



UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/35/743  
11 December 1980

ORIGINAL: ENGLISH

Thirty-fifth session  
Agenda item 82

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT

Report of the Third Committee

Rapporteur: Miss Olajumoke Oladayo OBAFEMI (Nigeria)

I. INTRODUCTION

1. The item entitled:

"Torture and other cruel, inhuman or degrading treatment or punishment:

"(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: report of the Secretary-General;

"(b) Unilateral declarations by Member States against torture and other cruel, inhuman or degrading treatment or punishment: report of the Secretary-General;

"(c) Draft Code of Medical Ethics: report of the Secretary-General;

"(d) Draft body of principles for the protection of all persons under any form of detention or imprisonment: report of the Secretary-General"

was included in the provisional agenda of the thirty-fifth session of the General Assembly in accordance with Assembly resolution 34/167 of 17 December 1979.

2. At its 3rd plenary meeting, on 19 September 1980, the General Assembly decided to include the item in its agenda and to allocate it to the Third Committee.

3. The Committee considered this item jointly with item 65 at its 72nd to 77th and 84th meetings, from 28 November to 2 December and on 5 December. The views expressed by the representatives of Member States on this item are contained in the summary records of those meetings (see A/C.3/35/SR.72-77 and 84).

4. At its 9th meeting, on 2 October, the Committee established an open-ended working group for the consideration of the questions of the human rights of individuals who are not citizens of the country in which they live, and of the draft body of principles for the protection of all persons under any form of detention or imprisonment.
5. The Committee had before it the following documents:
- (a) Report of the Secretary-General on the questionnaire on the Declaration on Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/35/369 and Add.1 and 2);
  - (b) Report of the Secretary-General on unilateral declarations by Member States against torture and other cruel, inhuman or degrading treatment or punishment (A/35/370/Rev.1 and Rev.1/Add.1);
  - (c) Report of the Secretary-General containing the replies received from Governments on the draft code of medical ethics (A/35/372 and Add.1-2);
  - (d) Report of the Secretary-General on the draft body of principles for the protection of all persons under any form of detention or imprisonment (A/35/401 and Add.1 and 2);
  - (e) Report of the Chairman of the open-ended Working Group (A/C.3/35/14 and Corr.1).
6. At the 74th meeting, on 1 December, the Chief of the New York Office of the Division of Human Rights made an introductory statement on behalf of the Director of the Division.
7. At the 72nd meeting, on 28 November, the Chairman of the open-ended Working Group for the consideration of the questions of the human rights of individuals who are not citizens of the country in which they live, and of the draft body of principles for the protection of all persons under any form of detention or imprisonment introduced the report contained in document A/C.3/35/14 and Corr.1.

## II. CONSIDERATION OF DRAFT RESOLUTIONS

### A. Draft resolution A/C.3/35/L.73 and Rev.1

8. The Committee had before it a draft resolution (A/C.3/35/L.73 entitled "Draft body of principles for the protection of all persons under any form of detention or imprisonment", sponsored by Austria, Germany, Federal Republic of, the Netherlands and Sweden. The draft resolution read as follows:

"The General Assembly,

"Recalling the adoption in its resolution 3452 (XXX) of 9 December 1975 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

"Recalling further its resolution 34/169 of 17 December 1979, by which it adopted the Code of Conduct for Law Enforcement Officials and decided to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials,

"Recalling also that the Economic and Social Council, in its resolution 1979/34 of 10 May 1979, requested the Secretary-General to transmit to all Governments for their comments the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (A/34/146), adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-first session, with a view to consideration of the matter by the General Assembly at its thirty-fifth session,

"1. Takes note of the constructive work undertaken by the open-ended working group which has been established with the task to elaborate a final version of the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, which task however it has not been able to conclude;

"2. Decides to establish, at its thirty-sixth session, an open-ended working group for the purpose of concluding the consideration of the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, with a view to its adoption by the General Assembly."

9. At the 72nd meeting, on 28 November, the representative of Austria introduced a revised draft resolution (A/C.3/35/L.73/Rev.1), sponsored by Austria, Colombia, Ecuador, Germany, Federal Republic of, the Netherlands, the Philippines and Sweden.

10. At the 73rd meeting, on 28 November, the representative of Morocco proposed an oral amendment to replace operative paragraph 2 by the following:

"2. Decides that the working group established under draft resolution A/C.3/35/L.86 shall also conclude the consideration of the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment."

11. The amendment was subsequently withdrawn by its sponsor.

12. At the same meeting, the representative of Mexico orally proposed a draft decision on the question, which read as follows:

"The General Assembly, bearing in mind resolution 684 (VII), and taking note of the constructive work undertaken by the open-ended Working Group which had been established with the task of elaborating a final version of the draft body of principles for the protection of all persons under any form of detention or imprisonment, which task, however, it has not been able to

conclude, decides to refer to the Legal Committee of the General Assembly the draft body of principles together with the report of the Chairman of the Working Group (A/C.3/35/14), so that the Legal Committee could continue the work on the draft body of principles."

13. The draft decision was subsequently withdrawn by its sponsor.

14. At the 74th meeting, on 1 December, the representative of the Federal Republic of Germany, on behalf of the sponsors, orally revised the text of the draft resolution by adding a new operative paragraph 3, which read as follows:

"3. Decides to refer at its thirty-sixth session the Draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment for consideration by the Sixth Committee."

15. At the same meeting, the representative of Morocco orally proposed the reversal of the order of operative paragraphs 2 and 3. The sponsors accepted the amendment and revised the text accordingly.

16. The attention of the Committee was drawn to the statement of the administrative and financial implications (A/C.3/35/L.92) of the draft resolution.

17. At the same meeting, the Committee adopted draft resolution A/C.3/35/L.73/Rev.1, as revised, without a vote (see para. 24, draft resolution I).

#### B. Draft resolution A/C.3/35/L.82

18. At the 77th meeting, on 2 December, the representative of the Netherlands introduced a draft resolution (A/C.3/35/L.82) entitled "Torture and other cruel, inhuman or degrading treatment or punishment", sponsored by Australia, Austria, Costa Rica, Greece, the Netherlands, Panama, Sweden and the United States of America, subsequently joined by Canada, Denmark and India.

19. At the 84th meeting, on 5 December, the representative of the Netherlands, on behalf of the sponsors, orally revised operative paragraph 3 of the draft resolution by inserting after the word "Governments", the words "of States parties to the International Covenant on Civil and Political Rights".

20. At the same meeting, the Committee adopted draft resolution A/C.3/35/L.82, as revised, without a vote (see para. 24, draft resolution II).

#### C. Draft resolution A/C.3/35/L.83

21. At the 77th meeting, on 2 December, the representative of the Netherlands introduced a draft resolution (A/C.3/35/L.83) entitled "Draft Code of Medical Ethics", sponsored by Australia, Costa Rica, Ecuador, Greece, Ireland, Italy, Lesotho, the Netherlands, Portugal, Sweden, Uganda and the United States of America.

22. At the 84th meeting, on 5 December, the representative of the Netherlands, on behalf of the sponsors, orally revised the fifth preambular paragraph of the draft resolution by replacing the words "progressive codification" by "establishment".

23. At the same meeting, the Committee adopted draft resolution A/C.3/35/L.83, as revised, without a vote (see para. 24, draft resolution III).

### III. RECOMMENDATIONS OF THE THIRD COMMITTEE

24. The Third Committee recommends to the General Assembly the adoption of the following draft resolutions:

#### DRAFT RESOLUTION I

##### Draft body of principles for the protection of all persons under any form of detention or imprisonment

The General Assembly,

Recalling the adoption, in its resolution 3452 (XXX) of 9 December 1975, of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recalling also its resolution 34/169 of 17 December 1979, by which it adopted the Code of Conduct for Law Enforcement Officials and decided to transmit it to Governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials,

Recalling further that the Economic and Social Council, in its resolution 1979/34 of 10 May 1979, requested the Secretary-General to transmit to all Governments, for their comments, the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, 1/ adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-first session, with a view to consideration of the matter by the General Assembly at its thirty-fifth session,

1. Takes note of the constructive work undertaken by the open-ended working group which has been established to elaborate a final version of the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, which task, however, it has not been able to conclude;

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1/ A/34/146.

2. Decides to refer to its thirty-sixth session the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment for consideration by the Sixth Committee;

3. Decides to establish, at its thirty-sixth session, an open-ended working group with the intention of concluding the consideration of the draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, with a view to its adoption by the General Assembly.

DRAFT RESOLUTION II

Torture and other cruel, inhuman or degrading  
treatment or punishment

The General Assembly,

Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975,

Bearing in mind article 7 of the International Covenant on Civil and Political Rights,

Recalling once again its resolutions 32/62 of 8 December 1977, in which it requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment in the light of the principles embodied in the Declaration, 32/63 of 8 December 1977, in which it requested the Secretary-General to draw up and circulate among Member States a questionnaire soliciting information concerning steps they had taken, including legislative and administrative measures, to put into practice the principles of the Declaration, and 32/64 of 8 December 1977, in which it called upon Member States to reinforce their support of the Declaration by making unilateral declarations against torture and other cruel, inhuman or degrading treatment or punishment,

Welcoming resolution 11 of the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, 2/ in which the belief was expressed that the draft convention should be finalized at the earliest possible time,

1. Welcomes Economic and Social Council resolution 1980/32 of 2 May 1980, by which the Council authorized an open-ended working group of the Commission on Human Rights to meet for a period of one week prior to the thirty-seventh session of the Commission to complete the work on a draft convention;

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2/ See A/CONF.87/14, part one.

2. Requests the Commission on Human Rights to complete as a matter of urgency, at its thirty-seventh session, the drafting of a convention on torture and other cruel, inhuman or degrading treatment or punishment, with a view to submitting a draft, including provisions for the effective implementation of the future convention, to the General Assembly at its thirty-sixth session;

3. Requests the Secretary-General to forward the replies submitted by Governments of States parties to the International Covenant on Civil and Political Rights to the questionnaire on torture to the Human Rights Committee for the use of Committee members when dealing with questions relating to torture or cruel, inhuman or degrading treatment or punishment;

4. Invites Member States which have not yet done so to deposit the unilateral declarations with the Secretary-General, as called for under General Assembly resolutions 32/64 of 8 December 1977 and 33/178 of 20 December 1978;

5. Decides to include in the provisional agenda of its thirty-sixth session the item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".

#### DRAFT RESOLUTION III

##### Draft Code of Medical Ethics

The General Assembly,

Recalling its resolution 34/168 of 17 December 1979, in which it requested the Secretary-General to circulate the draft Code of Medical Ethics to Member States, the specialized agencies concerned and interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council for comments and suggestions,

Taking note of resolution 11 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 3/ in which the hope was expressed that the General Assembly would adopt the draft Code, subject to any amendments which appear to be necessary,

Noting the pertinent report of the Secretary-General entitled "Torture and other cruel, inhuman or degrading treatment or punishment", 4/

Having been unable for lack of time to decide the matter during its thirty-fifth session,

Believing, however, that the elaboration of a draft Code of Medical Ethics constitutes an important step in the establishment of international standards in the field of human rights,

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3/ See A/CONF.87/14, part one.

4/ A/35/372 and Add.1-2.

1. Requests the Secretary-General to renew his request for comments and suggestions on the draft Code of Medical Ethics to Member States, to the specialized agencies concerned and to interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council which have not yet responded to his earlier note and to submit a revised report to the Economic and Social Council at the first regular session of 1981 and to the General Assembly at its thirty-sixth session;
2. Invites those Member States which have not yet done so to submit their comments and suggestions on the draft Code;
3. Requests the Economic and Social Council to consider the draft Code at its next session, taking into account the comments and recommendations submitted, with a view to presenting the draft Code to the General Assembly for adoption at its thirty-sixth session;
4. Invites Member States to take an active part in the future deliberation on the draft Code;
5. Decides to consider again the question of the draft Code of Medical Ethics at its thirty-sixth session under the item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".