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COMMISSION ON HUMAN RIGHTS
Thirty-fourth session
Agenda item 10 (a)

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM
OF DETENTION OR IMPRISONMENT IN PARTICULAR:

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Report of the informal Working Group to the Commission

Chairman-Rapporteur: Mrs. V. Pandit (India)

1. The General Assembly, by its resolution 32/62 of 8 December 1977, 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 on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Assembly further requested the Commission to submit a progress report to it at its thirty-third session.
2. At the 1430th meeting, on 7 February 1978, the Commission decided that an informal open-ended working group should be established to draw up the first draft of such a convention.
3. The informal working group held four meetings, on 10, 24 and 28 February and 2 March 1978. At the first meeting, on 10 February 1978, the group unanimously elected Mrs. V. Pandit (India) as its Chairman-Rapporteur.
4. The group had before it the text of a draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, proposed by the delegation of Sweden (E/CN.4/1285). It also had before it the text of a draft Convention for the Prevention and Suppression of Torture presented by the International Association of Penal Law (E/CN.4/NGO/213).
5. At the first meeting, the representative of Sweden introduced the draft Convention submitted by his delegation (E/CN.4/1285).
6. At the same meeting, the observer for the International Commission of Jurists introduced the draft Convention submitted by the International Association of Penal Law.

7. The view was expressed that the text of the Swedish proposal should be sent to the Governments of Member States for their comments.
8. After some discussion on methods of work, the group decided to conduct its preliminary deliberations on the basis of the text proposed by the representative of Sweden. Most speakers, however, said that they were not in a position to make detailed observations on the draft Convention submitted by Sweden as they needed more time to examine it. It was understood, therefore, that no articles were to be adopted at the current session of the Commission and that all delegations would have the opportunity of submitting both amendments and suggestions at later discussions of the draft Convention. These might include some which would be based on the proposals of the International Association of Penal Law.
9. Some delegations made general comments on the draft Convention. It was suggested, inter alia, that future discussion of a draft Convention should include an extensive debate on the question whether torture should be acknowledged a crime under international law. Some support was expressed by some delegations for the idea of torture being recognized as an international crime, as the practice of torture was shocking to the conscience of mankind.
10. Thereafter, the group turned to a preliminary reading of article 1 of the Swedish draft.

Article 1

11. Some representatives stated that the definition of torture in the Swedish draft was acceptable to them as a basis for further consideration. However, it was felt by some other speakers that more clarification and precision would be needed in the wording of article 1, as this definition was to serve as a basis for a legally binding instrument, which would go far beyond a declaration.
12. A debate took place on whether the scope of article 1 and of the whole Convention should be limited to acts of torture or whether it should be extended to include other cruel, inhuman or degrading treatment or punishment. Some speakers expressed the view that the Convention should cover only acts of torture, as the concept of "other inhuman treatment" was very difficult to define in terms acceptable to all countries and legal systems.
13. It was suggested that such torture as was inflicted by persons other than public officials or other than at the instigation of a public official should also be included in the definition of torture. However, some speakers pointed out that the act of torture committed by a public official was different in nature from, and inherently more serious than, that inflicted by a private person, and that the elimination of the former category of torture should be the main target of the Convention.
14. Regarding the purposes for which torture was used, while some speakers supported a reference to it in article 1, others stated that it should be deleted as too restrictive.
15. The view was expressed that the reference to the Standard Minimum Rules for the Treatment of Prisoners in the definition of torture in a Convention unnecessarily complicated the issue by granting the Rules the character of a legally binding instrument.

16. It was suggested that the word "pain" in the last sentence of paragraph 1 of the Swedish text should be deleted, since if that word were retained the last sentence might contradict the first sentence.

17. At the third meeting of the group, on 28 February 1978, the representative of Sweden made a proposal whereby the Commission on Human Rights would request the Secretary-General to transmit all relevant documents of its thirty-fourth session regarding the draft convention to the Governments of Member States for their comments. It would also recommend to the Economic and Social Council that it authorize the establishment of a working group open to all members of the Commission to meet for one week immediately before the thirty-fifth session of the Commission with a view to preparing concrete drafting proposals to the Commission.

18. All speakers were of the opinion that the work of drafting a convention should be expedited, but there were differing views as to how this should be done. All speakers expressed their support for the proposal to ask Governments for their comments on the Swedish draft and on other relevant documents. Some supported the proposal to establish a working group before the next session of the Commission. Others, however, suggested an increased number of meetings for a sessional working group. It was also said that the establishment of too many working groups to meet simultaneously before the next session of the Commission might not be advisable, as it might be difficult for small delegations to deal with all of them at the same time.

19. It was decided that before the next meeting of the working group the Swedish delegation would circulate a draft resolution which would include the Swedish proposal and any alternatives that might be suggested in the course of informal negotiations. One particular mode of carrying out some inter-sessional work on the draft Convention which was found to be most feasible and most widely acceptable would then be recommended in the report of the working group.

20. At its fourth meeting, on 2 February 1978, the working group had before it a revised draft resolution submitted by the Swedish delegation, containing three alternative proposals regarding method of future work of the Commission in the drafting of a convention on torture. The revised draft resolution read as follows:

The Commission on Human Rights,

Recalling the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the General Assembly in resolution 3452 (XXX) of 9 December 1975,

Noting General Assembly resolution 32/62 requesting 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,

Having taken cognizance of the report of the working group set up by the Commission (E/CN.4/L....);

1. Requests the Secretary-General to transmit all relevant documents of the thirty-fourth session of the Commission on Human Rights concerning the draft Convention on torture and other cruel, inhuman or degrading treatment or punishment to the Governments of the Member States for their comments, and to prepare a summary of these comments;

2. Recommends to the Economic and Social Council to authorize the holding of [a meeting of a working group open to all members of the Commission for one week immediately before the thirty-fifth session of the Commission] [a meeting of a working group open to all members of the Commission for one week immediately before the thirty-third session of the General Assembly] with the task of preparing concrete drafting proposals to the Commission on the basis of the relevant documents of the thirty-fourth session of the Commission and any comments received from the Governments of Member States;

OR
2. Decides that an open-ended working group composed of representatives from permanent missions of States Members of the Commission [in Geneva] [in New York] should be charged with the task of preparing concrete drafting proposals to the Commission on the basis of the relevant documents of the thirty-fourth session of the Commission and any comments received from the Governments of Member States;

3. Decides to accord priority to the consideration of the present item at its thirty-fifth session.

21. The Secretariat indicated, with respect to paragraph 2, that conference facilities would be available in Geneva during 5-9 February 1979. Many delegations felt that a decision concerning the working group would have to be made in plenary along with similar questions regarding working groups on other agenda items. After some discussion, the working group decided to transmit these Swedish proposals to the Commission. The group further agreed with a suggestion made by the representative of the United States of America, which read as follows:

"Although the Working Group was unable to reach a decision on the Swedish draft, most members recommend that an intersessional meeting take place which would allow the concentration needed to further our work on the drafting of a convention on torture."