



SUMMARY RECORD OF THE 36th MEETING

Chairman: Mrs. MAIR (Jamaica)

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AGENDA ITEM 80: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT (continued)

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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 80: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (continued) (A/32/3, chap. VI, sect. A, A/32/138, A/32/180, A/32/222, A/32/225; A/C.3/32/L.13, L.14 and L.15)

1. Mrs. MORRISON (Lesotho) said that the item on torture and other cruel, inhuman or degrading treatment or punishment was not a question for debate but a question requiring urgent action. Torture, whether physical or mental, degraded the victim and dehumanized the perpetrator. In view of the increase in torture in recent years, the international community must intensify its efforts to eliminate that malady from the face of the earth.
2. The Government of Lesotho, on numerous occasions and in various forums, had attempted to keep the world community informed of the alarming growth of torture in the southern part of the African continent. As the Minister for Foreign Affairs of Lesotho had observed at the recent Lagos Conference, to be black in South Africa was to live in perpetual fear of loss of liberty and life and to be unable to find safety even in gaol.
3. The item on torture had been on the agenda of the General Assembly for a long time. In South Africa not a single article of the code of conduct for law enforcement officials was observed. The treatment of prisoners had taken on an appalling aspect; prisoners were no longer simply tortured but died in the process, and even the cynical explanations of those responsible for their deaths could not mask the brutal truth. South African detainees could not expect protection under any of the guarantees for prisoners provided in articles 1, 11 and 6, among others, of the code of conduct for law enforcement officials. Some eight weeks earlier, for example, a young woman had been held hostage by South African officials and had suffered a miscarriage as a direct result. The South African authorities had detained the woman because they wished to exchange her for a South African refugee whom the Government of Lesotho had refused to hand over. The destiny of that woman and of hundreds of other detainees was uncertain, and her delegation appealed to the conscience of the world community to take the necessary action without delay.
4. Mr. GRAEFRATH (German Democratic Republic) observed that the draft code of conduct for law enforcement officials in document A/32/138 had been prepared by the Committee on Crime Prevention and Control and had so far not been transmitted to Member States for their examination and comment. The draft code had been elaborated on the basis of preliminary discussions held on the subject at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at which very divergent views had been expressed, no agreement had been reached on a clear-cut approach, and it had been recommended that further discussions should be continued at the expert level. It was therefore difficult to say to what extent the Committee on Crime Prevention and Control had succeeded in harmonizing in its present draft the divergent positions of Governments, as revealed at the Fifth Congress. Moreover, the Commission for Social Development had discussed the draft code only very briefly, as could be seen from the summary in the Commission's report (E/CN.5/556). That summary occupied a single paragraph - paragraph 10^b - and

(Mr. Graefrath, German Democratic Republic)

stated, inter alia, that most of the representatives - who had been 29 in number - were able to recognize the instrument only as a collection of basic principles. Unfortunately, the Economic and Social Council had not had time to hold a thorough discussion of that important document and had merely taken note of it when endorsing the report of the Commission for Social Development and referring it to the General Assembly.

5. For those reasons, and in view of the short time available for discussion of the text in the Third Committee, his delegation was of the view that it was premature to adopt the draft code of conduct for law enforcement officials at the current session of the General Assembly. To do so would considerably impair the legal value of the text. The draft code merely reflected the result of expert discussions and could not be adopted until all Member States had had an opportunity to examine it with due thoroughness and transmit their comments. The draft code was an important text and its rules directly affected the internal affairs of States; it should be examined carefully and commented upon and subsequently adopted by a unanimous decision. His delegation therefore supported the suggestion made by the Byelorussian delegation. It fully endorsed draft resolution A/C.3/32/L.13 and wished to be added to the list of sponsors.

6. Mr. DURIEUX (France) said that torture, far from abating, had become a widespread means of oppression which was taking on increasingly subtle forms. In addition to the forcible extraction of confessions, there was a trend towards the destruction of the individual's personality through the imposition of opinions and conduct which were alien to his own beliefs on the pretext of protecting higher interests.

7. There were United Nations instruments designed to prevent such treatment: the Universal Declaration of Human Rights and the International Covenants condemned torture. Moreover, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities were endeavouring to combat that scourge. But while achievements should not be overlooked, nor should the lacunae still to be remedied. As his delegation had consistently emphasized, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had not provided a satisfactory legal definition of torture. Furthermore, a distinct risk of confusion was introduced by the linkage of torture to degrading treatment. For example, the application of the ordinary penitentiary system to the perpetrators of a common law offence who attributed a political motive to their acts could be interpreted as degrading according to some ideologies. The Declaration should therefore clarify the notion of degrading treatment so as to avoid any risk of improper use.

8. In his delegation's view, the question of torture was within the purview of humanitarian law, which in certain international instruments, especially the Geneva Conventions, contained provisions relating to the protection of detained persons and to conditions of detention. It would be desirable to adopt a code of conduct for law enforcement officials and a code of medical ethics in that sphere.

(Mr. Durieux, France)

9. The Declaration was also seriously deficient in making no reference to the case of private torture. Acts perpetrated by a political organization distinct from State services but actually carrying out the same functions were outside the scope of the Declaration because of their private character. The same applied to similar acts perpetrated by private individuals, especially in the case of terrorists.
10. The legal foundations for future measures to be adopted by the United Nations in that sphere and in the envisaged convention for the elimination of torture already existed in the relevant articles of the Charter and in the Universal Declaration of Human Rights. There also existed procedures which would enable the Commission on Human Rights, the body particularly responsible for such questions, to monitor the observance of the provisions of the international instruments which the United Nations had established or would establish in the future to combat the practice of torture. What was needed, therefore, was rather to synthesize the work already done within the United Nations. His delegation, for its part, would co-operate fully in any work aimed at achieving that goal.
11. Mr. BAROODY (Saudi Arabia) said that the question of torture had kept the Committee busy to the point of exasperation for many years. Thirty years had passed since the drafting of article 5 of the Declaration of Human Rights, which prohibited torture, but unfortunately the practice of physical or mental torture was visibly increasing. Both forms must be taken into account, since mental torture could be even worse than physical torture.
12. The Committee had before it a draft code of conduct for law enforcement officials, the annex to which contained a draft resolution on the subject submitted by the Economic and Social Council (A/32/138); he considered the document relevant to the subject under consideration, since it arose from a concern for the adoption of radical measures aimed at reducing the practice of torture, which was carried on mainly by such officials. Torture was practised in almost every country, but not necessarily with the consent of Governments, although some of them called upon the police to obtain confessions at any price in order to defend the régime they represented.
13. Even if Governments rejected torture, they did not have the gift of omnipresence which would keep them informed of every act committed by the police, but if they were honest and were aware that acts of torture had been perpetrated, they would punish the guilty. However, some Governments, for political reasons, preferred not to punish torturers, fearing that the revelation of acts of torture would compromise their integrity.
14. It must be borne in mind that criminals were human beings and should not be subjected to torture. Although public order required the adoption of laws for its maintenance, it was important not to lose sight of the responsibility which society must bear, in some degree, for criminality.
15. The Committee also had before it draft resolutions A/C.3/32/L.13, L.14 and L.15. He did not think that anyone could vote against those draft resolutions or abstain from voting on them. It would have been preferable to consolidate the three draft

(Mr. Baroody, Saudi Arabia)

resolutions into a single one. Perhaps it was too late to prepare a consolidated text for the current year, but something along that line could be done in 1978.

16. One of his favourite projects some years earlier had been the production of posters with slogans against torture, stating, for example, that criminals were human beings who should not be subjected to torture. Those posters would be placed in the offices of law enforcement officials, police stations and court corridors. On the one hand, they would reassure detained persons and, on the other hand, they would remind the police that they must not extract confessions by means of torture and, in general, remind everyone that torture was not to be tolerated in any way. He hoped that that idea would be taken into account during the consideration of the item.

17. In short, it had to be taken into account that every criminal was a human being, and law enforcement officials must be warned that the United Nations not only disapproved of torture but maintained that torturers should be punished, a warning which might dissuade them from resorting to that practice. Lastly, he appealed to the sponsors of the aforementioned draft resolutions to meet and consolidate their actions, in order to speak before the world with a single voice.

18. He believed that draft resolution A/C.3/32/L.14 was a model declaration against torture, but he wondered whether all Governments would adopt it and, if they did, whether that would not be merely a formality. The adoption of resolutions by the United Nations had not succeeded in improving the existing situation in the matter of torture, the practice of which had increased. He therefore considered it advisable to adopt educational measures that would reach into the schools, perhaps through the intermediary of UNESCO and other organizations of the United Nations system. The two main aspects were education and publicity against torture, and it was along those lines that more radical measures should be taken, in conformity with what he had suggested and with other ideas that might be proposed. He hoped that the world community was at least started along the path that would lead to tangible results.

19. Miss CAO PINWA (Italy) said that the principle that no one should be subjected to torture or other cruel, inhuman or degrading treatment or punishment was included both in the Universal Declaration of Human Rights and in the Covenant on Civil and Political Rights and had been stated even more clearly in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

20. When that Declaration had been unanimously adopted, one might have supposed that it would constitute a decisive step towards the speedy abolition of those horrifying practices. The action subsequently taken by the United Nations bodies concerned with human rights and by those competent in the field of social defence had constituted another promising step. Yet, even while those favourable developments had taken place, it had become increasingly clear that torture was still being practised in various parts of the world and that persons arrested or imprisoned for political dissent were those who were most frequently exposed to torture and similar practices.

21. Lastly, she observed that in contrast to the large amount of reliable information available with respect to the use of torture, there was no information

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(Miss Cao Pinna, Italy)

concerning the effective implementation of the provisions of the Declaration relating to the prosecution and punishment of those responsible for such practices.

22. Two main conclusions could be drawn from the main features of the action taken by the United Nations to combat torture and from the actual situation with regard to such a violation of human rights. First, the value of the unanimous support won by all resolutions adopted so far might easily be questioned by world public opinion, thereby compromising the credibility of United Nations deliberations in that field. Secondly, as a consequence of that state of affairs, further and stronger action should be taken by all bodies concerned in order to ensure the effective implementation of the principles set forth in the Declaration.

23. Her delegation concurred with the view of the Director of the Division of Human Rights that the Sub-Commission on Prevention of Discrimination and Protection of Minorities was the main body dealing with the implementation of the principle in question, not only because it annually reviewed the situation with regard to the human rights of persons under arrest or in detention, but also because it was composed of independent experts. Moreover, the action taken so far by the Sub-Commission was a clear indication of its commitment to contribute to the elimination of torture and similar practices.

24. The three draft resolutions proposed by members of the Committee and the one submitted by the Economic and Social Council were inspired by a common concern to take all possible measures which might help to ensure respect for the principles set forth in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Her delegation would comment briefly on each of them.

25. It was the well-established practice of the United Nations to make the principles already embodied in declarations on human rights binding by incorporating them in conventions. There was no doubt about the necessity to proceed immediately with the drafting of a convention against torture. Her delegation believed that the Commission on Human Rights would be able to submit a draft convention against torture in the not too distant future. It therefore fully supported draft resolution A/C.3/32/L.13, of which it wished to become a sponsor.

26. The adoption of draft resolution A/C.3/32/L.15 could bring more immediate results in the form of a renewed and more explicit commitment by Member States to comply with the provisions of the 1975 Declaration. Her delegation therefore fully supported that draft resolution.

27. The draft resolution sponsored by the Netherlands and other countries (A/C.3/32/L.14) also had the support of her delegation. The information so far available on the implementation of the 1975 Declaration had come mainly from non-governmental organizations, and the proposed questionnaire could well prove helpful in providing additional knowledge on the present situation, particularly in connexion with the annual review of the human rights of persons arrested and in detention carried out by the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

(Miss Cao Pinna, Italy)

28. Italy had been among the sponsors of the draft resolution concerning the draft code of conduct for law enforcement officials. It therefore urged the Committee to approve that draft resolution as a first step towards defining the principles which should govern the conduct of all officers who exercised police powers, especially the powers of arrest and detention.

29. In conclusion, her delegation would like to add its voice to those of previous speakers who had expressed regret at the fact that the draft code on medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture had not yet been finalized by the World Health Organization. The joint adoption of the four draft resolutions before the Committee should not be regarded as an example of the usual proliferation of General Assembly resolutions. Each one of them added something new and they were all complementary, showing the deep concern of the General Assembly over the present situation of widespread disregard of human dignity.

30. Mr. PAPOULIAS (Greece) said that torture was currently a widespread phenomenon, despite the fact that it was legally prohibited and condemned. It was only recently that the prohibition of torture had been successfully placed in the context of human rights and had been seen not as a political right that could be granted, but as a natural, inalienable and sacred right.

31. Nevertheless, as a result of technological advances, torture had spread. Its range of application had been broadened and new techniques had been developed. The reason for that refinement of techniques of inflicting pain on human beings with the aim of breaking their physical and mental integrity was that, since the practice of torture was illegal, every effort was made not to leave any marks. Modern methods were thus insidious.

32. Those who practised torture, categorically denied the fact. Torture was also often a State activity which could take one of two forms: either it was an exceptional practice engaged in by officials who had overstepped the permissible limits, or it was a systematic practice used to maintain and stabilize a régime. Although the State did not have a monopoly on the use of violence, the circumstances in which torture was carried out made it almost exclusively a State practice, since the victims had to be under the physical control of the torturer and such control was a prerogative of States.

33. When States used torture to maintain political stability, they violated the fundamental democratic principle underlying article 21 of the Universal Declaration of Human Rights. It was impossible for an ordinary citizen to escape the actions of the régime's police force. In such a case, when fundamental principles of law were no longer respected, it was clear that the provisions of domestic legislation were inadequate.

(Mr. Papoulias, Greece)

34. In the light of that situation, the international community had adopted various instruments against torture. Under Article 55 of the Charter of the United Nations, Member States had an obligation to promote universal respect for human rights and fundamental freedoms for all. Torture did, in fact, violate two of the most fundamental human rights - the right to life and the right to physical and mental integrity. For its part, the General Assembly, in resolution 3452 (XXX) had adopted a Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

35. In the opinion of his delegation, the time had come to draft a more effective instrument against torture, in other words, a convention. For that reason, it had sponsored draft resolution A/C.3/32/L.13, which requested the Commission on Human Rights to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Declaration.

36. During the spring session of the Social Committee of the Economic and Social Council, his delegation had proposed the elaboration and adoption of an international convention for the prevention and punishment of torture. The proposal had been favourably received at that time, especially by the Austrian delegation, which had supported it. His own delegation considered the elaboration of such a convention to be of paramount importance, for although penal provisions against torture in the domestic law of a country served as preventives in a general way, there had been cases where the legal provisions for prosecution in cases of torture were not applied. It also felt that existing international legislation was insufficient to ensure the punishment of those who practised torture, especially in cases involving psychological torture.

37. His delegation felt that those who ordered torture bore a greater responsibility than those who carried out such orders, because they were guilty of a twofold violation of human dignity, against both the person tortured and the torturer. It considered, however, that those obeying such orders or co-operating with the torturers were also responsible. Such persons were generally law enforcement officials and doctors. For that reason, he expressed the hope that the World Health Organization would expedite the task which the General Assembly had entrusted to it under resolution 31/85, namely the preparation of 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.

38. His delegation trusted that the Committee would unanimously adopt draft resolution A/C.3/32/L.13. It also expressed its full support for the draft resolution appearing in document A/32/138.

39. Mr. GARCIA TEJEDOR (Spain) said that, although torture had borne a certain semblance of legality at particular moments in history, it had been completely rejected in the national legislation of countries following the adoption in the nineteenth century of such principles as the principle of no punishment without a pre-existing law and the principle of proportional punishment, both of which had increasingly acquired a preventive nature compared with the Manichean view of

(Mr. Garcia Tejedor, Spain)

punishment to be found in theocratic and feudal societies. The most striking feature of torture at the present time, however, was its universality and its intrinsic perversion, over and above any legal, political or ideological considerations. Those States of government bodies which practised or tolerated torture had to a certain degree abdicated their true legal functions and had become structural refuges of terror and cruelty.

40. Action to eliminate that evil must be universal and decisive; in that connexion, his delegation noted that the United Nations had cause to be very grateful to institutions which by their efforts had made some progress in that area. In particular, it congratulated Amnesty International on the well-deserved award of the Nobel Peace Prize for the current year.

41. His delegation would support any measure whereby the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, contained in General Assembly resolution 3452 (XXX), and article 5 of the Universal Declaration of Human Rights would become specific internal obligations of States. The Spanish Government would spare no efforts to promote the establishment of an international legal structure in that sphere which would leave no room for doubt, deceit or confusion.

42. He felt that the drafting of a convention against torture should take pride of place among those efforts. Spain was sponsoring draft resolution A/C.3/32/L.13 because it considered that, together with other draft resolutions which it would also support, it reflected more accurately long-term human needs in that important and essential sphere.

43. Similarly, his delegation welcomed the draft code of conduct for law enforcement officials prepared by the Committee on Crime Prevention and Control, which appeared in document A/32/138. With regard to document A/32/180, it hoped that the World Health Organization would complete its consultations and present its draft code on medical ethics which was of fundamental importance, as soon as possible.

44. Mr. O'DONOVAN (Ireland) said that Ireland welcomed the Indian proposals appearing in document A/C.3/32/L.15. He was also glad to announce that Ireland would co-sponsor draft resolutions A/C.3/32/L.13 and A/C.3/32/L.14.

45. No part of the world was immune from the fact of torture, since it represented the brutal and regressive elements of the human personality. It was, therefore, in a spirit of exhortation rather than accusation that Ireland had always supported the United Nations concern with the question of torture.

46. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment, appearing in General Assembly resolution 3452 (XXX), and the draft code of conduct for law enforcement officials, currently being prepared, were steps in the right direction. The code on medical ethics was a subject of special interest to Ireland because the Irish

(Mr. O'Donovan, Ireland)

Medical Association had been active in its elaboration up to its present stage of development, urging doctors to take no part directly or indirectly in any activity which could weaken the mental or physical health of a human being. The 1975 Tokyo Declaration reflected the concern of the Irish Medical Association. His delegation hoped that the General Assembly would very soon endorse the drafting of a code on medical ethics.

47. Mr. HARRADINE (Australia) said it was unfortunate that evidence available from many quarters confirmed that torture was not only still common in some parts of the world but was in some cases an instrument of government policy. His delegation believed that the time had come to prepare provisions prohibiting the use of torture, which would be legally binding on States. In that connexion, it should be noted that article 7 of the International Covenant on Civil and Political Rights prohibited torture and cruel, inhuman or degrading treatment and that article 4 of the same Covenant prohibited derogation from that prohibition. Accordingly, as a consequence of those provisions, which were now accepted by nearly 50 States, torture could not be used as an instrument of government policy; yet it was certain that it continued to be so used. Torture took many forms, extending from physical brutality through a whole spectrum of psychological pressure, and his delegation condemned it in any and all of its manifestations. Torture was an abomination and an affront to international opinion, no matter who committed such acts.

48. Since the adoption of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in resolution 3452 (XXX), which had been sponsored by Australia, there had been considerable activity in various parts of the United Nations system, and it was to be hoped that that activity would lead to the preparation of international instruments. In that context, a draft code of conduct for law enforcement officials, prepared by the Committee on Crime Prevention and Control, was being examined, and the World Health Organization and the Council for International Organizations of Medical Sciences were working on the development of a code on medical ethics. His country was following with great interest the work on both those codes, as well as the work of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities on the development of a body of principles for the protection of all persons under any form of imprisonment. While those principles had a wider scope than the problem of torture, they provided an opportunity for further definition of the rights of detained persons in relation to the practice of torture.

49. Although his delegation had referred to the fact that there could be no derogation from the principles of article 7 of the International Covenant on Civil and Political Rights, it wished to add that it saw much value in resolution 10 (XXX) of the Sub-Commission concerning the implications for human rights of situations such as states of seige or emergency.

50. Australia was co-sponsoring draft resolutions A/C.3/32/L.13, L.14 and L.15, which were in many respects complementary. A convention could be effective only if it was backed up by strong international legislation and practice. Finally, his delegation believed that the procedures to be followed should be developed in an atmosphere of collaboration so that they could make the most appreciable and lasting impact on States and societies.

51. Mr. ABRAMOV (Israel) regretted that in the course of the debate on the item under consideration the representatives of two countries had found it necessary to raise accusations against Israel. His delegation rejected those accusations and felt that, in view of the record of those countries with respect to human rights, they should be the last to accuse Israel. He would not dwell further on the subject, which would be considered at the right time and in the right forum.

52. Mr. AL-HUSSAMY (Syrian Arab Republic) cited a special report in the Sunday Times concerning torture in Israeli prisons, which mentioned the restrictions imposed on the International Red Cross in its efforts to visit detainees in the special prisons and interrogation centres. The International Red Cross was obliged to furnish a list of the names of the prisoners whom it wished to visit 48 hours in advance, and, usually, when its representatives arrived at the prison, they were told that the prisoners in question had just been transferred to other centres. As early as 1970, the International Red Cross had had to report that, although its representatives felt that there had been some improvement in the conditions in which prisoners were interrogated, it felt that the visiting procedures and restrictions imposed by the Israeli authorities made it impossible to ensure that no interrogation methods contrary to humanitarian law were in use. In January 1977, the International Red Cross had reported that many problems remained unsolved and that it was still not allowed to visit persons who had undergone interrogation. He also cited a study carried out by Michael Adams on the treatment by Israel of Arabs in the occupied areas; according to that study, all the inhabitants of the occupied territories were subject to being detained and kept in prison without a preliminary hearing. He also referred to the booklet published by the Comité de soutien au peuple palestinien, which had its headquarters in Switzerland, entitled Palestinian political prisons and repression in Israel and the occupied territories. That booklet described the vicissitudes to which the detainees were subjected by the Israeli authorities and arrived at the conclusion that the detentions were politically motivated, that none of the detainees had committed a crime, that all the victims requested Israel to withdraw from the occupied Arab territories and to respect the legitimate national rights of the Palestinian Arab people, and, lastly, that detainees were still subjected to torture.

53. Mr. ABRAMOV (Israel) said that, as he had stated when speaking in exercise of the right of reply, he would not dwell further on the subject, as the Committee would consider it in detail at the proper time. For the time being, he drew the attention of members of the Committee to the latest report of Amnesty International covering the period from 1 June 1975 to 31 May 1976.

54. The CHAIRMAN announced that the delegations of Angola, Lesotho, United Republic of Cameroon and Zambia had joined the list of sponsors of draft resolution A/C.2/32/L.13. She also informed members that the following day they would have before them a consolidated text prepared by the Chairman with regard to agenda item 81 on the International Covenants on human rights; the text would combine the draft resolutions appearing in documents A/C.3/32/L.7 and L.9.