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COMMISSION ON HUMAN RIGHTS  
Fiftieth session  
Pre-sessional Open-ended Working Group  
on the Question of the Draft Optional  
Protocol to the Convention against  
Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment  
Geneva, 25 October - 5 November 1993

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST  
TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING  
TREATMENT OR PUNISHMENT

Working paper submitted by the Secretariat pursuant  
to Commission on Human Rights resolution 1993/34

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction .....		
I. GENERAL COMMENTS AND SUGGESTIONS .....		
ii. COMMENTS AND PROPOSALS IN RESPECT OF THE TEXT OF THE DRAFT OPTIONAL PROTOCOL		

## INTRODUCTION

1. The Commission on Human Rights, at its forty-seventh session, in its decision 1991/107 of 5 March 1991, decided to consider at its forty-eighth session the text, proposed by the Government of Costa Rica on 22 January 1991, of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see E/CN.4/1991/66), designed to establish a system of visits to places of detention with a view to the effective prevention of torture.

2. Consequently, the Commission, having considered the question at its forty-eighth session (E/CN.4/1992/SR.21-26, 47, 48 and 52), adopted resolution 1992/43 of 3 March 1992, by which it decided to establish an open-ended inter-sessional working group in order to elaborate a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, using as a basis for its discussions the draft text proposed by the Government of Costa Rica, and to consider the implications of its adoption and the relationship between the draft optional protocol, regional instruments and the Committee against Torture.

3. The working group met from 19 to 30 October 1992. At its 16th meeting, on 30 October 1992, the group adopted its report (E/CN.4/1993/28) and agreed that in the framework of the initial examination of the draft optional protocol, useful progress had been made and that its work on the draft should continue. The working group considered that the record of discussions at that session as embodied in the report, together with any comments or suggestions that might be made by Governments, specialized agencies and non-governmental organizations would provide a satisfactory basis for decisions to be taken on revisions or amendments to the draft optional protocol, at its next session.

4. The Commission on Human Rights, at its forty-ninth session, adopted resolution 1993/34 of 5 March 1993 entitled "Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

5. In operative paragraph 1 of this resolution, the Commission took note of the report of the working group on the draft optional protocol to the Convention against Torture and welcomed the substantial progress it had made at its first session, which enabled an exhaustive analysis to be made of the essential basic principles of the draft.

6. In operative paragraph 3, the Secretary-General was requested to transmit the report of the working group to Governments, the specialized agencies, the chairmen of the human rights treaty bodies, the Special Rapporteur on the question of torture and intergovernmental and non-governmental organizations concerned, and to invite them to submit their observations to the working group.

7. In operative paragraph 2 of this resolution, the Commission requested the open-ended working group to meet between sessions for a period of two weeks prior to the fiftieth session of the Commission in order to continue its work and submit a report to the Commission.

8. The present document consolidates comments, observations and suggestions contained in documents E/CN.4/1992/WG.11/WP.1 and Add.1-6 submitted in 1992 and those received in 1993 in compliance with the request contained in resolution 1993/34.

9. Any additional replies received by the Centre for Human Rights after 8 October 1993 will be presented as addenda to the present document.

I. GENERAL COMMENTS AND SUGGESTIONS

10. The Governments, intergovernmental and non-governmental organizations, and the Committee against Torture, pointed out that the text of the draft optional protocol submitted by Costa Rica had provided a valuable basis for discussion in the Commission on Human Rights. They expressed their support for the initiative as well as for the experts and representatives of non-governmental organizations who had participated in the elaboration of the text and who had been following developments relating to this question.

11. The Government of Finland stated that it was in favour of developing the mechanism established by the Convention against Torture and elaborating a universal system of preventive visits. As a co-sponsor of Commission on Human Rights resolution 1992/43, the Finnish Government hoped that a considerable number of countries not parties to regional systems such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment would be willing to ratify such an optional protocol. It noted that the wording of the provisions of the draft optional protocol differed somewhat from that of the European Convention. Complete harmony between the two texts might not be achievable, but in order to avoid difficulties of interpretation it was advisable to examine the text of the optional protocol in the light of the European Convention.

12. While welcoming initiative to work on the draft optional protocol, the Government of Australia was concerned that it provided for yet another monitoring body in the treaty system. When fully operational it would be costly and administrative support could well consume substantial resources in the Centre for Human Rights presently devoted to other high priority areas in the human rights programme.

13. In the light of the report of the Working Group on a draft optional protocol to the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment, the Government of Costa Rica expressed its satisfaction at the way in which discussions on this draft was proceeding. The Government is of the opinion that the campaign against torture can be counted a real success if there are no manifestations of this practice. In this connection, it considers as vitally important to establish suitable mechanisms to control this grave evil before it can emerge. In other words, coercive or punitive measures are not sufficient to eradicate the disease: it is indispensable to prevent any risk of its occurrence through counselling, follow-up and periodic control. It sees the system of visits established by the draft as being designed to perform this function.

14. An understanding of the supplementary nature of the draft in relation to the 1984 Convention is vital to dispel the fears expressed by certain States with regard to the functioning of the mechanism of visits. The object is to reinforce the aims of the Convention. As emphasized in the report, this connection would make for greater efficiency by supporting the work of the Committee against Torture set up by the Convention through coordination, organic links and identity of basic principles.

15. Switzerland regards the project as a whole as acceptable in its present form. In this context, the Swiss delegation within the Working Group will spare no effort to ensure that the principal idea of the draft - namely, a preventive system of visits to places of detention designed to provide effective protection against torture for persons deprived of their liberty - is maintained as it stands.

16. The members of the Committee against Torture expressed their agreement in principle with the establishment of a system of preventive visits to places of detention at the global level and reaffirmed that the text of the draft optional protocol submitted by Costa Rica provided a valuable basis for discussion in the open-ended inter-sessional working group of the Commission on

Human Rights. However, concerns were raised about the amount and the complexity of the work associated with regular visits to places of detention on different continents, the language barriers that might exist between experts and persons interviewed during such visits and the high financial cost of the preventive system envisaged by the draft optional protocol. Some members of the Committee observed that the establishment of a system of preventive visits to places of detention at the universal level was perhaps premature and that it would be preferable for countries outside the Council of Europe to establish similar systems at the national or at the regional level.

17. According to the International Committee of the Red Cross, an effectively functioning system to combat torture depends on various factors, of which the text of an international legal instrument is merely one among others. The spirit in which States parties agree to promote a new system, the financial means which they place at its disposal, the composition of the Sub-Committee and the policy which it follows, and the choice of visiting delegates, in particular, are factors on which the success of the enterprise will depend, just as much as the text of the treaty.

18. Mr. P. Kooijmans, the former Special Rapporteur of the Commission on Human Rights on the question of torture, noted that it had been said that the optional protocol would not achieve its purpose since it would not be ratified by those States whose places of detention most needed inspection. Although this might initially be the case, the existence of a mechanism which was readily available to Governments which had been established after a dictatorial regime had been toppled would be of inestimable importance. A mechanism for a system of periodic visits was not only a mechanism for monitoring the implementation of standards and norms but, more importantly a mechanism for providing advisory services and technical assistance.

II. COMMENTS AND PROPOSALS IN RESPECT OF  
THE TEXT OF THE DRAFT OPTIONAL PROTOCOL

Title

19. Ecuador felt that it would be more suitable to entitle such an instrument "Optional Protocol for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

Article 1

20. Switzerland considers that the time has come to adopt instruments enabling human rights violations to be forestalled, so as to contribute to the implementation of those rights in advance of potential violations rather than, as previously, after they are committed. It is therefore not so much a question of publicly pillorying a country as of offering it advisory services and technical assistance in the struggle against torture.

21. Cameroon considered that if the object of the preventive visits was to draw the attention of States parties to the conditions of detention in the context of a "friendly" contact, the stress must absolutely be placed on strict observance of the Standard Minimum Rules for the Treatment of Prisoners.

22. With regard to the obligation to permit visits to any place over which the State exercises direct authority or control and in which any person is deprived of liberty, the Government of Mexico suggested that the words "provided that full respect is ensured for the principles of non-intervention and the sovereignty of States" should be added.

23. Austria suggested to replace in paragraph 1 the words "within its jurisdiction" by the words "under its direct or indirect control". In its opinion, such a formulation would cover situations of constraint in cases of civil war and furthermore eliminate uncertainties in some federal states, while

retaining a scope going beyond the sole concept of actions by a "public authority". Austria also proposed to delete in paragraph 2 the words "in accordance with international standards".

#### Article 2

24. In the view of Cameroon, the body to be set up should be a Sub-Committee, placed under the supervision of the Committee against Torture by reason, inter alia, of the latter's prestige and competence. Since the objectives of the two institutions are different, their terms of reference should be different. This precaution would guarantee the Sub-Committee's independence, objectivity and effectiveness.

25. Costa Rica pointed out that the fact that, under article 2, it was the Committee against Torture that was called upon to establish a Sub-Committee for the purposes of the protocol, and that the criteria for selecting the members were the same in both cases as far as moral and professional qualities are concerned, held out the prospect of uniformity, seriousness and competence in the treatment of this subject and particularly in the application of international standards guiding these bodies in assessing the scope and nature of the acts of torture subject to examination. That this in no way affects the functional independence of either organ is demonstrated, inter alia, by the fact that the Sub-Committee draws up its own rules of procedure and has its own specific competence. However, as regards the actual examination of the situations coming within the Sub-Committee's competence, it is important to point out that the Sub-Committee is not a judicial or quasi-judicial body, nor does it play an accusatorial role.

26. The Government of Chile stated that it shared the basic ideas set out in the draft optional protocol. However, with the ultimate goal of contributing to the success of the protocol, the Government suggested the establishment of a mechanism different from that of a Sub-Committee. In that regard, it pointed out



that if, in theory, the objective of the protocol was to prevent detainees from being tortured - this, according to the introductory memorandum, differed from the monitoring procedure of the Convention which became operative only after torture had taken place - in practice, it was difficult to separate preventive functions from investigative ones. In that respect, article 12.3 authorizes a delegation of the Sub-Committee to "communicate without restriction with relatives, friends, lawyers, and doctors, of persons who are or have been deprived of their liberty and with any other person or organization...". As the functions to be performed by the Sub-Committee were not really different from those of the Committee (see para. 8 (b) of the introductory memorandum), in the view of the Government of Chile, there was no justification for the creation of another body.

27. The Government of Chile further stated that the proposed system would inevitably cause delays in the release of the findings of the delegation because its report must first be submitted to the Sub-Committee, then to the State party and finally to the Committee. This would happen only months after the inquiry had taken place. It was further pointed out that the creation of a Sub-Committee would increase costs: the draft proposes that the Sub-Committee would hold two ordinary sessions annually in addition to extraordinary sessions and missions.

28. With the aim of ensuring that the goal of preventing torture is achieved in the best possible way, the Government of Chile proposed in its additional reply, that instead of creating a Sub-Committee to perform the functions envisaged in the optional protocol, the Committee against Torture should establish its own list of experts to carry out visits and should draft a set of working methods for the missions. The rationale for this proposal was the achievement of greater efficiency in the carrying out of tasks under the protocol, the avoidance of delays in acquainting the Committee with the results of missions, improved coordination with that body and cost reductions.

29. The Government of Chile considers that if the proposal to establish a Sub-Committee to implement the aims of the protocol prevails, the number of Sub-Committee members could be reduced and the list of experts increased in order to have a wider range of the most highly qualified professionals whose presence would guarantee the effectiveness of the visits and whose professional qualifications should be defined in the protocol.

30. The Government of Mexico stated that emphasis must be placed on the need to maintain a clear link between the optional protocol and the Convention against Torture. It further pointed out that it should be specified how the Sub-Committee would be established, as well as who its members and what its functions would be, what relationship it would have with the Committee and what relationship the Sub-Committee and the Committee would have with the group of experts and the special institute referred to in paragraph 51 of the working group's report in order to guarantee the Sub-Committee's effectiveness, competence and balanced geographical representation. It is also of the opinion that it should be specified whether the persons on the "list of experts" referred to in the third line of this paragraph would be permanent or temporary so that all States might take part.

31. Austria regards the establishment of a separate body (be it as a Sub-Committee or otherwise) as excessive both for reasons of coordination and cost. An extension of the mandate of the existing Committee, with the involvement of designated experts if necessary, and taking full account of the necessary confidentiality would seem more appropriate and simpler concerning the relation to existing bodies, reporting and elections.

32. In the view of the United Nations Educational, Scientific and Cultural Organization, it would be advisable that utmost care be given to the drafting of the terms of reference of the Sub-Committee in such a way as to avoid any possibility of weakening the prestige and authority of the Committee against Torture,

under whose auspices it would operate. UNESCO further noted that the various articles concerning, inter alia, the composition of the Sub-Committee, its methods of work, rules of procedure and modalities of election of its members, were drafted in a very explicit manner while article 2, which determined the relations between the Committee and the Sub-Committee, was rather brief. UNESCO expressed strong support for the idea that the Sub-Committee working, to a large extent, independently from the Committee against Torture, the relations between the two entities should be more clearly defined, possibly under article 2.

### Article 3

33. Costa Rica pointed out that the draft protocol was based on two essential principles reflected in many provisions of the text - the cooperation of States parties and confidentiality - and it therefore set out to guide States through recommendations made by a technical service of the highest level concerning corrective action which should be taken, or measures adopted as appropriate, for the purpose of safeguarding respect for human rights, including in particular the right to life and to physical and mental integrity. In other words, the system of visits and the work of the Sub-Committee are closely associated with the idea of cooperating with States in joint endeavours to protect human rights and bring internal systems into line with standard values and with the international commitments assumed in this field.

34. Cameroon noted that this article, which dealt with the cooperation between the Sub-Committee and States, might well become paragraph 1 of article 8.

### Article 4

35. Cameroon considered that with 25 members the Sub-Committee will have the largest membership of all the bodies established in the field of human rights. This number seems to be consistent with the diversity, multiplicity and the need for quality in the

work of the Sub-Committee.

Article 5 (4)

36. In the view of the Government of Cameroon, it seems desirable to restrict the number of successive terms of office of the experts in order to avoid the formation of oligarchies or disguised establishments. Such a restriction would make for more extensive involvement of expertise, which cannot nowadays be said to be in short supply. Two terms of office would seem to be reasonable.

Articles 6-7

37. No comments were made on these articles.

Article 8

38. The Government of Egypt proposed that more specific wording and clear criteria be employed to define the possible grounds for action by the Sub-Committee and to indicate whether the exceptional cases or important circumstances justifying the dispatch of missions other than regular missions are to be left to the sole discretion of the Sub-Committee or whether there should be prior consultation with the State concerned in this regard.

39. In the view of the Government of Spain, the programme of regular missions is not clearly defined. More detail on how the regular missions are to be conducted, such as is found in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, would be desirable.

40. As regards paragraph 1 of article 8, it appeared necessary to the Government of Chile to establish a mechanism for the decision to make emergency visits should the situation of mass torture occur in a country. In certain cases, the Chairman of

the Committee against Torture might find it advisable, after consultations with three members of the Committee, to appoint a "delegation" to undertake an emergency mission.

41. The Government of Cameroon proposed to insert the wording of article 3 in the new paragraph 1 of this article.

42. Some members of the Committee against Torture were of the view that, if a system of visits to places of detention at the universal level were to be adopted, the monitoring mechanism established under the Convention and that envisaged under the draft optional protocol should be independent of each other.

43. With respect to paragraph 2 of this article, the Government of Sweden pointed out that a duplication of mechanisms established under the Convention against Torture and that envisaged under the draft optional protocol should be avoided. At the same time, it emphasized the role of the Special Rapporteur on torture which should be regarded as complementary to the functions of the Committee against Torture. The additional workload that would be the result of new preventive tasks of the Committee against Torture would have to be considered by the working group. One possibility would be for the Committee to use independent experts to carry out missions under a possibly enlarged mandate of the Committee.

44. Members of the Committee against Torture expressed the opinion that the text of paragraph 2 should be changed or an additional paragraph added to outline in more detail how the relationship between the Committee against Torture and the Sub-Committee to be established under the optional protocol would be affected by the postponement of a scheduled mission by the latter in cases where a State party had agreed to receive a visit of the Committee against Torture under article 20 of the Convention.

Article 9

45. In the view of the Government of Austria, the universal and regional mechanisms should include the possibility of mutual cooperation, guaranteeing strict confidentiality. While duplication has to be avoided, the decision on a supplementary visit by the universal mechanism to the region in exceptional cases and circumstances should lie with the UN body.

46. The Government of Cameroon wondered whether some reference to the cooperation between the Sub-Committee and the national institutions responsible for the protection and promotion of human rights might not be incorporated into this article or elsewhere. In view of the way missions are currently organized, some States might be reluctant to authorize them unless some national "structure" was associated with the operation.

47. The Government of Costa Rica considers that the system of visits not only reinforces the purposes of the Convention against Torture but also serves to support possible efforts in other normative frameworks. Thus, article 9 of the draft highlights the flexibility of the proposed instrument and establishes the principles or bases of coordination and cooperation with other regional systems such as the European one, where a system of visits already exists under the European Convention against Torture.

48. The Government of Mexico stated that the relationship the proposed group would have with the mandate of other bodies, such as the Committee against Torture and the Special Rapporteur on the Commission on Human Rights on the question of torture, must be made clear. The Government of Mexico considers that the draft text, as currently worded, could lead to overlapping with existing terms of reference, in particular those of the bodies mentioned above. The need is also seen for a revision of the conditions for the establishment of cooperation with regional organizations, particularly with regional agreements on this

topic. It is felt, in this regard, that the protocol's provisions should be universal in scope and not exclude any region, even where relevant regional agreements exist. It also noted that the issue of "places of detention" will probably require very careful review.

49. In the view of the Government of Spain, Article 9, paragraph 1, seems to imply that the Sub-Committee would decide when to send a mission, whereas according to article 8 it is the Committee that establishes the programme of regular missions and schedules ad hoc or special ones. It would be worthwhile to spell this article out more clearly and avoid unnecessary duplication.

50. Concerning paragraph 1 of article 9, the view was expressed by the Committee against Torture that the system envisaged under the draft optional protocol could have a negative effect on the possibility of creating regional systems and on their functioning, but one member of the Committee was of the view that this objection had been taken into account by the authors of the draft optional protocol in its article 9 on relations with regional organizations.

51. Members of the Committee were of the view that the term "may", appearing at the beginning of the second sentence of paragraph 1, should be replaced by the term "shall". They were also of the view that consideration should be given to adding a paragraph to article 9 which would exhort all the international and regional organs or organizations concerned to engage in the fullest cooperation with each other.

52. The Crime Prevention and Criminal Justice Branch was of the opinion that the broad and diversified composition of visiting delegations and the exclusion of nationals from delegations visiting their own States (as provided for by article 10.2) could be regarded as essential for the future Sub-Committee's impartiality.

53. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) took note with interest of article 9, paragraph 1, of the draft Optional Protocol. The Committee fully approved of the basic spirit of this provision, which was, through consultation, to avoid a wasteful duplication of efforts by parallel systems of control. To this end, the CPT would certainly be eager to have the closest possible relations with the Sub-Committee envisaged by the draft Optional Protocol.

54. However, the CPT had misgivings as regards the specific means of coordinating the respective activities of the Sub-Committee set up under the draft Optional Protocol and regional bodies, highlighted in Article 9, paragraph 1. The participation of a member of the Sub-Committee, as an "observer", in missions carried out by regional bodies is foreseen; this member would subsequently make a "strictly confidential" report to the Sub-Committee. The implementation of such a measure could give rise to significant legal and practical problems insofar as the CPT is concerned. Almost certainly it would involve amending the provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment concerning the composition of visiting delegations and the rule of confidentiality. Further, the presence of an observer from the Sub-Committee in the midst of a visiting delegation could well cause operational complications in the field, no matter how closely defined his position might be in advance. The effectiveness of a visiting delegation depends in large measure on its unity; the latter would not be facilitated by the proposal presently under consideration.

55. Moreover, it is far from certain that such a system would be the best method of ensuring a good coordination of activities, since the observer would obtain only an imperfect picture of the outcome of a visit. His detailed knowledge would be limited to those parts of the visit in which he participated personally (in this connection, it should be recalled that CPT visiting



delegations operate for much of the time in sub-groups, often located in quite different parts of the country concerned). Further, he would possess neither the report subsequently sent to the State visited nor the latter's response. It follows that his report to the Sub-Commission would be incomplete and hence potentially misleading.

56. In view of CPT, a possible alternative - and more efficacious - means of facilitating the desired coordination of activities could be for a State which has ratified both a regional system and the Optional Protocol to agree that visit reports drawn up by the regional body in respect of that country and the State's response are to be systematically forwarded to the Sub-Committee on a confidential basis. In this way, the Sub-Committee would have a full picture of the situation in the regional context, and the consultations between the regional body and the Sub-Committee foreseen in Article 9 (1) of the draft Optional Protocol could be held in the light of all the relevant facts. The implementation of this measure vis-à-vis the CPT's activities might not require an amendment of the European Convention.

57. The International Committee of the Red Cross (ICRC) pointed out that paragraph 2 of article 9 clarified the relations between the States parties to the Geneva Conventions of 1949 and their Additional Protocols of 1977 and ICRC, on the one hand, and between them and the Sub-Committee envisaged by the draft optional protocol, on the other hand. ICRC was of the opinion that it was necessary to identify mechanisms for consultation which would avoid practical difficulties and optimize the complementary nature of the work of each institution.

#### Article 10

58. Concerning paragraph 1 of article 10, the Government of Cameroon considered that the text appeared to depart from the current United Nations practice in which members of the Sub-

Committee were experts. Therefore, it would be necessary to redefine the term "experts" and the others.

59. As regards paragraph 2 of this article, the Government of Cameroon indicated that the exclusion of a member of the Sub-Committee from missions to his country would appear to guarantee the security of the person concerned and avoid putting his impartiality to the test. It also wondered what would be the situation concerning the participation of a non-national appointed upon the proposal of the State that receives a mission and if "experts" and interpreters were sought locally.

#### Article 11

60. No comments were made on this article.

#### Article 12

61. Concerning paragraph 1 of article 12, the Government of Egypt considered that the draft optional protocol should explicitly provide for a "reasonable interval of time" between the notification of the State concerned and the dispatch of the Sub-Committee's mission, instead of leaving this question to the rules of procedure of the Sub-Committee (the Sub-Committee could determine the reasonableness of the interval in consultation with the State concerned). It specified that it was important to make provision for such an interval in view of the fact that most countries of the third world would frequently be unable to provide such committees with the requisite facilities and information for various practical reasons relating to their current socio-economic situation and the circumstances of their governmental administration.

62. The Government of Spain was of the view that the minimum length of time that may elapse between the decision to organize a mission and the mission itself should be specified. As a result, it made the following comments and requests: more detail

on the programme of visits and the decision to organize visits. Article 8, paragraph 1, authorizes the Sub-Committee to undertake regular and special missions without stating what criteria should apply. Yet article 8, paragraph 2, allows the Sub-Committee to postpone missions; article 2 says that the Sub-Committee is responsible for organizing missions; and article 9, paragraph 1, allows the Sub-Committee to send missions to States parties to regional conventions. The text needs to specify who decides to organize a mission and who carries it out.

63. With respect to paragraph 2 of article 12, the Government of Austria submitted the following comments: All the words from the beginning of the paragraph until after "in particular" should be deleted, in order to achieve a more precise formulation. It is to be understood, however, that the provision of the proper facilities to the mission includes the non-obstruction of its related activities.

- Sub-para. 2(b) and (c): These provisions are acceptable, provided the above-mentioned proposals concerning Article 1 (1) are being met, as otherwise the State party would assume responsibilities which it objectively might not be in a position to fulfill.

- Sub-para.2(e): Replace "convenient" with "adequate", thus englobing also security, financial and other practical aspects that may arise, if the presentation of a person in a particular place requested (for example, outside the place of detention) by the mission meets with difficulties.

- Sub-para 2(f): Add at the end: "... having regard to applicable rules of national law and professional ethics."

64. The Government of Cameroon wondered whether there should not be specific provision that the State receiving the mission shall supply local transport facilities in order to reduce the cost of visits.

65. The Government of Mexico considered it necessary that the draft text should set forth, in a balanced way, the conditions for the cooperation between the proposed group and the State parties.

66. Concerning paragraph 2 and 3 of article 12, the Government of Australia considered that the nature, scope and effect of the powers of experts during their missions to order production of any detainee who the delegation wished to interview should be determined. While it presumed that the standards which were to be applied would be those based on the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, this should be clarified.

67. As regards paragraph 3, Austria suggested to replace "inside or outside his place of detention" with "at an adequate location", for the same reasons as specified with regard to article 2.

68. With respect to paragraph 4, Austria indicated that it shared concerns expressed that the wording of this provision might prevent recourse for defamatory statements and induce immunity from civil liability. Therefore, in its view, the paragraph should be deleted as it stands now.

### Article 13

69. Concerning paragraph 1 of article 13, the Government of Australia considered that the conditions on which a State party may object to a visit should be determined.

70. Austria was of the view that competent authorities of the Party concerned may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of

a person or that an urgent interrogation relating to a serious crime is in progress.

71. Bearing in mind the terms of article 2 (2) of the Convention against Torture, Chile suggested with regard to the possible suspension of a visit by a State party for "urgent and compelling reasons" that it be expressly stated in this provision that the existence of "states of emergency" cannot serve as a basis for objecting to a visit.

72. As regards paragraph 2 of article 13, the Government of Cameroon pointed out in reference to the terms "outside" in the first line of article 12 (3) and "transfer" that the risks of escape and the financial implications involved in the operation called for further reflection and that its preference was for the more general and more flexible formulation of article 12 (2) (c) "... at a convenient location", which allowed arrangements to be made to meet the particular case.

#### Article 14

73. With respect to paragraph 2 of article 14, Australia was of the opinion that the conditions under which a report may be published against the wishes of the State party should be determined.

74. Austria suggested to add at the end of the paragraph the following sentence: "No personal data shall be published without the expressed consent of the person concerned".

75. In view of the Government of Chile, attention should be given to the concern about respect for the principle of confidentiality, which constitutes a method of work and a guarantee of the principles upon which the protocol is based. The use of experts by the Committee against Torture does not imply that that principle will be violated or that the Committee's methods for monitoring compliance with national

obligations will be altered, as long as the two functions, namely prevention under the protocol and control under the Convention, are carried out in accordance with clearly defined rules.

Article 15

76. Concerning article 15, some members of the Committee against Torture were of the view that there should be a clear link between the mechanism established under the Convention and that envisaged under the draft optional protocol in order to avoid conflicts of areas of competence and undue proliferation of organs dealing with the same issue.

77. The Committee also considered that its provisions unduly restricted the information that should be made available to the Committee against Torture in respect of its jurisdiction under article 20 of the Convention. They accordingly suggested that the following proposal be taken into consideration as an alternative to article 15 of the draft optional protocol or to any other relevant provisions: "The Sub-Committee shall submit to the Committee against Torture the following reports:

(a) Reports which the State party concerned wishes to be published;

(b) Reports upon which the Sub-Committee wishes the Committee against Torture to make a public statement;

(c) Reports which in the Sub-Committee's opinion reveal that systematic torture has been practised by a State party;

(d) Reports concerning a State party in respect of which the Committee against Torture has indicated to the Sub-Committee that an inquiry in accordance with article 20 of the Convention against Torture is under consideration.

The reports under (b), (c) and (d) shall be dealt with by the Committee against Torture in private meetings.

78. In addition, the members of the Committee felt that in paragraph 2 of article 15 of the draft optional protocol, after the words "general annual report on its activities", the following words should be added: ", including a list of all States parties visited, the composition of the visiting delegations and the places visited."

79. The Crime Prevention and Criminal Justice Branch stated that the work of the Sub-Committee should be based on the principles of confidentiality, cooperation and effectiveness. Its main task would not be to publicly criticize countries, but rather to assist them to avoid unacceptable behaviour.

#### Article 16

80. While welcoming initiative to work on the draft optional protocol, Australia was concerned that it provided for yet another monitoring body in the treaty system. When fully operational it would be costly and administrative support could well consume substantial resources in the Centre for Human Rights presently devoted to other high priority areas in the human rights programme. Australia suggested that it may be possible to limit costs according to the number of States parties and for visits to be limited, initially at least, to jurisdictions where there is little evidence of an independent administrative or judicial framework to protect detainees from torture.

81. The Government of Ghana considered that there were two potential stumbling blocks, however; the first was the logistics factor to make the system tenable, and the second was adequate finance to make it feasible. Providing that these aspects were adequately provided for, the system should be satisfactory.

82. As regards paragraph 1 of article 16, Cameroon recommended that a preliminary evaluation of a mission by the competent services should produce an estimate of its cost. It expressed doubts whether the two-thirds of States Members which were at

present unable to pay the statutory contributions that at times conditions their right to vote within certain organizations would accept willingly and in good faith the creation of new statutory contributions. It suggested, on a preliminary basis, the creation of a special fund open to voluntary contributions whose operating procedures would be defined in the light of current experience.

83. Concerning paragraph 3 of the article, Cameroon suggested to insert the following sentence at the end of the paragraph: "The procedures for its operations shall be decided at the time of the entry into force of the Protocol for the States Parties".

#### Article 16

84. According to ICRC, its experience has shown that serious protection efforts in places of detention require a substantial commitment of staff and funds. The aspiration of adopting such an approach for all prisoners covered by the Convention would require considerable resources and entail vast organizational problems. The Sub-Committee's objectives should therefore be adapted to the means which it can reasonably be expected to have at its disposal.

#### Article 17

85. No comments were made on this article.

#### Article 18

86. With respect to paragraph 1 of article 18, the Government of Australia was of the view that a realistic number of ratifications should be required before the protocol comes into force. It considered the current requirement of 10 too low illustrating that, for example, if the majority of ratifications were European countries (given that they already have a similar mechanism under the Council of Europe), its entry into force



would be meaningless.

87. Austria proposed that the number of ratifications needed for entry into force of the optional protocol be the same as in the relevant provision of the Convention against Torture, namely 20, to promote universal acceptance, in particular considering the growing number of United Nations Member States.

88. Concerning paragraph 3 of article 18, Austria pointed out that the possibility of reservations to the provisions of the protocol should not, a priori, be discarded.

Articles 19, 20, 21

89. No comments were made on these articles.