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Thirty-seventh session
THIRD COMMITTEE
Agenda item 88 (b)

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT: (b) DRAFT CODE OF MEDICAL ETHICS: REPORT OF
THE SECRETARY-GENERAL

Australia, Austria, Costa Rica, Italy, Netherlands, New Zealand,
United States of America: draft resolution

Code of Medical Ethics

The General Assembly,

Recalling its resolution 31/85 by which it invited WHO to prepare a draft Code 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,

Expressing once again its appreciation to the WHO Executive Board, which decided, as its sixty-third session, January 1979, to endorse 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",

Bearing in mind ECOSOC resolution 1981/27 in which ECOSOC recommended that the General Assembly take measures to finalize the draft Principles of Medical Ethics at its thirty-sixth session,

Recalling its resolution 36/61 in which it decided to consider the draft Principles of Medical Ethics at its thirty-seventh session with a view to adopting them,

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,

Recognizing that throughout the world significant medical activities are increasingly being performed by health personnel not licensed or trained as physicians, such as physician-assistants, paramedics, physical therapists and nurse practitioners,

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, Tokyo, October 1975,

Noting that in accordance with the Declaration of Tokyo measures should be taken against any attempt to subject health personnel or members of their families to threats or reprisals resulting from a refusal by such personnel to condone the use of torture or other forms of cruel, inhuman or degrading treatment,

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 its resolution 3453 (XXX), in which it has unanimously declared any act of torture or other cruel, inhuman or degrading treatment or punishment an offence to human dignity, a denial of the purposes of the Charter of the United Nations and a violation of the Universal Declaration of Human Rights,

Recalling that, in accordance with article 7 of the United Nations Declaration on Torture, each State shall ensure that the commission of all acts of torture, as defined in article 1 of that Declaration, or participation in, complicity in, incitement to and attempt to commit torture, are offences under its criminal law,

Convinced that under no circumstances a person shall be punished for carrying out medical activities compatible with medical ethics regardless of the person benefiting therefrom, or shall be compelled to perform acts or to carry out work in contravention of medical ethics, but, at the same time, that contravention of medical ethics for which health personnel, particularly physicians, can be held responsible should entail accountability and, as the case may be, liability,

Desirous to set further standards in this field which ought to be implemented by health personnel, particularly physicians, and by Government officials:

1. Adopts the annexed "Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment";

2. Calls upon all Governments to give the Principles, together with this resolution, the widest possible distribution, in particular amongst medical and paramedical associations, and institutions of detention or imprisonment in an official language of the State;

3. Invites all relevant intergovernmental organizations, in particular the World Health Organization, and non-governmental organizations concerned to bring the Principles to the attention of the widest possible group of individuals, especially those active in the medical and paramedical field;

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ANNEX

PRINCIPLES OF MEDICAL ETHICS RELEVANT TO THE ROLE OF HEALTH
PERSONNEL, PARTICULARLY PHYSICIANS, IN THE PROTECTION OF
PRISONERS AND DETAINEES AGAINST TORTURE, AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2

It is a gross contravention of medical ethics for health personnel particularly physicians, 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. 1/

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any medical relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

1/ See 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. Article 1 of the Declaration states:

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.

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

Principle 4

It is a contravention of medical ethics for health personnel, particularly physicians:

(a) to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international human rights instruments; 2/

(b) to certify, or to participate in the certification of the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international human rights instruments, or to participate in any way in the infliction of any such treatment or punishment.

Principle 5

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees or of his guardians and it presents no hazard to his physical or mental health.

Principle 6

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

2/ Particularly the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Standard Minimum Rules for the Treatment of Prisoners.