in which the Secretary-General was requested, taking into account the need for establishing a unified long-term programme of work in the field of human rights, to submit to the Commission at its thirty-second session, inter alia, a report on "the discussions and recommendations of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders relating to the various aspects of human rights, with particular reference to General Assembly resolution 3218 (XXIX), as well as the decisions of the General Assembly on the matter".
2. The concern which the United Nations has expressed for many years for the protection of detained persons against torture and other cruel, inhuman or degrading treatment or punishment has intensified significantly since 1973. In September of that year, at its twenty-sixth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Commission on Human Rights to authorize it to include in the agenda of its next session an item entitled "The question of the human rights of persons subjected to any form of detention or imprisonment". 1/
3. By resolution 3059 (XXVIII) of 2 November 1973, the General Assembly, bearing in mind the Sub-Commission's request, asked the Secretary-General to inform it, under the report of the Economic and Social Council, of the consideration given to this question by the Sub-Commission, the Commission on Human Rights and other United Nations organs concerned. The Assembly further decided to examine the question of torture and other cruel, inhuman or degrading treatment or punishment in relation to detention or imprisonment as an item at one of its future sessions.
4. Having been so authorized by the Commission on Human Rights, 2/ the Sub-Commission considered this matter at its twenty-seventh session in 1974 and, by resolution 7 (XXVIII) of 20 August 1974, decided to review annually the situation concerning the human rights of detained persons, taking into account the reliably attested information from Governments, the specialized agencies, the regional intergovernmental organizations and interested non-governmental organizations in consultative status with the Economic and Social Council, provided that such non-governmental organizations acted in good faith and that their information was not politically motivated contrary to the principles of the Charter of the United Nations.
5. By resolution 3218 (XXIX) of 6 November 1974, the General Assembly, noting with appreciation the decision of the Sub-Commission and recalling, inter alia, Economic and Social Council resolution 663 C (XXIV) whereby the Council approved the Standard Minimum Rules for the Treatment of Prisoners, Council resolution 1794 (LIV) concerning the preparation of an international code of police ethics, and General Assembly resolution 3144 (XXVIII) on human rights in the administration of justice, expressed its conviction that, in view of the increasing number of alarming reports on torture, further efforts were needed to protect the basic human right to be free from torture and other cruel, inhuman or degrading

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1/ E/CN.4/1128, part B, sect. (b), decision 1 (i).

2/ See Official Records of the Economic and Social Council, Fifty-sixth Session, Supplement No. 5 (E/5464), chap. XIX. B.6.

treatment or punishment. The Assembly decided to consider the question again at its thirtieth session. In paragraph 2 of the resolution, it requested the Secretary-General to prepare an analytical summary of the information to be sought from Member States on the legislative, administrative and judicial measures, including remedies and sanctions, aimed at safeguarding persons within their jurisdiction against torture and other cruel, inhuman or degrading treatment or punishment, and of their comments on articles 24 to 27 of the draft principles on freedom from arbitrary arrest and detention prepared for the Commission on Human Rights. 3/ The summary was to be submitted to the General Assembly at its thirty-first session, to the Commission on Human Rights, to the Sub-Commission, and to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Congress was specifically requested, in paragraphs 3 and 4 of the resolution, to examine the question of the preparation of an international code of ethics for police and related law-enforcement agencies, and, in the course of its review of the Standard Minimum Rules for the Treatment of Prisoners, to formulate rules for the protection of all detained persons against torture and other cruel, inhuman or degrading treatment or punishment. The Assembly further invited the World Health Organization to draft, in co-operation with other organizations concerned, for submission to the Congress, an outline of the principles of medical ethics relevant to the protection of detained persons against torture and other cruel, inhuman or degrading treatment or punishment.

6. By resolution 4 (XXVIII) of 10 September 1975, the Sub-Commission, having conducted its first annual review of information concerning the human rights of detained persons, stressed in general terms a number of issues which, it felt, needed immediate attention. The Sub-Commission, further, invited the Commission on Human Rights to give urgent consideration to the study of the right of everyone to be free from arbitrary arrest, detention and exile and the draft principles annexed thereto. The Secretary-General was again requested to submit to the next session of the Sub-Commission reliably attested information received on the question from Governments, specialized agencies and regional intergovernmental organizations, together with a synopsis of the materials received from non-governmental organizations, and to make available to the Sub-Commission a report on the relevant aspects of the activities of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

7. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held at Geneva from 1 to 21 September 1975. It was attended by experts designated by Governments of States Members of the United Nations and members of the specialized agencies, by representatives of specialized agencies, the Palestine Liberation Organization and liberation movements recognized by OAU, various intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, and qualified individuals. The Division of Human Rights of the United Nations Secretariat participated actively in the work of the Congress and its Director conveyed to it, in particular, the concern of the General Assembly, the Commission on Human Rights and the Sub-Commission regarding the human rights of detained persons. The debates and recommendations of the Congress on the two questions expressly referred to it by

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3/ See Study of the Right of Everyone to be Free From Arbitrary Arrest, Detention and Exile (United Nations publication, Sales No. 65.XIV.2), part VI. This study had been prepared in accordance with Economic and Social Council resolution 624 B (XXII).

General Assembly resolution 3218 (XXIX) and on some other aspects of its work which appear to be closely related to human rights issues are analysed in chapter I of the present report.

8. The debates and decisions of the General Assembly at its thirtieth session under the item "Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment" are dealt with in chapter II.

9. Reference to the discussions and recommendations of the Congress and the debates of the General Assembly in the present report are purely illustrative in character.

I. DISCUSSIONS AND RECOMMENDATIONS OF THE FIFTH UNITED NATIONS  
CONGRESS RELATING TO THE VARIOUS ASPECTS OF HUMAN RIGHTS,  
WITH PARTICULAR REFERENCE TO GENERAL ASSEMBLY  
RESOLUTION 3218 (XXIX)

10. The Fifth United Nations Congress, which was devoted to the general theme "Crime prevention and control - the challenge of the last quarter of the century", had the following agenda:

- (1) Changes in forms and dimensions of criminality - transnational and national
- (2) Criminal legislation, juridical procedures and other forms of social control in the prevention of crime
- (3) The emerging roles of the police and other law enforcement agencies, with special reference to changing expectations and minimum standards of performance
- (4) The treatment of offenders, in custody or in the community, with special reference to the implementation of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations
- (5) Economic and social consequences of crime: new challenges for research and planning.

11. Section A of this chapter deals with the debates and recommendations of the Congress regarding the formulation of draft rules for the protection of detained persons against torture and other cruel, inhuman or degrading treatment or punishment. Section B is devoted to the work of the Congress concerning the question of preparing an international code of ethics for the police and related law-enforcement agencies, in accordance with the other request of the General Assembly in resolution 3218 (XXIX). Section C refers to some other aspects of the work of the Congress which appear to be closely related to the protection of human rights.

A. Debates and recommendations of the Congress regarding the  
formulation of rules for the protection of detained  
persons against torture and other cruel, inhuman  
or degrading treatment or punishment

12. In considering this question, the Congress had before it, in addition to several working papers by its secretariat, the text of the Standard Minimum Rules for the Treatment of Prisoners, 4/ the draft principles on freedom from arbitrary arrest and detention prepared for the Commission on Human Rights, 5/ the analytical summary of information and comments by Member States, which had been prepared by

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4/ United Nations publication, Sales No. 1956.IV.4.

5/ United Nations publication, Sales No. 65.XIV.2, part VI.

the Secretary-General in accordance with paragraph 2 of General Assembly resolution 3218 (XXIX), 6/ and a paper entitled "Health aspects of avoidable maltreatment of prisoners and detainees", prepared by the World Health Organization in accordance with paragraph 5 of the same resolution. 7/

13. The report of the Secretary-General referred, in particular, to article 5 of the Universal Declaration of Human Rights and to articles 6, 7, 8 and 9 of the International Covenant on Civil and Political Rights, 8/ pointing out, in particular, that these provisions, under the Covenant, could not be derogated from by the States parties, even in time of public emergency.

14. In response to the request of the General Assembly in paragraph 4 of its resolution 3218 (XXIX), attention was first directed to the suggestions contained in a working paper by the United Nations Secretariat 9/ that articles 4 (1) and 84 (1) of the Standard Minimum Rules be amended to make the whole body of the Rules applicable to any person deprived of his freedom, regardless of whether a criminal charge had been lodged against him. The text of the amendment suggested by the Secretariat read as follows, the proposed changes being underlined:

"(a) Rule 4 (1). Part I of the Rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to 'security measures' or corrective measures ordered by any authority."

"(b) Rule 84 (1). Persons arrested, imprisoned or otherwise deprived of their liberty by whatever reason, who have not yet been tried and sentenced, will be referred to as 'untried prisoners' hereinafter in these rules."

15. The expert from Canada proposed that, in order to ensure the protection of all detained persons against torture, the substance of articles 24, 26 and 27 of the draft principles on freedom from arbitrary arrest and detention should be embodied in the Standard Minimum Rules, part II, "Rules applicable to special categories of prisoners", as an added section E, "Prisoners under arrest and detention". 10/

16. The suggested amendments to the Standard Minimum Rules and the draft procedures for their effective implementation, to which no objection was raised in

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6/ A/10158. This report was circulated to the Congress under the symbol A/CONF.56/8.

7/ A/CONF.56/9.

8/ The International Covenant on Civil and Political Rights and the Optional Protocol thereto will come into force on 23 March 1976, the requirements as to the minimum number of ratifications or accessions (35 for the Covenant, 10 States parties to the Covenant for the Protocol) having been fulfilled.

9/ A/CONF.56/6. The full text of these suggestions is also reproduced in document A/10260, para. 10.

10/ A/CONF.56/L.6/Add.1, para. 13: statement made by the expert from Canada in Section IV on 9 September 1975.

the discussions, were, in the view of some participants, expected to be referred to the appropriate bodies within the United Nations. 11/

17. The Congress established an informal working group to consider all the drafts and suggestions submitted.

18. The debate focused mainly on a proposed "declaration concerning the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment" introduced by the experts from the Netherlands and Sweden and reviewed by the working group. Such a declaration was presented by its authors as a set of broad principles relating to the prohibition of torture. It was not to be regarded as a body of juridical rules capable of strict legal interpretation at the domestic or international level. The draft, according to its sponsors, could stand alone or be inserted or referred to in an international code of police ethics as well as in a revised version of the Standard Minimum Rules.

19. The draft declaration was revised in the course of the debates. Special attention was given to the definition of torture provided in draft article 1, which read as follows:

"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons."

Those who favoured a somewhat more restrictive formula proposed that the definition should apply only to acts directly inflicted by public officials. The participants who advocated a broader provision favoured the deletion of the word "intentionally" and the addition of the term "or for any other purpose" at the end of the article. 12/ It was proposed that the word "severe" be replaced by the word "cruel". 13/ None of these amendments was accepted by the Congress, but they were maintained in the form of reservations transmitted to the General Assembly along with the approved text of the draft declaration. The Congress, however, added to the original formula of article 1 the qualifying clause that torture "does not include pain or suffering arising only from, or inherent in or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners".

20. As regards article 10, dealing with sanctions against persons accused of acts of torture, it was proposed - but not accepted - that the scope of the provision be expanded to provide for "disciplinary or other appropriate proceedings" in addition to criminal sanctions. 14/ Article 12, concerning the inadmissibility of evidence obtained through torture or ill-treatment, also gave rise to some

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11/ A/10260, para. 14.

12/ Ibid., para. 16.

13/ Ibid.

14/ Ibid.

discussion. The Congress accepted a proposal to declare such evidence inadmissible not only against the victim but also "against any other person in any proceedings".

21. The Congress did not accept a suggestion to delete from article 3 a clause reaffirming that exceptional circumstances might not be invoked as a justification for torture and ill-treatment. 15/

22. In the course of its debate on the meaning and limitations of the concept of "torture", including mental torture, and on questions regarding complicity in connexion with article 7, reference was made to the work of the World Health Organization and of other organizations, including the World Medical Association, on the relevant aspects of medical ethics.

23. There was considerable debate regarding article 13 of the original draft by the Netherlands and Sweden, which read: "All States shall endeavour to implement this Declaration as soon as feasible. All appropriate international governmental organizations are requested to co-operate in the implementation of these standards in accordance with international law and practice". While some participants supported the inclusion of the article, other participants thought that the provision should be eliminated as inappropriate in such a Declaration. 16/ Article 13 was not included in the text of the draft declaration submitted to the General Assembly.

24. The Congress approved by acclamation the text of the draft declaration, as amended, and recommended it for adoption by the General Assembly. 17/

25. At the close of its debates on this subject, the Congress concluded that the practice of torture and other cruel, inhuman or degrading treatment or punishment was clearly abhorrent to the community of nations. It was recognized that the Declaration was only the first step towards ensuring the effective protection of all peoples against such practices. The view was expressed that the ultimate objective, in this regard, would be the adoption and universal acceptance of an international convention on this matter. 18/

B. Debates and recommendations of the Congress regarding the preparation of an international code of ethics for police and related law-enforcement agencies

26. It may be recalled that this question had been placed on the agenda of the twentieth session of the Commission on Human Rights in accordance with the suggestion of a United Nations seminar on the role of the police in the protection of human rights held at Canberra, Australia, from 30 April to 14 May 1963, under the programme of advisory services in the field of human rights. 19/ The Commission, however, was not able to consider this question owing to lack of time

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15/ A/CONF.56/L.6/Add.1, para. 12.

16/ Ibid.

17/ A/10260, para. 15.

18/ A/CONF.56/L.6/Add.1, para. 15.

19/ See report of the seminar, ST/TAO/HR.10.

and the higher priority given to other items on its agenda. By resolution 1794 (LIV) of 18 May 1973, the Economic and Social Council invited the Committee on Crime Prevention and Control to consider the possibility of including in its work programme the question of preparing an international code of police ethics and to transmit to the Commission on Human Rights its recommendations as to the desirability, scope and possible contents of such a code. The Council requested the Commission on Human Rights to consider the matter at an appropriate session in the future, on the basis of the recommendations of the Committee on Crime Prevention and Control. As was noted in the introduction to the present report, the General Assembly, in paragraph 3 of resolution 3218 (XXIX), requested the Congress urgently to examine this question, taking into account the relevant work of the Committee on Crime Prevention and Control, in accordance with Council resolution 1794 (LIV).

27. In preparation for the Congress, the Secretary-General convened a working group of police experts in January 1975 to prepare the preliminary draft of an international code of ethics for the police and related law-enforcement agencies. The following draft international code of police ethics, prepared by that working group, was presented to the Congress:

"A police officer is both a citizen and a law enforcement officer who, on behalf of his fellow citizens, prevents crime, preserves the public peace, protects persons and property and detects and apprehends offenders. It is the tradition of the police profession to be helpful, beyond the call of duty, to all persons.

"(1) A police officer is a servant of the law.

"(2) Honesty in thought and deed should characterize a police officer's official and private life.

"(3) A police officer must be impartial and fair to all people, whatever their social position, race or creed.

"(4) A police officer must be incorruptible.

"(5) A police officer should have a compassionate respect for the dignity of the individual and behave to all with courtesy, self-control, human understanding and tolerance.

"(6) A police officer must never use more force than necessary to accomplish a legitimate purpose, nor may he ever subject anyone to any form of cruel, inhuman or degrading treatment.

"(7) A police officer should strive continually to increase his professional skills and, in so doing, the officer should seek to gain ever greater insight into society and human behaviour.

"(8) A police officer must obey the orders of the legally constituted authorities and the regulations of the police organization of which the officer is a member, unless he is legally entitled to disregard them.

"(9) Matters of a confidential nature coming to the attention of a police officer should be kept secret unless the performance of duty requires otherwise.

"(10) A police officer's conduct as a citizen should be exemplary." 20/

28. Another draft code was submitted by the expert from the Netherlands, laying stress on the specific prohibition of torture. It was presented as an addition to the working group's draft. The text of this draft code read as follows:

"1. The police function is the provision of a public, essentially civilian service, created by and responsible only to the properly constituted government under law. It is obliged by law to prevent violations of the law, apprehend and prosecute law-breakers and maintain order and public security under law.

"This obligation includes the duty to maintain and promote human rights, as described in the Universal Declaration of Human Rights, in the principles of which police offenders should receive proper education and training.

"2. A police code of ethics should apply to all those individuals and organizations, including secret services, military police, armed forces or militia acting in policing capacities, or others engaged in enforcing the law, investigating violations, maintaining public order, or preserving state security.

"3. Summary executions, torture and other cruel, inhuman or degrading treatment or punishment, and in general every violent act against the physical or mental integrity of the individual, are prohibited under any and all circumstances, including the greatest emergencies of civil strife or war.

"4. There should be established a clear chain-of-command responsibility whereby superior officers, civilian or military, are personally liable for acts of commission or omission in connexion with acts of torture and other ill-treatment.

"5. Police officers and all others covered by this code have the right to disobey or disregard any order, instruction or command, even if lawfully made within the context of national legislation, which is in clear and significant contradiction to basic and fundamental human rights, as described in the Universal Declaration of Human Rights. They have a duty to disobey or disregard any order, instruction or command summarily to execute, torture or otherwise to inflict bodily harm upon a person under their custody. They also have the duty, where they have carried out orders, instructions or commands which they believe to be otherwise in clear and significant contradiction to basic and fundamental human rights - such as lengthy detention without effective judicial supervision - to protest against the issuance of such order, instruction or command.

"6. Police and other officials who are detaining persons should follow the instructions of doctors or other competent medical workers when, for the preservation of the good health of a detainee, the doctor or medical worker places the detainee under medical care.

"7. Those covered by the code have an obligation to inform the proper national and international bodies of those activities which are in direct contravention of the principles and provisions of this code of ethics and in gross violation of human rights, as described in the Universal Declaration of Human Rights. If necessary as a last resort, they should make such information publicly known.

"8. No officer or other person covered by the code should suffer administrative or other penalties as a result of action taken to resist or protest against orders, instructions or commands inconsistent with the principles and provisions of this code of ethics.

"9. Given article 23 (4) of the Universal Declaration of Human Rights, there should be a personal and corporate duty upon all officers and other professionals or persons covered by the provisions of the code, and their professional, workers' trade union, or other employment organizations, to offer support to all those who are in need of such as a result of their adherence to the principles and provisions of the code.

"10. Any organizational body, national or international, which adopts, proposes or promulgates the code, should maintain some mechanism for hearing appeals from those covered by the code who claim that any of its provisions have been violated.

"11. The police officer or any other person covered by this code who complies with the code, serves and is entitled to the active moral and physical support of the community in which he/she performs his/her duty." 21/

29. In the course of a brief discussion on the substance of the proposals, it was stressed by a number of participants that the draft code of ethics should be formulated in sufficiently general terms to be acceptable to all countries. It would rest with each Government to implement its provisions as appropriate in accordance with social needs, within the framework of each political and legal system. It was said, however, that the code should not be so general in wording as to be ambiguous and confusing for those concerned. 22/

30. The draft submitted by the expert from the Netherlands aroused the interest of various participants, who considered it on the whole as a valuable attempt at formulating standards on some important issues, particularly the prohibition of torture, in accordance with the Universal Declaration of Human Rights and other existing instruments of the United Nations in the field of human rights. Considerable doubts were raised, however, by some participants on the implications for police discipline of article 5 of the draft, concerning disobedience to orders which are contrary to the basic principles laid down in the Universal Declaration.

31. It became clear that, while the majority were in favour of an international code of police ethics being recommended by the United Nations, the consensus of opinion was that there should be further expert consideration of the matter. 23/  
The Congress therefore decided:

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21/ Ibid., para. 4.

22/ A/CONF.56/L.5/Rev.1, para. 64.

23/ A/10260, para. 5.

"That the General Assembly of the United Nations be requested to establish a committee of experts to study the question of an international code of police ethics and within one year prepare a new document to be considered by the competent organs of the United Nations. The General Assembly may wish to consider the feasibility of regional groups drafting preliminary documents for the use of the committee of experts. Such groups should consist of representatives who would reflect the cultural and legal systems of each region." 24/

C. Some other aspects of the work of the Congress  
which appear to be closely related to the  
protection and promotion of human rights

1. Changes in forms and dimensions of criminality -  
transnational and national

32. Under this agenda item, consideration of the topics relating, in particular, to "interpersonal violence" and "criminality associated with migration and flight from natural disaster and hostilities" involved discussion of human rights issues.

(a) Interpersonal violence

It was generally agreed 25/ that research should be undertaken into the relationship between violent crime and, among other factors, discrimination against ethnic groups; that attention should be paid to factors contributing to violent behaviour among youth, inter alia, the extent to which they really share in the adoption of major national decisions; and that proposals should be explored within the United Nations system for an international convention providing minimum guidelines for the contents of mass media directed to children and young persons, in order to avoid a negative impact on behaviour patterns.

(b) Criminality associated with migration and flights from natural disasters  
and hostilities

The Congress adopted, inter alia, the following conclusions:

(i) The United Nations should consider offering migrants international travel documents for the period during which their status is being considered by national authorities;

(ii) Consideration should be given to the establishment of an international agency of world-wide competence to deal with the problems of foreign migrant workers, and the elaboration of a Charter for such workers might be contemplated;

(iii) The international machinery to assist refugees and disaster victims, namely, the Office of the United Nations High Commissioner for Refugees and the Office of the United Nations Disaster Relief Co-ordinator, should be strengthened;

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24/ A/10260, para. 6.

25/ See A/CONF.56/L.3/Rev.1, para. 36.

(iv) The advantage of bringing representatives of migrant worker groups into the public administration, especially law enforcement, of the host communities in which they are employed should be kept in mind.

2. Criminal legislation, judicial procedures and other forms of social control in the prevention of crime

33. Some participants suggested certain reforms of the criminal justice systems, in particular, attempts to reduce the number of cases put through the whole penal process and to replace this process by social actions which are closer to the people, less time-consuming, less costly and which do not carry any stigma. It was emphasized, however, that, in applying such reforms, the human rights and fundamental freedoms of all concerned, especially the right of defence, should always be respected. 26/

34. It was considered that a revision of legal aid systems to service all citizens equally was required. 27/

35. Judges were advised to avoid situations where certain categories of persons - foreigners, non-conformists, the poor - tended to be kept more easily and for longer periods in detention pending trial. 28/

3. The emerging roles of the police and other law-enforcement agencies, with special reference to changing expectations and minimum standards of performance

36. In addition to discussing the question of an international code of police ethics, the Congress concluded, inter alia, that police training should include the subjects of ethics, human rights and social science, and that, whenever possible, women should be employed as police officers on equal terms with men.

4. The treatment of offenders, in custody or in the community, with special reference to the implementation of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

37. While discussing the subitem "Factors in correctional reforms", the Congress noted the increased emphasis which was being given to the protection of the human rights of the person charged with or convicted of a crime. 29/ It was the general view that among the persons under detention awaiting trial, only those whose offences were of a grave nature or whose detention in custody was necessitated by reasons of national security or the protection of the community or to ensure appearance at trial should be under detention pending trial. 30/ It was suggested that house arrest could be used as a form of detention in suitable cases.

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26/ A/CONF.56/L.4/Rev.1, paras. 48 and 75 (4).

27/ Ibid., para. 48.

28/ Ibid., para. 57.

29/ A/CONF.56/L.6, para. 13.

30/ Ibid., para. 16.

38. The Congress stressed that, in many countries, it was recognized that prisoners should continue to enjoy the same rights as other citizens, except those specifically withdrawn by law. 31/ It was felt that the Standard Minimum Rules, when properly implemented, assured the protection of the individual rights of prisoners to a significant degree.

39. There was a consensus that no fundamental revision of the Standard Minimum Rules was needed, although periodic reviews would be useful to ensure that the Rules were being kept up to date. 32/ The view was expressed, however, that articles concerning the grievance procedures available to prisoners should be strengthened, and that provision should be made for prisoners to have recourse to an independent authority such as an ombudsman. 33/

5. Proposals regarding procedures for the implementation of the Standard Minimum Rules for the Treatment of Prisoners and the participation of the Commission on Human Rights and the Sub-Commission in such procedures

40. In a working paper submitted to the Congress by the Secretariat, 34/ a set of procedures and institutional arrangements was proposed with a view to ensuring the effective implementation of the Rules. The proposed system would include: a strengthened periodic reporting system by Member States; the widest possible dissemination of the text of the Rules, reference being made, inter alia, to the Yearbook on Human Rights; and the promotion of a United Nations technical assistance programme. The role of the Committee on Crime Prevention and Control with regard to the review of the Rules and its implementation was stressed.

41. Paragraphs 11 to 14 of the Secretariat's proposals, which may be of special interest to the Commission on Human Rights, read as follows:

"11. Nothing in these procedures is to be construed as precluding resort to any other means of enforcement available under international law or set forth by other United Nations bodies and agencies for redress or violations of human rights.

"12. The Commission on Human Rights, utilizing its established procedures, may review requests from the Secretary-General and other United Nations bodies and agencies to consider individual complaints pertaining to violations of the Standard Minimum Rules. The Commission, through the Economic and Social Council, may refer the review of such complaints to the Committee on Crime Prevention and Control and recommend to the Secretary-General the appropriate responses.

"13. Allegations of serious, repeated and consistent violations of the Standard Minimum Rules shall be brought to the attention of the Secretary-General with a recommendation that the Commission on Human Rights

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31/ Ibid., para. 17.

32/ A/CONF.56/L.6/Add.1, paras. 2 and 3.

33/ Ibid., para. 3.

34/ A/CONF.56/L.6. See also A/10260, para. 12.

and the Sub-Commission on Prevention of Discrimination and Protection of Minorities examine the situation in accordance with the procedures of those bodies.

"14. The Committee on Crime Prevention and Control shall assist the General Assembly and the Secretary-General, when requested, with recommendations on the formation, methodology and reports of ad hoc inquiry commissions whenever they are appointed with respect to matters pertaining to the Standard Minimum Rules and their application and implementation."

42. The Congress was not able to consider these proposals in detail, owing to lack of time.

II. THE DEBATES AND DECISIONS OF THE GENERAL ASSEMBLY AT ITS  
THIRTIETH SESSION UNDER THE ITEM "TORTURE AND OTHER CRUEL,  
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN  
RELATION TO DETENTION AND IMPRISONMENT"

43. The item "Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment" was discussed by the General Assembly's Third Committee at its 2159th to 2160th, 2165th to 2168th and 2172nd meetings, from 14 to 28 November 1975.

44. In accordance with General Assembly resolution 3218 (XXIX), the Committee had before it, in particular, the analytical summary of information and comments from Member States prepared by the Secretary-General (A/10158 and Add.1) and a report by the Secretary-General on the work of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concerning the question of an international code of police ethics and the formulation of rules for the protection of detained persons against torture and other cruel, inhuman or degrading treatment or punishment (A/10260). The Committee was informed that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, on 10 September 1975, had adopted resolution 4 (XXVIII) concerning the human rights of persons subjected to any form of detention or imprisonment, at the conclusion of its first annual review of developments on this subject in accordance with its resolution 7 (XXVII). In addition, the Committee received information concerning the question of medical ethics in relation to the protection of detained persons against torture and other cruel, inhuman or degrading treatment or punishment, including the texts of the Declaration of Tokyo of the World Medical Association on this subject (A/C.3/641) and the working paper on health aspects of avoidable maltreatment of prisoners and detainees prepared for the Congress by the World Health Organization (A/CONF.56/9).

45. On the recommendation of the Third Committee, the General Assembly adopted two resolutions. One of them, resolution 3452 (XXX), proclaimed the "Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", while the other, resolution 3453 (XXX), entitled "Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment", contained, in its paragraph 2, requests addressed by the General Assembly to the Commission on Human Rights concerning further work in this field. The texts of those resolutions are reproduced in annexes I and II, respectively.

46. The work of the General Assembly regarding the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and related questions will be dealt with in section A. The discussions and decisions of the General Assembly concerning the question of an international code of police ethics will be summarized in section B.

A. Protection of detained persons against torture and cruel,  
inhuman or degrading treatment or punishment

47. Several representatives considered that the United Nations had taken positive steps towards ensuring prisoners international protection against torture and ill-treatment since the twenty-eighth session, when this topic had first been raised in the General Assembly. Appreciation was expressed, in particular, for the action taken by the Sub-Commission and for the work of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. However, the consensus was to stress that, in spite of all the recommendations of the United Nations and all condemnations of torture as a denial of the principles of the Charter and of the Universal Declaration, practices of torture and other cruel, inhuman or degrading treatment or punishment were being increasingly reported upon in respect of many countries. 1/ It was said that in various countries, torture seemed to be inflicted systematically as a means of maintaining a political régime and eliminating dissent. The Assembly therefore reiterated its conviction, expressed in its resolution 3218 (XXIX), that further and sustained efforts were required, at the domestic and international levels, to put an end to such inhuman behaviour.

48. Most representatives considered that further elaboration of the international standards set forth in the Universal Declaration and the International Covenant on Civil and Political Rights should be one of the important tasks of the United Nations in its efforts to eliminate torture. 2/ One view was, however, that it might not be necessary for the United Nations to pursue standard-setting activities in that field which was already well covered by existing instruments, in particular articles 7 and 10 of the Covenant. 3/

49. In the course of the debate concerning the advisability of drawing up further international standards, many representatives referred to the information submitted by Member States and analysed by the Secretary-General in his report (A/10158 and Add.1). It was felt by some speakers that these reports should be studied by the Commission on Human Rights and perhaps also by the Committee on Crime Prevention and Control with a view to exploring the possibilities for codifying the various laws against torture. 4/ Another representative considered that articles 24 to 27 of the draft principles on freedom from arbitrary arrest and detention deserved more thorough study by the competent United Nations organs, in particular the Commission on Human Rights. Those articles, which, in his view, bore to a large extent the imprint of the Anglo-American system of law, could be made more compatible with Continental European and other legal systems. 5/ The resolution adopted by the Assembly (3453 (XXX)) requested the Commission on Human Rights, inter alia, to consider these draft principles.

50. The discussion on standard-setting was mainly devoted, however, to the consideration of the draft Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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1/ See A/C.3/SR.2167, p. 4.

2/ A/C.3/SR.2160, p. 12; A/C.3/SR.2160, p. 5.

3/ A/C.3/SR.2167, p. 14.

4/ A/C.3/SR.2167, p. 2.

5/ A/C.3/SR.2160, p. 7.

introduced by the representative of the Netherlands at the 2160th meeting of the Third Committee, on 14 November 1975. This was the text which the Congress had recommended for adoption by the General Assembly. 6/

51. In the view of several representatives, the proposed Declaration constituted a valuable statement of principles, acceptable in all countries, which had been carefully drafted by experts of all political and legal systems at the Congress. Admittedly, the authors had to deal with difficult problems, such as the definition of "torture" in article I. While the formula proposed might not cover all types of torture, it was felt that it had the merit of clearly drawing attention to the main purposes for which torture was, in fact, being inflicted nowadays. 7/

52. Support was also expressed, in particular, for article 3, which reaffirmed the prohibition of torture even in exceptional circumstances, and articles 8 to 12, which stressed the need for appropriate remedies and sanctions at the national level. 8/

53. Some representatives felt, however, that, although adoption of the draft Declaration would constitute a major step towards the abolition of torture, the text could not be considered entirely satisfactory, especially as regards ensuring the protection of political prisoners under repressive régimes. 9/ In this regard, one view was that article 7 should be amended to stress the criminal responsibility of leaders and administrative heads not only for ordering but also for tolerating the perpetration of torture or neglecting to prevent or punish such practices. 10/

54. Regarding the concepts of criminal responsibility and complicity in that field, several representatives expressed their great interest for the question of medical ethics in relation to the human rights of persons subjected to detention, which had been referred to in the document prepared for the Congress by the World Health Organization 11/ and in the Declaration of Tokyo of the World Medical Association concerning guidelines for medical doctors adopted in October 1975. 12/ It was suggested that the appropriate organs within the United Nations system should consider the views of the World Health Organization in order to establish guidelines on the question. 13/

55. At the 2167th meeting, on 24 November 1975, after the Third Committee had accepted a proposal by the representative of the German Democratic Republic to replace the word "principles" by the word "purposes" in article 2, it approved the draft Declaration, as amended, by acclamation (see annex I below).

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6/ See A/10260, para. 15.

7/ A/C.3/SR.2160, pp. 2 and 3.

8/ A/C.3/SR.2160, p. 8; A/C.3/SR.2160, p. 13.

9/ A/C.3/SR.2160, p. 10.

10/ Ibid., p. 11.

11/ A/CONF.56/9.

12/ A/C.3/64.

13/ A/C.3/SR.2160, p. 16.

56. A number of representatives felt that adoption of the Declaration should be only the beginning of United Nations efforts towards the eradication of torture and cruel, inhuman or degrading treatment or punishment. Some speakers stressed that, in their view, an international convention on the subject was required. <sup>14/</sup> In the opinion of several representatives, full consideration should now be given to the implementation of the Declaration through appropriate international machinery. In this regard, one view was that particular attention should be given, within the framework of the procedure established by Economic and Social Council resolution 1503 (LVIII) for the handling of communications concerning violations of human rights and fundamental freedoms, to complaints of torture being practised in a systematic manner. <sup>15/</sup>

57. Some representatives, however, doubted whether there was need to consider further steps for the implementation of relevant international standards, in view of the coming into force of the International Covenant on Civil and Political Rights and its implementation provisions. <sup>16/</sup> Rather, they felt that States should be urged to ratify this instrument.

58. Concern for the implementation of international standards against torture inspired to a large extent the submission by Greece, on behalf of Australia, Austria, Belgium, Canada, Colombia, Costa Rica, Cyprus, Denmark, Ecuador, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Jordan, Mexico, the Netherlands, New Zealand, Norway, the Philippines, Portugal, Sweden and Venezuela, of a draft resolution, which, in its operative paragraph 2, after some revision, requested the Commission on Human Rights at its thirty-second session "to study the question of torture and any necessary steps for ensuring the effective observance of the Declaration". The Commission on Human Rights was, at the same time, invited to pursue and enlarge its standard-setting work in this field by formulating "a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile and the draft principles attached to it". This formula gave satisfaction to the Committee, which approved the draft resolution as a whole without a vote at the 2172nd meeting (see annex II below).

B. Debates and decisions of the General Assembly concerning  
the question of an international code of ethics for  
police and related law-enforcement agencies

59. As was mentioned in chapter I, section B, above, the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, after having considered proposed texts for an international code of ethics for police and related law-enforcement agencies, had recommended that "the General Assembly be requested to establish a committee of experts to study the question of an international code of police ethics and within one year prepare a new document to be considered by the competent organs of the United Nations".

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<sup>14/</sup> A/C.3/SR.2165, p. 10.

<sup>15/</sup> A/C.3/SR.2160, p. 6; A/C.3/SR.2165, p. 19.

<sup>16/</sup> A/C.3/SR.2167, p. 14.

60. Several representatives stressed the crucial role which a law-abiding, competent and devoted police force should play in maintaining the proper balance between the just requirements of the community and the human rights of detained persons. 17/ Alarming reports tended to show, however, that many repressive Governments were perverting the police to make it their main agent for crushing opposition through torture and ill-treatment. 18/

61. It was therefore generally agreed that the United Nations should fully support the concept of an international code of police ethics and intensify its work in that field. Such a code, through enhancing among the police a sense of respect for human rights, could contribute significantly to the protection of detained persons against torture and ill-treatment. 19/

62. Though some representatives were in favour of the creation of an expert committee of the General Assembly to prepare a draft code, as proposed by the Congress, 20/ other representatives felt that such a procedure might be too ambitious at this stage. 21/ It was considered more practical to entrust that task to the already established Committee on Crime Prevention and Control, which some representatives wished to have strengthened, if necessary, in order to carry out this mandate expeditiously. In operative paragraph 3 of the draft resolution introduced by Greece on behalf of a number of sponsors - the text that was finally adopted as resolution 3453 (XXX) - the General Assembly requested "the Committee on Crime Prevention and Control to elaborate, on the basis of, inter alia, the proposals presented to and the conclusions arrived at by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a code of conduct for law enforcement officials and to submit this draft code to the General Assembly at its thirty-second session through the Commission for Social Development and the Economic and Social Council".

63. It may also be recalled that, in paragraph 2 of the same resolution, the Commission on Human Rights was requested to study the question of torture and any necessary steps for ensuring the effective observance of the Declaration against torture, and for formulating principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone To Be Free From Arbitrary Arrest, Detention and Exile and the draft principles attached to it.

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17/ A/C.3/SR.2160, p. 15.

18/ A/C.3/SR.2167, p. 3.

19/ A/C.3/SR.2160, p. 9.

20/ A/C.3/SR.2160, p. 15.

21/ A/C.3/SR.2167, p. 2.

Annex I

GENERAL ASSEMBLY RESOLUTION 3452 (XXX)

Declaration on the Protection of All Persons from Being  
Subjected to Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Considering that these rights derive from the inherent dignity of the human person,

Considering also the obligation of States under the Charter of the United Nations, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights 1/ and article 7 of the International Covenant on Civil and Political Rights, 2/ both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Adopts the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the text of which is annexed to the present resolution, as a guideline for all States and other entities exercising effective power.

ANNEX

Declaration on the Protection of All Persons from Being  
Subjected to Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

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1/ Resolution 217 A (III).

2/ Resolution 2200 A (XXI), annex.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation, in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

Annex II

GENERAL ASSEMBLY RESOLUTION 3453 (XXX)

Torture and other cruel, inhuman or degrading treatment or  
punishment in relation to detention and imprisonment.

The General Assembly,

Reaffirming the rejection, in its resolutions 3059 (XXVIII) of 2 November 1973 and 3218 (XXIX) of 6 November 1974, of any form of torture and other cruel, inhuman or degrading treatment or punishment,

Reiterating its conviction expressed in resolution 3218 (XXIX) that, because of the increase in the number of alarming reports on torture, further and sustained efforts are necessary to protect under all circumstances the basic human right to be free from torture and other cruel, inhuman or degrading treatment or punishment,

Welcoming resolution 4 (XXVIII) of 10 September 1975, adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the report of the Secretary-General 3/ containing an analytical summary of the information received under paragraph 1 of resolution 3218 (XXIX),

Recalling its request to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders that it consider steps to be taken for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to report thereon to the General Assembly at its thirtieth session,

Noting the working paper, entitled "Health aspects of avoidable maltreatment of prisoners and detainees", 4/ submitted by the World Health Organization to the Fifth United Nations Congress,

Noting with appreciation the report of the Secretary-General, 5/

Taking into account that the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders expressed the opinion that, on the matter of an international code of police ethics, there should be further expert consideration,

Having adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to resolution 3452 (XXX) of \_\_\_\_\_,

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3/ A/10158 and Corr.1 and Add.1.

4/ A/CONF.56/9.

5/ A/10260.

Believing that further international efforts are needed to ensure adequate protection for all against torture and other cruel, inhuman or degrading treatment or punishment,

1. Expresses its appreciation to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders for the elaboration of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

2. Requests the Commission on Human Rights at its thirty-second session to study the question of torture and any necessary steps for:

(a) Ensuring the effective observance of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(b) The formulation of a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile and the draft principles attached to it; 6/

3. Further requests the Committee on Crime Prevention and Control to elaborate, on the basis of, inter alia, the proposals presented to and the conclusions arrived at by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a code of conduct for law enforcement officials and to submit this draft code to the General Assembly at its thirty-second session through the Commission for Social Development and the Economic and Social Council;

4. Invites the World Health Organization to give further attention to the study and elaboration of principles of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment;

5. Decides to include in the provisional agenda of its thirty-first session an item entitled "Torture and other cruel, inhuman or degrading treatment or punishment" for the purpose of reviewing the progress achieved in accordance with the present resolution.