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COMMISSION ON HUMAN RIGHTS

Fifty-second session

Pre-sessional open-ended working group  
on the question of a draft optional  
protocol to the Convention against  
Torture and Other Cruel, Inhuman or  
Degrading Treatment or Punishment  
Geneva, 30 October-10 November 1995

Working paper submitted by Portugal

Comments on the Draft Optional Protocol to the Convention  
against Torture and Other Cruel, Inhuman or Degrading  
Treatment or Punishment

General comment

As a basis for acceptance of the Optional Protocol, account was taken of the letter and spirit of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Specific comments

Article 1

Paragraph 1

In our opinion, it is essential to base the mechanism of this article on the compromise underlying the wording of paragraph 1, i.e. waiver of the consent of the State to the visit and possibility that the visit should be made to any place where persons deprived of their liberty are held. The words in square brackets at the end of the paragraph are therefore inappropriate.

Paragraph 2

Although it is obvious that the purpose of the Protocol is to strengthen measures to prevent torture, it is important that the words now in square brackets, namely, "and to take measures of prevention in accordance with applicable international standards, instruments and law" should be included at the end of the paragraph.

Paragraph 2 should emphasize that the experts must always have experience in the field of human rights. In the last line, the words "or in the field of human rights" should therefore be replaced by the words "and in the field of human rights".

Article 5

(c) The election of the members of the Sub-Committee by the Committee would strengthen the independence of the experts selected.

Article 8

We would like to make the following comments on article 8:

Paragraph 1

1.1. In the first alternative for the text of the first paragraph, the words "undertake missions" are more appropriate, since the second alternative might mean that the Sub-Committee would first have to publicize the programme of a visit to be made, and this would be unacceptable (see our comments on art. 1).

1.2. We prefer the second alternative, namely, "based on criteria consistent with the principles set out in article 3". Referring to the principles of non-selectivity, impartiality, etc. has, in practice, often created obstacles to and restrictions on action to defend and protect human rights.

1.3. In our view, it is important to keep the last sentence in square brackets (possibility of additional missions) as a logical consequence of the objectives of the Convention.

2. With regard to paragraph 2 of this article, we are of the opinion that wording similar to that of article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment should be used.

Paragraphs 3 and 4

3. In respect of paragraphs 3 and 4, we consider that, in accordance with what was suggested in the preceding paragraph, mechanisms of the kind

proposed should be compatible with the solutions adopted in articles 2, 3, 7, 8 and 9 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Article 9

In paragraph 1, it would be better to use the words "may decide", which would strengthen the independence of this body.

As to paragraph 3, we propose the following wording:

(a) In the first paragraph, we suggest the use of the words "consult and cooperate" and the words "and avoid duplication of work and missions".

(b) In the second paragraph, we propose that the words "exempt" and "missions" should be retained.

Article 12, paragraph 1

We have the strongest reservations about the first sentence of this paragraph, which is contrary to the object and purpose of the Protocol and jeopardizes its chances of success.

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