



SUMMARY RECORD OF THE 75th MEETING

Chairman: Mrs. de ARANA (Peru)

CONTENTS

AGENDA ITEM 12: REPORT OF THE ECONOMIC AND SOCIAL COUNCIL (continued)

AGENDA ITEM 65: CRIME PREVENTION AND CONTROL: (continued)

- (a) CAPITAL PUNISHMENT: REPORT OF THE SIXTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS
- (b) SIXTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS
- (c) IMPLEMENTATION OF THE CONCLUSIONS OF THE FIFTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

AGENDA ITEM 82: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: (continued)

- (a) QUESTIONNAIRE ON THE DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
- (b) UNILATERAL DECLARATIONS BY MEMBER STATES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
- (c) DRAFT CODE OF MEDICAL ETHICS
- (d) DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT

*This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned within one month of the date of publication to the Chief of the Official Records Editing Section, room A-3550, 866 United Nations Plaza (Alcoa Building), and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate fascicle for each Committee.

Distr. GENERAL
A/C.3/35/SR.75
10 December 1980
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 3.25 p.m.

AGENDA ITEM 62: REPORT OF THE ECONOMIC AND SOCIAL COUNCIL (continued)

AGENDA ITEM 65: CRIME PREVENTION AND CONTROL (continued)

- (a) CAPITAL PUNISHMENT: REPORT OF THE SIXTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS (A/CONF.87/9)
- (b) SIXTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS (A/35/3/Add.26; A/35/629; A/CONF.87/14/Rev.1 and Add.1)
- (c) IMPLEMENTATION OF THE CONCLUSIONS OF THE FIFTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS (A/35/289)

AGENDA ITEM 82: TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (continued)

- (a) QUESTIONNAIRE ON THE DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A/35/369 and Add.1 and 2)
- (b) UNILATERAL DECLARATIONS BY MEMBER STATES AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (A/35/370/Rev.1 and Add.1)
- (c) DRAFT CODE OF MEDICAL ETHICS (A/35/372 and Add.1 and 2 and Corr.1)
- (d) DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT (A/35/401 and Add.1 and 2, A/C.3/35/L.73/Rev.1, L.92)

1. Mr. SCOBLE (Australia) expressed satisfaction at the success of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas, Venezuela, in August 1980. The topics discussed at the Congress included some which were on the agenda of the Third Committee, namely, torture, capital punishment, extra-legal executions and a code of conduct for law-enforcement officials. The Australian delegation to the Congress, in introducing the relevant draft resolution, had mentioned the importance of maintaining continuity between Congresses, and Member States had been invited to provide information to the Secretary-General on the measures they had taken to implement the conclusions of the Congress. It was partly because of its commitment to promoting continuity of action that Australia had decided to become a sponsor of the Caracas Declaration.

2. Capital punishment was a complex matter which involved not only political and criminal considerations but cultural and even religious ones as well. The

(Mr. Scoble, Australia)

Congress had had before it the report of Amnesty International, which drew attention to the fact that in many parts of the world even the minimum procedural safeguards were ignored when a death sentence was pronounced. His delegation felt that the most careful consideration should be given to the conditions under which the death penalty might be used and to the eventual possibility of abolishing it once and for all. It was in that spirit that it intended to support draft resolutions A/C.3/35/L.67 and A/C.3/35/L.80, on capital punishment and summary executions respectively.

3. With regard to the setting of standards, he said that his delegation had been gratified at the adoption of the Code of Conduct for Law Enforcement Officials: it would support draft resolution A/C.3/35/L.65 on that subject.

4. Concerning the draft code of medical ethics, his delegation agreed with the proposal contained in draft resolution A/C.3/35/L.82, on torture and other cruel, inhuman or degrading punishment. The comments submitted thus far by Governments to the questionnaire on torture had been very informative and his delegation would like more time to give them mature consideration. With regard to the draft body of principles for the protection of all persons under any form of detention or imprisonment, his delegation hoped that the Working Group could complete its work on the text at the next session.

5. A further issue addressed at the Sixth Congress had been that of torture, which was unequivocally condemned in article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights. His Government strongly supported the completion of a convention against torture and other cruel, inhuman or degrading treatment or punishment. It had participated actively in the drafting of such an instrument in the Commission on Human Rights and had been guided by the principle that the convention must be clear and must firmly preclude any spurious justification for isolated or systematic uses of torture. The new instrument must not provide a weaker international legal basis for action against torture than existed at present in the Covenant on Civil and Political Rights.

6. Mr. NORDENFELT (Sweden), speaking also on behalf of the delegations of Denmark, Finland, Iceland and Norway, said that the Governments and peoples of the Nordic countries had undertaken to achieve the ultimate abolition of capital punishment. Accordingly, they followed with close attention the work done within the framework of the United Nations with a view to restricting the use of capital punishment. Important resolutions had been adopted on the subject, including in particular General Assembly resolution 2857 (XXVI), in which the General Assembly had affirmed that, in order fully to guarantee the right to life, there must first be action to restrict progressively the number of offences for which capital punishment might be imposed, the desirable objective being the total abolition of that penalty in all countries. However, according to a working paper drawn up for the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, the number of crimes for which capital punishment might be imposed seemed to be on the increase, as did the number of death sentences pronounced and the number of executions in many countries. Views differed with

(Mr. Rordenfelt, Sweden)

regard to the deterrent effect of the death penalty: while research carried out in that area was not conclusive, the experience of those countries which had abolished the death penalty hardly seemed to substantiate the theory of a deterrent effect.

7. The Nordic countries had opposed capital punishment because it was incompatible with the fundamental right to life and the right not to be subject to cruel, inhuman or degrading treatment and because, unlike other penalties, it was irreversible. Moreover, it appeared from available studies that individuals belonging to disadvantaged groups or groups that were the target of racial discrimination ran the greatest risk of having capital punishment imposed on them. It was also used against political adversaries.

8. Thus, the ultimate abolition of capital punishment would do much to strengthen human rights measures that would make it possible for the international community to come closer to that objective set by the General Assembly over a decade earlier, should therefore be taken.

9. Mrs. RASI (Finland) said that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in August 1980 at Caracas, Venezuela, had enabled Member States to exchange information and experience in the field of crime prevention and control. The number of resolutions adopted by the Congress indicated the wide range of problems discussed.

10. With regard to the preparation of crime statistics, experts agreed in recognizing that the official figures could be misleading. In many categories of crime, only a small fraction of the cases was reported to the authorities. Thus, as was stated in the report of the Sixth Congress, many countries distrusted crime statistics. Efforts should therefore be made to improve the quality of statistics, so that they could serve as a basis for comparison. The Sixth Congress had adopted a resolution on the subject, and an important task for the United Nations would be to provide Member States with the technical assistance they needed for the preparation of such statistics in accordance with international standards. However, it should be borne in mind that it was sometimes impossible to compare statistics from countries which were at widely differing stages of development. Co-operation in the field of crime prevention and control should therefore be developed at the regional level.

11. The comparison of statistics on crime should also be applied to the social costs of crime control: statistics on the number of offences should be supplemented by statistics on the number of prisoners. An exchange of information among countries would make it possible to formulate more rational crime-fighting policies. In order to improve the system of information, sufficient resources must be provided. Her delegation therefore supported the proposal in the report of the Sixth Congress concerning the need for strengthening the capacities of the United Nations system in that area, particularly that of the Crime and Criminal Justice Branch of the United Nations. It also believed that the scope of United Nations regional activities in that area should be enlarged.

(Mrs. Rasi, Finland)

12. Finland had abolished the death penalty and therefore supported the efforts of the United Nations to achieve its ultimate abolition in all countries.
13. Mr. DOMINGUEZ PASIER (Spain) stressed the eminently humanitarian character of agenda item 82, concerning torture and other cruel, inhuman or degrading treatment or punishment, and said that an increasing number of Governments had undertaken to respect the Declaration against torture and had replied to the questionnaire drawn up three years earlier by the Secretary-General. The Spanish Government was among that number.
14. With regard to the preparation of the draft convention against torture and other cruel, inhuman or degrading treatment or punishment, his delegation was pleased at the progress of the work and firmly supported the initiative taken in that regard, which was in large part due to the Swedish delegation. His delegation hoped that the Working Group would be able to complete at the next session the preparation of the draft body of principles for the protection of all persons under any form of detention or imprisonment.
15. The question of capital punishment was one to which his delegation had given particular attention at the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Caracas, Venezuela. Spain was a sponsor of draft resolution A/C.3/35/L.67 and would support draft resolution A/C.3/35/L.75, concerning measures aiming at the ultimate abolition of capital punishment (draft Second Optional Protocol to the International Covenant on Civil and Political Rights).
16. His delegation was also a sponsor of draft resolution A/C.3/35/L.65, concerning a code of conduct for law-enforcement officials, which it hoped would be adopted without a vote. His Government, after actively participating in the preparation of the code of conduct, had decided to incorporate it into its legislation.
17. Mrs. SUTHERLAND (Canada) noted the success of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which had brought together experts from all regions of the world to exchange information and experience on a wide range of criminal justice issues. There had been agreement on the crucial role of the family, school and community as a bulwark against criminality and as custodian of societal values. A specific resolution had dealt with the need to develop at the international level standard minimum rules regarding juvenile justice. On the proposal of the Canadian delegation, a resolution (resolution 8-A/CONF.87/14) on alternatives to imprisonment, of which she quoted various provisions, had been adopted by consensus. Canada would continue its efforts to develop alternatives to imprisonment in order to achieve a more humane penal system, better rehabilitation and easier integration of offenders into society. Another Canadian proposal regarding the transfer of offenders (resolution 13-A/CONF.87/14) had also been adopted. Since 1975, Canadian efforts in that field had resulted in the signing of bilateral treaties with Mexico, Peru and the United States, and negotiations were in progress with other countries.

(Mrs. Sutherland, Canada)

18. The Sixth Congress had also agreed on the need for increased co-operation at the international level for in-depth studies of issues related to crime prevention and the treatment of offenders. The participants in the Congress had felt that the United Nations could act as a catalyst in policy development in that sector, and that its role in that respect should be expanded. To that end, the United Nations should undertake more initiatives, establish mechanisms to enforce international standards, and provide technical advice. Reliable and complete information on crime and criminal justice would permit evaluation and international comparison of data and should therefore be made available to States. The participants in the Congress had also drawn attention to the need to take measures against torture and other cruel or degrading treatment. The resolutions adopted by the Congress had an impact on the work of the Committee on Crime Prevention and Control which made it necessary to evaluate the resources available to the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat. In that connexion she pointed out that the Committee had held its sixth session immediately following the Congress in Caracas but had been unable to obtain the requisite documentation and had therefore had to advance the dates of its subsequent sessions. Her delegation thought that the attention of the Committee on Conferences should be drawn to that matter.

19. There had been agreement at Caracas on the need to increase the staff of the Crime Prevention and Criminal Justice Branch. The number of Professional staff represented only eight man-years of work, which was clearly insufficient to permit the Branch to follow up the decisions of the Congress. Canada supported the proposal for allocating more adequate resources to the Branch within the present policy of redeploying existing resources wherever possible.

20. With the move to Vienna of the Centre for Social Development and Humanitarian Affairs, it was important to ensure that the social sectors of the United Nations activities, especially crime prevention and criminal justice, were properly integrated in over-all planning. To increase the effectiveness of the Vienna-based divisions, and particularly the crime prevention branch, there was a need for liaison positions based in New York. Her delegation understood that the Assistant Secretary-General for Social Development and Humanitarian Affairs had already proposed such an arrangement.

21. In conclusion, her delegation congratulated the Government of Venezuela and the United Nations Secretariat on the effective organization of the Sixth United Nations Conference on the Prevention of Crime and the Treatment of Offenders. As long as the United Nations endeavoured to deal with social and economic questions from the professional viewpoint which had characterized the work of the Congress, it would make a great contribution to the development of international co-operation.

22. Mr. ZHANG (China) said that the Government of China attached great importance to the prevention of crime and treatment of offenders. He reviewed a number of points in the Caracas Declaration, particularly the idea that crime was firmly linked to economic, social and political factors, so that there could be no effective crime prevention until those problems had been solved.

(Mr. Zhang, China)

23. The Government of the People's Republic of China had always been very much aware of that fact and since 1950 it had been attacking the problems which it had inherited from feudalism and capitalism with a view to establishing a new social order. The Government of China was currently following a complex policy: it was trying to gain the support of the people by a large-scale education campaign about the legal system; to redeem common offenders through education, punishing only the few who represented a real danger to society; and to improve the socialist legal system by the promulgation of new laws.

24. The basic principles of criminal trials were as follows: equality of all citizens before the law; independence of judicial organs; judgements based solely on facts and in accordance with the law; prohibition of corporal punishment, torture and other cruel or degrading treatment in order to obtain a confession.

25. Capital punishment had been retained in the criminal law because it was still needed for a time, but the death sentence was rare and was never imposed on minors or pregnant women. The law of criminal procedure contained detailed provisions regarding sentencing and appeals, and specified the cases in which the death penalty should be imposed or commuted.

26. With regard to juvenile delinquency, the Chinese Government had always regarded youth as the future of the country, so that its moral, intellectual and physical development must be fostered. Young people could not always distinguish right from wrong and thus they sometimes committed offences, but on the other hand they were adaptable; the Chinese Government therefore followed a policy of rehabilitation of juvenile delinquents. They were placed in reformatories or schools, according to the seriousness of their crimes, where they studied while working. Many of them were looked after by assistance groups. Except in extreme cases, they were not taken to court. The few repeated offenders were given light penalties. That method had proved its worth. At the same time, the Chinese Government was studying a set of regulations to protect the legitimate interests of the young and promote their harmonious development.

27. Mr. DUE (Norway) said that during the past 10 years there had been a general rise in the crime rate. The existing system of criminal prosecution was clearly unable to halt the trend. Some countries had tried to remedy the situation by severer penalties; others, such as Norway, by liberalizing their penal codes. But none of those solutions had produced the anticipated results. It was therefore an illusion to think that changes in the penal code would reduce crime.

28. The nature of crime was also changing. New forms of crime were appearing, particularly in commercial practice where the law enforcement agencies were not competent. Crime was also becoming transnational, and there again national authorities were helpless. However, in certain areas good international co-operation had been established, in particular through the United Nations system and on the problem of drug trafficking.

29. The changes in the character of crime were closely bound up with present-day social development, both national and international, and to some extent with the

(Mr. Due, Norway)

trend in development in different countries and different kinds of societies. An effective fight against crime required a systematic study of the features which encouraged crime in every country and society. Once the causes of crime had been defined, a determined will to remove them would be necessary.

30. A number of countries were considering reducing the use of imprisonment, which was often regarded as inhumane. The Norwegian Penal Code already provided for solutions of that kind. In that respect, the Norwegian authorities assumed an attitude of reserve: offenders who were given milder forms of punishment might later commit more serious crimes requiring imprisonment. There was also a danger that such solutions could result in social injustices, since the more resourceful criminals would be better able to defend themselves and thus benefit from those measures. However, those new alternatives might be used in cases where criminal law provided for milder forms of punishment.

31. On the question of crime prevention, both nationally and internationally, Norway emphasized the importance of the abolition of inhuman or degrading methods of punishment and the abolition of the death sentence. It was difficult to reconcile the right to life, which was perhaps the most important human right, with the fact that the State itself could take life.

32. Mr. ALMOSLECHNER (Austria) said that his Government was firmly in favour of the abolition of capital punishment.

33. The death penalty had first been abolished in Austria in 1797 and had been restored after the First World War when the rise of fascism in the 1930s had been a setback to the forces of progress. During the Second World War, death sentences had become almost a daily occurrence. The death penalty had been abolished in 1950 in ordinary criminal procedure and in 1968 Parliament had embodied the total elimination of capital punishment in the Constitution. In his opinion, the Austrian Parliament's action had not been undemocratic; torture had been abolished in Europe in the eighteenth century without consulting the public and the basic principles of national constitutions - including equality of sex and elimination of all forms of racial discrimination - were not always supported by public opinion.

34. Austria would have advocated the abolition of the death penalty even if the courts had been infallible and even if it could have been shown that it had a greater deterrent effect than imprisonment: the State authority should not inflict something that it endeavoured to prevent, namely, murder.

35. The de jure or de facto abolition of capital punishment in a considerable number of countries had not led to an increase in crime and public safety had not been seriously threatened.

36. It was clear from various General Assembly resolutions that the United Nations was firmly committed to the idea of restricting and eventually abolishing capital punishment. The draft resolution proposed by Sweden was designed to translate that

(Mr. Almoslechner, Austria)

objective into concrete terms: it was not intended to impose a solution or set a time-limit, or to require immediate or drastic changes in national legislation. Austria had joined the sponsors of the proposal for a protocol to the International Covenant on Political and Civil Rights concerning the abolition of capital punishment.

The meeting rose at 4.25 p.m.