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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Report of the Third Committee

Rapporteur: Mr. Naoharu FUJII (Japan)

I. INTRODUCTION

1. At its 4th plenary meeting, on 18 September 1981, the General Assembly decided to include in its agenda the item entitled:

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

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

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

and to allocate it to the Third Committee.

2. The Committee considered this item jointly with items 75, 85, 86 and 87 at its 27th to 38th meetings and at its 43rd meeting, from 22 to 30 October and on 2, 3, and 9 November 1981. The views expressed by Member States and an observer on this item are contained in the summary records of those meetings (A/C.3/36/SR.27-38 and 43).

3. The Committee had before it the following documents:

(a) Draft Code of Medical Ethics: report of the Secretary-General (A/36/140 and Add.1-4);

(b) Unilateral declarations of Member States against torture and other cruel, inhuman or degrading treatment or punishment: report of the Secretary-General (A/36/426 and Add.1);

(c) Report of the Economic and Social Council, chapters XIX and XXIII (A/36/3/Add.19 and 23 (Part I)). 1/

4. At the 27th meeting, on 22 October, the Deputy Director of the Division of Human Rights made a statement on the item.

II. CONSIDERATION OF PROPOSALS

A. Draft resolution A/C.3/36/L.34

5. At the 37th meeting, on 2 November, the representative of Sweden introduced a draft resolution (A/C.3/36/L.34), entitled "Torture and other cruel, inhuman or degrading treatment or punishment", sponsored by Austria, Costa Rica, Denmark, Ecuador, Finland, Greece, Iceland, Jamaica, the Netherlands, Norway, Portugal, Spain and Sweden, later joined by Canada and Nicaragua.

6. At the 38th meeting, on 3 November, the Committee adopted the draft resolution without a vote (see para. 14, draft resolution I).

B. Draft resolution A/C.3/36/L.38

7. At the 37th meeting, the representative of the Netherlands introduced a draft resolution (A/C.3/36/L.38), entitled "Draft code of medical ethics", sponsored by Australia, Austria, Costa Rica, Denmark, Germany, Federal Republic of, Greece, the Netherlands, New Zealand, Norway, Panama, Portugal, Sweden, and the United States of America, later joined by Nicaragua.

8. At the same meeting, the representative of the Union of Soviet Socialist Republics proposed that in operative paragraph 2 which read as follows:

2. Requests the Secretary-General to circulate among Member States for their further comments the annexed draft-principles of medical ethics as revised in the light of the replies received by the Secretary-General;"

the words "in the light of the replies received by the Secretary-General" be deleted.

9. Subsequently, the representative of the Netherlands revised the draft resolution on the basis of the proposal of the Union of Soviet Socialist Republics by deleting, in operative paragraph 2, the words "as revised in the light of the replies received by the Secretary-General" and inserting the word "revised" between the word "annexed" and the words "draft principles".

1/ To be incorporated in Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 3 (A/36/3/Rev.1).

10. At the same meeting, the Third Committee adopted the draft resolution, as orally revised, without a vote (see para. 14, draft resolution II).

C. Draft decision A/C.3/36/L.39 and Rev.1

11. At the 33rd meeting, on 28 October, the representative of Jordan proposed a draft decision (later issued as document A/C.3/36/L.39) entitled "Torture and other cruel, inhuman or degrading treatment or punishment". The draft decision read as follows:

"The Third Committee of the General Assembly,

"After listening to the statements concerning the fate of Mr. Ziad Abu Ein,

"Requests the Chairman of the Third Committee to communicate to the Government of the United States of America the concern expressed in the Committee and to join in the appeal to set Mr. Ziad Abu Ein free and to allow him to go to any country of his choice."

12. Subsequently, the Committee had before it a revised draft decision (A/C.3/36/L.39/Rev.1), sponsored by Jordan, which read as follows:

"The General Assembly,

"Taking cognizance of the concerns expressed on behalf of Mr. Ziad Abu Ein, a Jordanian citizen who may be extradited by the United States authorities to Israel,

"Requests the President of the General Assembly to communicate, on behalf of the Assembly, to the United States Government the concerns expressed and to appeal that Mr. Abu Ein should not be extradited to Israel."

13. The draft decision was subsequently withdrawn.

III. RECOMMENDATIONS OF THE THIRD COMMITTEE

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

DRAFT RESOLUTION I

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 further its resolution 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 and its resolution 32/63 of 8 December 1977,

Noting that, in its resolution 11 of 5 September 1980, the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders expressed the belief that the draft convention should be finalized at the earliest possible time,

1. Welcomes Economic and Social Council resolution 1981/37 of 8 May 1981, 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-eighth session of the Commission to complete the work on a draft convention;

2. Requests the Commission on Human Rights to complete as a matter of highest priority, at its thirty-eighth 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-seventh session;

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

DRAFT RESOLUTION II

Draft Code of Medical Ethics

The General Assembly,

Reaffirming the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as unanimously adopted in General Assembly resolution 3453 (XXX) of 9 December 1975,

Recalling its resolution 31/85 of 13 December 1976, by which it invited the World Health Organization to prepare a draft code on 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,

Expressing its appreciation to the Executive Board of the World Health Organization which endorsed, at its sixty-third session in January 1979, the principles set forth in a report entitled "Development of codes of medical ethics" containing, in an annex, a draft body of principles prepared by the Council for International Organizations of Medical Sciences and entitled "Principles of medical ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment",

Recalling also resolution 11 adopted on 5 September 1980 by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Congress expressed the hope that the General Assembly would adopt the draft Code, subject to any amendments which might appear to be necessary,

Taking note with appreciation of the Guidelines for Medical Doctors concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment, as adopted by the twenty-ninth World Medical Assembly, held at Tokyo in October 1975,

Bearing in mind Economic and Social Council resolution 1981/27 of 6 May 1981, in which the Council recommended that the General Assembly should take measures to finalize a draft Code at its thirty-sixth session,

Recognizing that throughout the world significant medical activities are increasingly being performed by health personnel other than physicians, such as physician-assistants, physical therapists and nurse practitioners,

Alarmed that not infrequently members of the medical profession or other health personnel are engaged in activities which are difficult to reconcile with medical ethics,

Convinced of the need to set standards in this field which ought to be implemented by members of the medical profession and other health personnel as well as by government officials,

1. Takes note with appreciation of the comments on the proposed principles of medical ethics endorsed by the Executive Board of the World Health Organization which were received by the Secretary-General from Governments, specialized agencies and non-governmental organizations; 2/

2. Requests the Secretary-General to circulate among Member States for their further comments the revised draft principles of medical ethics set forth in the annex to the present resolution;

3. Decides to consider this question at its thirty-seventh session with a view to adopting the draft Principles of Medical Ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment.

2/ See A/35/372 and Add. 1 and 2, A/36/140 and Add. 1-4

Annex

Draft Principles of Medical Ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment

1. Prisoners and detainees have the same rights to the protection of physical or mental health and the treatment of disease as those who are not in prison or detained.
2. It is a gross contravention of medical ethics for health personnel, in particular physicians, having clinical responsibility for prisoners or detainees to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit, torture or other cruel, inhuman or degrading treatment or punishment. 3/
3. It is a contravention of medical ethics for health personnel, in particular physicians, to be involved in any other relationship with prisoners or detainees that is not a medical relationship in the sense that its purpose is the protection or improvement of the physical or mental health of the prisoner or detainee.
4. It is also a contravention of medical ethics for health personnel, in particular physicians:
 - (a) To apply their knowledge and skills in order to assist in methods of interrogation; or
 - (b) To certify prisoners or detainees as fit for any form of punishment that may adversely affect physical or mental health.
5. Participation of health personnel, in particular physicians, in any procedure for restraining prisoners or detainees is not in conformity with medical ethics unless it is determined by purely medical criteria in a manner which presents no

3/ For the purpose of the present 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. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

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hazard to the health of prisoners or detainees and is necessary for the physical or mental health and safety of the prisoner himself and/or of his fellow prisoners or detainees or his guardians.

6. There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.
