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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Third Committee

Rapporteur: Mr. Karl BORCHARD (Federal Republic of Germany)

I. INTRODUCTION

1. At its 4th plenary meeting, on 24 September 1982, 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 84, 85, 86 and 87 at its 47th, 50th to 53rd, 55th, 56th, 64th, 67th and 72nd meetings, on 18, 23, 24 and 26 November and 3, 7 and 9 December. An account of the discussion of the Committee is contained in the relevant summary records (A/C.3/37/SR.47, 50-53, 55-56, 64, 67 and 72).

3. The Committee had before it the following documentation:

(a) Unilateral declaration by Member States against torture and other cruel, inhuman or degrading treatment or punishment: report of the Secretary-General (A/37/263);

- (b) Draft Code of Medical Ethics: report of the Secretary-General (A/37/264 and Add.1 and 2);
- (c) Report of the Economic and Social Council, chapter V, section A (A/37/3 (Part I)); 1/
- (d) Letter dated 18 October 1982 from the Permanent Representative of Democratic Kampuchea to the United Nations addressed to the Secretary-General (A/37/551).

4. At the 47th meeting, on 18 November, the Special Assistant to the Director of the Centre for Human Rights made an introductory statement.

II. CONSIDERATION OF PROPOSALS

A. Draft resolution A/C.3/37/L.49

5. At the 64th meeting, on 6 December, the representative of Sweden introduced a draft resolution (A/C.3/37/L.49) entitled "Torture and other cruel, inhuman or degrading treatment or punishment", sponsored by Australia, Austria, Canada, Costa Rica, Denmark, Ecuador, Finland, Greece, Iceland, India, Italy, the Netherlands, Nicaragua, Norway, Portugal, Senegal, Spain and Sweden as well as Ghana.

6. At the 67th meeting, on 7 December, the Committee adopted the draft resolution without a vote (see para. 10, draft resolution I.

B. Draft resolutions A/C.3/37/L.79 and Rev.1

7. At its 64th meeting, on 6 December, the representative of the Netherlands introduced a draft resolution (A/C.3/37/L.79) entitled "Code of Medical Ethics", sponsored by Australia, Austria, Costa Rica, Italy, the Netherlands, New Zealand and the United States of America as well as Fiji and Ireland.

8. At the 72nd meeting, on 9 December, the representative of the Netherlands introduced a revised draft resolution (A/C.3/37/L.79/Rev.1), entitled "Principles of Medical Ethics", sponsored by Australia, Austria, Costa Rica, Fiji, Ireland, Italy, the Netherlands, New Zealand and the United States of America as well as Canada, the Dominican Republic, Greece and Norway. The revisions called for:

(a) The insertion of the words "by States and by professional associations and other bodies as appropriate" after the words "measures should be taken", in the eighth preambular paragraph;

1/ To be issued as Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 3 (A/37/3).

(b) The deletion of the words "and, as the case may be, liability," at the end of the eleventh preambular paragraph;

(c) The insertion of the words "as well as an offence under applicable international instruments" after the words "medical ethics", in principle 2 of the annex;

(d) The addition of article 7 in the foot note 1/:

"Article 7 of the Declaration states:

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."

(e) The word "medical" before the word "relationship" was replaced by the word "professional", in principle 3 of the annex;

(f) The words "in a manner" were inserted before the words "that may adversely affect", in principle 4 (a) of the annex;

(g) The words "human rights" before the word "instruments" was deleted in principle 4 (a) and (b) of the annex;

(h) The words "which is not in accordance with the relevant international instruments" were added at the end of principle 4 (b) of the annex.

9. At the 72nd meeting, the Committee adopted draft resolution A/C.3/37/L.79/Rev.1, without a vote (see para. 10, draft resolution II).

III. RECOMMENDATIONS OF THE THIRD COMMITTEE

10. 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, 2/

Recalling further 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, and 32/63 of 8 December 1977,

Recalling 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,

Considering that it was not found possible to complete the work on the draft convention during the thirty-eighth session of the Commission on Human Rights,

1. Welcomes Economic and Social Council resolution 1982/38 of 7 May 1982, by which the Council authorized a meeting of an open-ended working group of the Commission on Human Rights for a period of one week prior to the thirty-ninth 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-ninth 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-eighth session;
3. Decides to include in the provisional agenda of its thirty-eighth session the item entitled "Torture and other cruel, inhuman or degrading treatment or punishment".

DRAFT RESOLUTION II

Principles of Medical Ethics

The General Assembly,

Recalling its resolution 31/85 of 13 December 1976, in which it invited the World Health Organization 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,

2/ Resolution 2200 A(XXI), annex.

Expressing once again its appreciation to the Executive Board of the World Health Organization which, as its sixty-third session in January 1979, decided, 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 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 the draft Principles of Medical Ethics at its thirty-sixth session,

Recalling its resolution 36/61 of 25 November 1981, 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, held in Tokyo in October 1975,

Noting that in accordance with the Declaration of Tokyo measures should be taken by States and by professional associations and other bodies, as appropriate, 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 3452 (XXX) of 9 December 1975, in which it 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 Declaration adopted under resolution 3452 (XXX), 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 that at the same time, contravention of medical ethics for which health personnel, particularly physicians, can be held responsible should entail accountability,

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 "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" annexed to the present resolutions;

2. Calls upon all Governments to give the Principles of Medical Ethics, together with the present resolution, the widest possible distribution, in particular among 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 of Medical Ethics to the attention of the widest possible group of individuals, especially those active in the medical and paramedical field;

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, as well as an offence under applicable international instruments, 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. 3/

Principle 3

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

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 in a manner that may adversely affect the

3/ 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."

Article 7 of the Declaration states:

"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."

physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments; 4/

(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 instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

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.

4/ 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.