



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)\* OF THE 777th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 16 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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\* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.777.

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The public part of the meeting was called to order at 11.55 a.m.

DRAFT GENERAL COMMENT NO. 2 CONCERNING THE IMPLEMENTATION OF  
ARTICLE 2 OF THE CONVENTION (CAT/C/GC/2/CRP.1/Rev.1)

1. The CHAIRPERSON invited the Committee to consider the revised version of the draft general comment on the implementation of article 2 of the Convention as contained in document CAT/C/GC/2/CRP.1/Rev.1, which incorporated the suggestions made during the previous session.
2. Mr. MARINÑO MENÉNDEZ (Rapporteur for the general comment) said that he and Ms. Gaer, the alternate rapporteur, had made further amendments to the draft following the discussion at the last session. He summarized the structure of the draft general comment and the content of each of its six sections, noting that the key issues were contained in the first four sections. Once the Committee approved the draft, it would decide which interested parties, including States parties, NGOs and other United Nations bodies, would be invited to submit observations on the draft before final adoption.
3. He drew attention to the problem of the distinction between torture and cruel, inhuman and degrading treatment, which was addressed in particular in paragraph 2, but was in fact implicit throughout the text. The question that might arise was the extent to which provisions concerning torture should apply to inhuman treatment, or whether a rigid conceptual separation between the two should be maintained. Ms. Gaer and he were of the view that there should not be a rigid distinction, as measures to prevent cruel, inhuman or degrading treatment also prevented torture. In fact, it was often impossible to maintain a distinction between the two in practice.
4. He noted that the general comment, although not a law, would undoubtedly influence the decisions of bodies that applied the prohibition of torture; the Committee should therefore be progressive and express its views with care.
5. The CHAIRPERSON said that the Committee should aim to reach an agreement on the draft by the end of the current session. The draft would then be circulated to States parties, NGOs and other treaty bodies, which would be invited to comment by a given deadline. The two rapporteurs would then discuss which observations should be reflected in the draft and amend it accordingly, and a revised draft would be prepared and translated in time for the November session.
6. Mr. WANG Xuexian commended the rapporteurs for their work on the draft. Nonetheless, he expressed concern about the statement in paragraph 6 that States parties must define and make the offence of torture punishable as a human rights violation in both their Constitution and criminal laws. He doubted that the Committee could tell States parties that they were obliged to incorporate the article 1 definition into their constitutions, as article 1

itself specified that the definition was for the purposes of the Convention. It was the Committee's practice to recommend incorporation of the definition of torture into national laws, but it had never said that it was an obligation.

7. He also had reservations about the Committee's tendency to treat the obligation under article 16 to prevent acts of cruel, inhuman or degrading treatment and the obligation to prevent torture, which had been intentionally kept separate when drafting the Convention, in largely the same way in its recommendations to States parties.

8. Ms. GAER (Alternate rapporteur for the general comment) said that the draft reflected and recorded the jurisprudence, views and conclusions of the Committee; each point in the text could be referenced to multiple comments and decisions. The draft had been presented in a somewhat unusual form to facilitate comparison with the earlier version of the text which had been available in all languages. The majority of amendments were contained at the beginning of the document, as no specific requests concerning the remainder had been made by Committee members.

9. In response to Mr. Wang Xuexian's point, she stressed that it was not argued that torture and cruel, inhuman or degrading treatment were the same thing. Nonetheless, the text explained that the obligation to prevent had a very significant overlap, to such a degree that the obligation to prevent one would include measures that would prevent the other.

10. The CHAIRPERSON said that the confusion was compounded by the fact that they were grouped together in article 7 of the Convention and other conventions. However, they must be addressed separately.

11. Ms. GAER read out the revised draft and drew attention to the following amendments.

12. A new sentence had been inserted in paragraph 1, emphasizing the non-derogative character of the prohibition of torture. Paragraph 1 bis had been added and recalled the obligation of States parties under article 2, paragraph 1, of the Convention to prevent acts of torture by adopting the measures outlined in the subsequent articles.

13. Paragraph 1, as amended, and paragraph 1 bis were adopted.

14. Ms. GAER said that the third and fourth sentences of paragraph 2 had been amended to read: "Article 16, identifying the means of prevention of ill-treatment, emphasizes 'in particular' the measures outlined in articles 10-13, but does not limit effective prevention to these articles. The definitional threshold between cruel, inhuman or degrading treatment or punishment and torture involves differing degrees of severity and purpose but in practice the difference is often not clear."

15. Mr. MARIÑO MENÉNDEZ said that in articles 2 and 16 of the Convention the verb "prevent" was used. The term used in the general comment should be the same as that used in both articles of the Convention in every language.

16. Ms. GAER suggested removing the words “differing degrees of” from the fourth sentence. The concepts of severity and purpose were used in article 1 of the Convention in relation to torture, but not in article 16 in relation to cruel, inhuman or degrading treatment. By using the words “differing degrees”, the Committee drew a distinction which did not exist in the Convention.

17. After a discussion in which the CHAIRPERSON, Ms. GAER, Mr. MARIÑO MENÉNDEZ, Ms. BELMIR, Ms. SVEAASS, Mr. GALLEGOS CHIRIBOGA and Mr. KOVALEV took part, it was decided to amend the fourth sentence to read: “In practice, the definitional threshold between torture and cruel, inhuman or degrading treatment or punishment is often not clear.”

18. Paragraph 2, as amended, was adopted.

19. Ms. GAER said that the third and fourth sentences of paragraph 4 had been amended to read: “The Committee is deeply concerned at any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies whether in time of peace or armed conflict and regardless of any threat of terrorist acts or violent crimes. The Committee considers that a general amnesty which includes the crime of torture would violate the principle of non-derogability.” The last sentence of the original version of the paragraph had been removed.

20. Paragraph 4, as amended, was adopted.

21. Ms. GAER said that the following new first sentence had been inserted in paragraph 5: “The Committee also understands that the concept of ‘territory under its jurisdiction’, linked as it is with the principle of non-derogability, includes any territory or facilities and must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State party.” The first and second sentences of the original version had been amended to read: “The Committee emphasizes that the State’s obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State party.” The following amendments had been made to the last sentence of the paragraph: the words “It is a matter of urgency that” had been inserted at the beginning of the sentence; the words “closely monitor those acting with or on its behalf and” had been inserted after the word “should”; and the words “among others” had been inserted after the word “measures”.

22. Paragraph 5, as amended, was adopted.

23. Ms. GAER said that paragraph 6 had been amended to specify that States parties must define and prohibit torture in both their Constitution and criminal laws.

24. The third sentence of paragraph 7 had been amended to read: “The Committee emphasizes that elements of intent and purpose in article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances.” The words “so long as they contain, as a minimum, the standards of the Convention” had been inserted after the word “Convention” in the last sentence.

25. In paragraph 8, the words “object to” in the last sentence had been replaced by “challenge” and the words “represents complicity” had been replaced by “violates the Convention through instigation, consent”.

26. Mr. KOVALEV, referring to paragraph 6, said the Convention did not stipulate that States parties “must define” the offence of torture in their Constitution or criminal laws. However, the Committee could “call upon” States parties to do so.

27. The CHAIRPERSON, also referring to paragraph 6, expressed concern that it was unrealistic to ask States parties to change their Constitution.

The meeting rose at 1 p.m.