



SUMMARY RECORD OF THE 34th MEETING

Chairman: Mrs. MAIR (Jamaica)

later: Mr. PEDERSON (Denmark)

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The meeting was called to order at 11 a.m.

AGENDA ITEM 81: INTERNATIONAL COVENANTS ON HUMAN RIGHTS (continued)

(a) REPORT OF THE HUMAN RIGHTS COMMITTEE (continued)

(b) STATUS OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (continued) (A/32/44, A/32/188; A/C.3/32/4; A/C.3/32/L.7, L.9 and L.11)

1. Mr. van BOVEN (Director, Division of Human Rights) said that he wished to reply to two questions which had been raised during the previous week. At the 33rd meeting the representative of New Zealand had asked what publicity the Division of Human Rights intended to give to the International Covenants and Optional Protocol in accordance with the suggestion of the Human Rights Committee (A/32/44, para. 177). The Division of Human Rights felt it was important that those instruments should be translated into and disseminated in as many languages as possible. A brochure containing the texts of the Universal Declaration of Human Rights, the International Covenants and the Optional Protocol was being prepared and would be distributed in the official languages. The Office of Public Information was taking steps through its overseas network to encourage translation into as many additional languages as possible for subsequent dissemination world-wide.

2. The second question referred to the report (A/32/227) and press release on the protection of human rights in Chile. It had been intended to release both those documents on Monday, 24 October. The press release had in fact been issued on that date but, owing to a technical misunderstanding, the report had not been issued until Wednesday, 26 October.

AGENDA ITEM 80: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A/32/3, chap. VI, sect. A; A/32/138; A/32/180, A/32/222 and A/32/225)

3. Mr. van BOVEN (Director, Division of Human Rights), introducing the item, said that he wished to focus attention on three aspects. The first was the growing concern with the widespread practice of torture, which had become a global issue; no continent seemed to be spared. The practice occurred mainly at the pre-trial stage, when suspects were under interrogation, and had become a transnational phenomenon, with similar techniques being used in different countries. There were, for example, training centres where interrogators learned how to extract confessions. Reports of the various investigating groups of the United Nations had provided ample evidence on conditions under which torture was applied, what techniques were used and what the attitude of the responsible authorities was. Those groups had heard numerous witnesses who had testified on the basis of personal experience.

4. The second aspect of the problem concerned the setting of standards by the United Nations. The Universal Declaration of Human Rights and the International Covenants contained clear prohibitions against torture and cruel, inhuman or degrading treatment or punishment; article 4 of the Covenant on Civil and Political

Rights clearly stipulated that no derogation from such prohibitions was allowed under any circumstances. Common article 3 of the Geneva Conventions of 1949 contained provisions to the same effect. The General Assembly had been actively seized of the question since 1973 and, on 9 December 1975, had unanimously adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX)). Torture had been defined in article 1 of that Declaration. Other standard-setting activities of the United Nations involved, in addition to the General Assembly, such organs as the Economic and Social Council, the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on Crime Prevention and Control and the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The draft code of conduct for law enforcement officials, which the Committee had before it (A/32/138), dealt with rights and duties of law enforcement officials in the performance of their duties and in particular stressed the obligation to respect and protect human dignity and human rights, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment and the inadmissibility of all acts of corruption. The Commission on Human Rights, in its resolution 8 (XXXIII), had requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to draw up a body of principles for the protection of all persons under any form of detention or imprisonment. A first draft, prepared by Mr. Erik Mettel, a member of the Sub-Commission and Rapporteur on the subject, had been considered by the Sub-Commission, which had decided that further examination was required (resolution 8 (XXX)).

5. The General Assembly had repeatedly expressed interest in the elaboration of a code of medical ethics relevant to the protection of detained persons against torture and other inhuman treatment and in its resolution 31/85, as indicated in document A/32/180, had invited the World Health Organization to prepare a draft code on the subject. At the request of WHO the Council for International Organizations of Medical Sciences (CIOMS) had undertaken a study which was to be submitted to a future session of the WHO Executive Board for its consideration before being forwarded to the General Assembly. In August 1977 CIOMS had submitted a written statement to the Sub-Commission in which questions relating to medical ethics were dealt with. He hoped that WHO would actively pursue the elaboration of a code of medical ethics.

6. The third aspect concerned activities relating to implementation. In its resolution 7 (XXVII) (E/CN.4/Sub.2/354) the Sub-Commission on Prevention of Discrimination and Protection of Minorities had stressed that detainees and prisoners should enjoy certain basic human rights, including the right not to be subjected to torture; the right to equal protection of the law, without discrimination; the right to be informed of the grounds of the arrest or detention; the right to communicate with legal counsel; and the right to a fair and public hearing by an independent and impartial tribunal. In the same resolution the Sub-Commission had decided to review annually developments concerning the human rights of persons subjected to any form of detention or imprisonment. The Sub-Commission had also been requested by the Commission on Human Rights to draw upon General Assembly resolution 3452 (XXX) as a guideline for its work in preparing its annual review of developments. On the basis of information received from the

(Mr. van Boven)

various sources in accordance with that procedure, the Sub-Commission, in its resolution 4 (XXVIII), had identified the following issues as requiring immediate attention: (a) prolonged and often indefinite detention of large numbers of unconvicted persons without formal charges being brought against them; (b) the necessity of impartial judicial investigation into alleged illegal practices against arrested and detained persons; (c) the lack or ineffectiveness of judicial control over arrest and detention practices; (d) the role of secret police and para-military organizations; (e) the position of the family and relatives of arrested and detained persons; and (f) the special problems relating to the human rights of women detained or imprisoned. The most recent actions taken by the Sub-Commission had been summarized in the note by the Secretary-General (A/32/222).

7. In conclusion he stated that programming and co-ordination were essential to the success of the various activities involved in the setting of standards and in the implementation of the rights of persons subjected to any form of detention or imprisonment.

8. Mr. Pederson (Denmark) took the Chair.

9. Mr. MUELLER (Assistant Director, Crime Prevention and Criminal Justice Branch) said that the efforts of the United Nations to draft a code of conduct for law enforcement officials dated back to 1961 but that the General Assembly had not called for action until 1974. In that year it had requested the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to give urgent attention to the question of the development of an international code of ethics for police and related law enforcement agencies. That body had been unable to agree on the wording of such a code and had so reported to the General Assembly, which had then requested the Committee on Crime Prevention and Control to elaborate a text. The Committee had done so at its fourth session and the result was now before the Third Committee. The code it had produced was less an actual code of conduct than a statement of principles. The Committee on Crime Prevention and Control had endeavoured to make it totally consistent with the instruments which the United Nations had adopted applicable to the difficult area of police interference with the rights of citizens. The proposed preamble praised the efforts of law enforcement officials who were performing their difficult task conscientiously and with dignity, in compliance with the principles of human rights, but also recognized the immense potential of abuse which the exercise of such awesome duties entailed. The code recognized that, ultimately, decent and humane law enforcement consonant with all United Nations human rights standards could not rely solely on a code of conduct for law enforcement officials. It recognized the other important elements which had a role to play and it called on law enforcement officials to police themselves.

10. In conclusion, he stressed that the Committee on Crime Prevention and Control had been unanimous in adopting the draft code and that all bodies which had considered it subsequently had approved it without dissent.

11. Miss RICHTER (Argentina) said that she wished to deal with items 77 and 80 together, as the Commission for Social Development and the Economic and Social Council had done. Furthermore, it was impossible to dissociate the work of the Committee on Crime Prevention and Control and the Crime Prevention and Criminal Justice Branch from that being carried out elsewhere in the United Nations system on the question of torture, especially since both the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, embodied in General Assembly resolution 3452 (XXX), and the draft code of conduct for law enforcement officials, annexed to document A/32/138, had been the direct outcome of the work of those bodies. Those noteworthy advances suggested that the Committee on Crime Prevention and Control had succeeded in enlisting the close co-operation of Governments. Studies had also been initiated by other organs in the United Nations system on the question of protecting prisoners and detainees.
12. When the Commission on Human Rights, of which Argentina was not a member, considered the question of torture at its thirty-fourth session it would have before it the body of principles on the protection of the human rights of detained persons being prepared by Mr. Erik Nettel. It would also enlist the services of the Committee on Crime Prevention and Control.
13. With regard to continuing efforts to undermine the confidentiality of the procedure laid down in Economic and Social Council resolution 1503 (XLVIII) for the ad hoc committee that the Commission on Human Rights might appoint, her delegation reaffirmed its opposition to the establishment of any organ that would be authorized to ignore that resolution. That opposition was based not only on the need for full respect for decisions of United Nations bodies but also on the fact that the procedure for confidentiality would ensure co-operation among States and prevent individuals outside the system from using the United Nations as a sounding-board for their political propaganda against Member States.
14. Turning to the Secretary-General's report on crime prevention and control (A/32/199), the title of which she felt should be reworded to indicate that the document also referred to the Standard Minimum Rules for the Treatment of Prisoners, she noted its conclusions that crime had become a world problem of major proportions, that international co-operation should be strengthened in order to combat it and that the United Nations could and should play a unique role in that connexion. The report also drew attention to the rise in terrorism as one of the most serious aspects of crime.
15. Noting that the Committee on Crime Prevention and Control had found it difficult to make progress in preparing recommendations with a view to achieving an adequate level of international co-operation in eradicating the most serious forms of crime, she said that her comment should not be regarded as a criticism of the Committee, which required a clear mandate in order to proceed further. In her delegation's view, the General Assembly was in a position to provide that mandate, either to the Committee or to other organs of the system, so that Governments could be requested to contribute to the common task by pooling the wealth of information which they possessed in the field of crime prevention and control.

(Miss Richter, Argentina)

16. She noted that the torture practised by various terrorist groups as a means of weakening their victims' resistance and creating public panic had not been envisaged in the drafting of the Declaration in General Assembly resolution 3452 (XXX), which referred only to torture inflicted by or at the instigation of a public official. That was due to the fact that terrorism involved various aspects of human rights in addition to torture, for in seeking to destroy society it destroyed members of that society.
17. It was particularly disturbing to note how much needed to be done at the international level in connexion with crime prevention and control. Although the highest incidence of crime had emerged in several developed countries, the developing countries were also severely affected. As the Secretary-General had noted in paragraph 101 of document A/32/199, the spread of violence, creating a climate of insecurity, impeding investment and affecting life-styles, was one of the most alarming features of the current crime situation.
18. The Committee on Crime Prevention and Control had, however, prepared a draft international plan of action which was contained in annex IV to its report (E/CN.5/536) to the Commission for Social Development and which was referred to in the draft resolution submitted by the Council (A/32/163, annex) for adoption by the General Assembly. That important achievement had her delegation's unreserved support.
19. She drew attention to paragraphs 65-66 of the plan of action, in which the Committee noted the need, pending possible future revision of the Standard Minimum Rules, for suitable commentaries in order to provide greater flexibility in the application of the Rules in accordance with current correctional policies and practices, as well as the need for effective implementation of the Rules and of their wider dissemination. The broad range of proposals which the Committee had put forward in its plan of action would be the subject of an interdisciplinary approach on the part of all ministries of the Argentine Government, and would be dealt with as a matter of priority.
20. Her delegation also supported the initiatives of the Committee on procedures for the effective implementation of the Minimum Rules, which in 1958 had been embodied in her country's legislation. The existence of a corps of professional staff in the federal prison service contributed in large measure to the effective implementation of the Rules.
21. It was rather more difficult to improve the condition of prison buildings in Argentina, and certain ambitious plans, some of which had received international recognition, had not been fully implemented, principally for budgetary reasons.
22. Argentina was applying a progressive system of observation, treatment and testing, taking account as far as possible of advances in theories of rehabilitation of prisoners. Moreover, incidence of recidivism had not entirely responded to expectations. Her Government had not lost confidence, however, and would support any text drawn up along the lines of that which the Swedish

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delegation had circulated unofficially several months earlier aimed at gradually reducing the number of crimes subject to capital punishment with a view to its abolition.

23. Argentina could also support the draft resolution circulated unofficially by the Indian delegation concerning a unilateral declaration by Member States on the question of torture. Such a measure could strengthen the support given to the Declaration in General Assembly resolution 3452 (XXX), especially for those countries whose legal order did not include express provisions such as those set forth in the Argentine Constitution prohibiting torture.

24. Her delegation also welcomed the draft resolution circulated unofficially by the Swedish delegation on the question of a convention aimed at combating torture. However, it made no mention of the Committee on Crime Prevention and Control, which had thus far proved to be the most effective means of international codification in connexion with the question of torture and the treatment of prisoners in general.

25. Her delegation would also support draft resolution B in the annex to document A/32/163 and particularly welcomed the measures proposed in paragraphs 3 and 4 of the resolution. Such measures highlighted the constructive role of the United Nations in the prevention of crime and, above all, in the treatment of offenders, in connexion with which much remained to be done to satisfy governmental requirements. The preparation of effective measures to prevent torture, in particular, could not be considered outside the context which gave rise to inhuman and degrading punishment, and that was precisely the sphere in which the Committee on Crime Prevention and Control was in a position to contribute its abundant expertise.

26. With regard to paragraph 8 of draft resolution B, she said that her delegation would have no objection if the General Assembly provided the means to enable the countries of Latin America, Africa and Asia to participate in the preparations for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Sydney in 1980. It would also be useful to have reports prepared by consultants, provided they were selected in accordance with the principle of equitable geographical distribution, since it was essential that the Congress should reflect international experience without distinction as to legal systems or cultures and, above all, without ignoring the conditions prevailing in the various regions of the world.

27. The same principle should also apply to the members of the Committee on Crime Prevention and Control, who, in accordance with Economic and Social Council resolution 1584 (L), paragraph 6, should be appointed by the Council on the Secretary-General's recommendation. That task of the Economic and Social Council would reflect its co-ordinating function, having regard to the fact that the Committee submitted reports to the Commission for Social Development and, where necessary, to the Commission on Narcotic Drugs and the Commission on Human Rights. Continued application of the principle of equitable geographical distribution was essential. The Council itself would be studying the possibility of abolishing some of the subsidiary bodies. While her delegation did not believe that the Committee should be abolished, in view of its highly technical nature and the

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useful services which it provided, it felt that the Commission for Social Development might well be abolished, since its functions largely overlapped those of the Social Committee of the Economic and Social Council. Her delegation's comments were made not with a view to restructuring, a matter which fell within the competence of another forum, but rather with a view to avoiding changes that had not been envisaged in Council resolution 1584 (L).

28. The CHAIRMAN suggested that delegations should confine their statements to item 80.

29. Miss RICHTER (Argentina) pointed out that her statement had been made in accordance with the suggestion made by the Chairman at the beginning of the session to the effect that closely related items could be considered together.

30. Mr. DE FARIA (Portugal) said that torture was an evil which could be eliminated and the Committee's deliberations must focus on finding the most appropriate ways of achieving that purpose. That had been the aim of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which had been adopted by the General Assembly in resolution 3452 (XXX). That Declaration was far more than just another instrument relating to the protection of certain human rights. It was a unique declaration because it reflected the universal perception that there was a difference between protection against torture and the protection of all other human rights and fundamental freedoms. It was true that all human rights - and he did not wish to minimize the importance of any of them - were perceived and interpreted differently in different countries, cultures and socio-economic systems, and quite rightly so. That was true even for the most fundamental right, the right to life. However, it was not true for torture which was, in a sense, worse than death, because it reflected not merely the desire to put a human being to death but the desire to destroy the human nature of the victim; and that, as all men, regardless of background or origin, agreed, was, together with slavery, the greatest offence to human dignity. It was also universally agreed that torture would, if left unchecked, surface in any country, any culture, any socio-economic system. The profound significance of the Declaration was that it recognized that fact and laid down the principles for concerted international action to do with respect to torture what had been done a century before with respect to slavery.

31. It was regrettable that some countries had not lived up to their commitment under the Declaration, but the majority had done so. That did not mean, unfortunately, that torture occurred only in a few places or remote countries; it simply meant that an effort to eradicate it had begun almost everywhere. That was no easy task, for there would always be those who were motivated by greed, vengeance or other personal reasons to resort to that supreme offence against the dignity of man. It must be the concern of the Assembly to ensure that agents of Governments were never in a position to take such action, to oblige Governments which had failed to honour their commitment with respect to torture to account to the international community for that failure, and to provide those who were honouring their commitment with more efficient means of achieving the common aim.

(Mr. De Faria, Portugal)

32. That was the purpose of the draft resolution in the annex to document A/32/138, and his Government therefore fully supported that text. It was also the purpose of Economic and Social Council resolution 2076 (LXII), which approved an additional rule, rule 95, for inclusion in the Standard Minimum Rules for the Treatment of Prisoners. Such too had been the purpose of the General Assembly's invitation to 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, as referred to in document A/32/180, and he regretted that WHO had not yet done so.

33. The same purpose was reflected in draft resolution A/C.3/32/L.13. It was his Government's opinion that States should be bound not only morally but also legally, i.e., that they should start working towards the adoption of an international convention embodying the principles laid down in the Declaration as soon as possible. His delegation therefore sponsored and whole-heartedly supported that draft resolution.

34. That purpose was also reflected in draft resolution A/C.3/32/L.14. His Government was concerned that the Declaration as it stood should be fully implemented by everyone and felt that the suggestion that the General Assembly should analyse what Governments had or had not done in that connexion was an excellent one. It hoped that the thirty-third session of the General Assembly would make an objective evaluation of the situation in that respect and therefore had joined in sponsoring draft resolution A/C.3/32/L.14.

The meeting rose at 12.25 p.m.