Distr.
LIMITED

E/CN.4/1995/WG.11/WP.1
3 October 1995

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

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

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 1995/33

CONTENTS

INTRODUCTION

1. The present document has been prepared pursuant to Economic and Social Council resolution 1994/250 by which it authorized an open-ended working group of the Commission on Human Rights to meet for a period of two weeks prior to its fifty-first session, in order to continue the elaboration of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. It should be noted that in the course of its second session, from 25 October to 5 November 1993, the Working Group considered articles 1 to 7 of the draft. In the course of its third session, from 17 to 28 October 1994, the Group considered articles 8 to 13 and new article 12 bis of the draft. As the Group pointed out in its reports, that consideration constituted the outcome of the beginning of the first reading of the optional protocol. (See documents E/CN.4/1995/25 and E/CN.4/1995/38.)

3. The Commission on Human Rights in paragraph 3 of its resolution 1995/33 of 3 March 1995, requested the Secretary-General to transmit the report of the third session of the Working Group to Governments, the specialized agencies, the chairpersons of the human rights treaty bodies and the intergovernmental and non-governmental organizations concerned, and to invite them to submit their comments to the Working Group.

4. Therefore, the present document consolidates comments, observations and suggestions relating to articles 1 to 13 considered by the Working Group at its second and third sessions and contained in the annex to document E/CN.4/1995/38. In addition, it consolidates comments, observations and suggestions concerning remaining articles 14 to 21 of the draft, which were not considered at the third session of the Working Group.

5. Any additional replies received by the Centre for Human Rights after 29 September 1995 will be presented as addenda to the present document.

I. GENERAL OBSERVATIONS

6. The Government of the Republic of Argentina believes that the Working Group has produced certain essential elements for the future instrument which it is most important to retain. We refer to the unconditional obligation to accept visits resulting from consent for the protocol to enter into force, as well as the prohibition of entering reservations and the indication that visits shall be made to any place where persons are deprived of their liberty.

Another equally relevant aspect, in the opinion of the Government, is the fact that the delegation appointed to make the visit should be composed of independent experts with competence in the field.

7. Regarding the issues to be considered at the next session, the Government of the Republic of Argentina wishes to state that, since the regime provided for in the draft protocol is based on necessary cooperation between the State interviewed and the monitoring body, if this cooperation is thwarted and all the available means of encouraging it have been exhausted, it is reasonable for a public statement to be made or for the report to be published, where necessary. Such procedures are provided for elsewhere, especially in the Latin American regional system, of which Argentina has been a member since the restoration of democracy on 10 December 1983.

8. The Swiss Government wishes again to emphasize the importance it attaches to the draft, which aims to establish a treaty mechanism for the prevention of torture through the establishment of an international committee of independent experts who would be able at any time to visit any place where persons deprived of their liberty by a public authority are held. Such a system, preventive in character, would form part of the efforts currently being made by the international community in the area of preventive diplomacy. Such an instrument would make it possible to anticipate human rights violations, which would help in implementing human rights before potential violations can occur and no longer only ex post facto. In other words, the function of this mechanism would not in principle be to denounce violations, but to prevent them, in particular by ensuring that conditions of detention do not have the potential to lead to violations. Such a mechanism would establish the basis for cooperation between the competent authorities of the country visited and the international experts and would introduce a measure of confidence in this respect. The recommendations made by the experts would in principle be confidential. There would therefore be no question of pillorying a State, but rather of offering it advisory services and technical assistance in combating torture and other cruel, inhuman or degrading treatment or punishment.

9. In June 1993, the World Conference on Human Rights reaffirmed "that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, [called] for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". It is disturbing to note that the work

of the Working Group set up to prepare the draft is not making more rapid progress and that - after three two-week sessions - the first reading of the draft has not yet been completed.

10. The Swiss Government keenly hopes that the work on the first reading of the draft will be completed at the present session of the Working Group.

11. The Andean Commission of Jurists (hereinafter referred to as ACJ) believes the present draft optional protocol to the Convention against Torture is an essential tool which would efficiently supplement the present Convention against Torture. One of the principal prevention mechanisms of this instrument is the development of a system establishing regular visits and inspections of areas of detention. Such a mechanism would thus contribute to the protection of persons deprived of their freedoms and to the monitoring and control of the treatment and prison conditions. Additionally, it would offer a more formal and official access, facilitating the visit to all areas of detention without passing through the tedious system of requesting previous authorization from the Government of the country in question. Furthermore, it would imply a certain international pressure along with an important impact on internal and external public opinion.

12. On 9 May 1995 the Andean Commission of Jurists held a working meeting in Santiago, Chile at the University Diego Portales on the draft optional protocol, where one of the major results of the meeting consisted of reflecting upon the possibility of a regional mechanism, which would have similar structure to that of the draft optional protocol to the United Nations Convention against Torture. Additionally, such a mechanism could include a combined strategy with the Organization of American States, in one of its non-conventional procedures. It was also emphasized that the Andean region ought not to wait for the adoption of the optional protocol, but to act now, in establishing a regional effort.

II. COMMENTS AND PROPOSALS IN RESPECT OF THE TEXT OF THE ARTICLES WHICH CONSTITUTED THE OUTCOME OF THE BEGINNING OF THE FIRST READING OF THE OPTIONAL PROTOCOL DURING THE SECOND AND THIRD SESSIONS OF THE WORKING GROUP (Articles 1-13)

ARTICLE 1

Paragraph 1

13. Mexico considers that the visits by the body proposed in the optional protocol cannot be made without the prior consent of the State. The

instrument's effectiveness in preventing acts of torture is dependent on the cooperation to be established between the body envisaged and the State party. The protocol therefore cannot go beyond what is stipulated regarding the conduct of visits in the Convention against Torture and such visits must fully respect the principles of the Charter of the United Nations and of international law.

14. The expression "in any place" requires greater legal precision, since it is too broad for the purposes of the optional protocol. The expression should refer clearly to places of detention as such. Should it not do so, the text itself would implicitly be accepting the establishment of places of detention not legally intended as such.

Paragraph 2

15. Mexico proposes that the text of paragraph 2 should read as follows: "The object of the visits shall be to examine the treatment of persons deprived of their liberty so that the State may strengthen, if necessary, on the basis of the Sub-Committee's recommendations, its protection of such persons from torture and from other cruel, inhuman or degrading treatment or punishment in accordance with applicable international standards and instruments."

ARTICLE 2

16. Mexico considers that the phrases in square brackets, "of the Committee against torture" and "which shall carry out the functions laid down in the present protocol" should be retained and that the phrase "... and shall provide the Committee against Torture with a report on its work." should be added at the end of the paragraph.

ARTICLE 3

17. Mexico considers that the words in square brackets, i.e., "[the competent national authorities of]", should be retained and that the words "including the national institutions for the promotion and protection of human rights" should be added after the words "the State party concerned". The last sentence should read "The Sub-Committee shall be guided by the principles of confidentiality, objectivity and impartiality and shall ensure respect for the principles of non-interference and State sovereignty."

ARTICLE 5

Paragraph 1 (a)

18. The Government of Mexico believes that the phrase in square brackets i.e., "[one of whom may be a national of a State party other than the nominating State party]" should be deleted from the text.

(b)

19. The Government of Mexico considers that the text in paragraph 1 (b), which is in square brackets and begins with the words "From the nominations received, ..." is acceptable.

(c)

20. The Government of Mexico considers that the text of paragraph 1 (c) should read as follows: "The members of the Sub-Committee should be elected by the majority of the States parties, by secret ballot, from a list of persons meeting the requirements set out in article 4, drawn up by the Committee against Torture, on the basis of the proposals of the States parties."

Paragraph 5

21. As regards the death or resignation of a member of the Sub-Committee, the Government of Mexico considers that the election of a replacement should not be restricted to the State of which that member of the Sub-Committee was a national. States parties should propose candidates, who should then be elected in accordance with the procedure laid down.

ARTICLE 6

22. The Government of Mexico considers that members of the Sub-Committee should be eligible for re-election only once, in order to ensure renewal of the membership and make it representative.

ARTICLE 7

Paragraph 1

23. The Government of Mexico considers that the composition of the bureau of the Sub-Committee should be specified, that it should be indicated whether there will be a Chairman of the Sub-Committee and, if there is to be one, that his functions, manner of election and term of office should be laid down. As in the case of article 6, re-election of members of the bureau for more than one additional term should be avoided.

Paragraph 2 (b)

24. The Government of Mexico believes it should be made clear in this paragraph that the decisions involved are "decisions of the Sub-Committee" and not "decisions of the Committee" as currently indicated.

Paragraph 3

25. The Government of Mexico proposes that paragraph 3 should read as follows: "After its initial meeting, the Sub-Committee shall meet for a regular session twice a year and on special occasions as shall be provided in its rules of procedure."

26. Concerning the functions of the Sub-Committee, as reflected in articles 2, 4 and 7, the ACJ considers that such a body should be of a multidisciplinary character (medieval staff ..., experts in prison matters, etc.) thus allowing for an ample diversified evolution. Additionally, the indirect election of the members of the Sub-Committee will guarantee its independence in respect to the Member States. In view of the ACJ, the Committee against Torture will play a large role in the election of the Sub-Committee members, as it will propose the candidates and intervene in matters it feels necessary in order to guarantee an effective function of the body.

ARTICLE 8

27. The Government of Mexico proposes that the words in square brackets i.e., "[establish a programme of missions]", should be deleted from paragraph 1. The power granted to undertake "other missions as appear to it to be appropriate" is too broad. The nature of such "other" missions and the criteria for determining whether or not they are "appropriate" should therefore be clarified. In the second paragraph, it should be explicitly indicated that the missions shall be undertaken only with the express consent of the State party concerned. A reference should be made to the importance of cooperation between the two parties and the need for mutual agreement in determining the modalities of the mission. The third paragraph should read as follows: "The Sub-Committee shall send a written notification to the Government of the State party concerned regarding the modalities of the mission, and the Government shall give a written agreement or refusal, after which the Sub-Committee may at any time visit any place referred to in its plan."

ARTICLE 9

Paragraph 3

28. The Government of Mexico considers that the words in square brackets in the second part of the paragraph should be retained. The text should then read as follows: "However, the Sub-Committee and the bodies established under such regional conventions are encouraged to cooperate and consult with a view to promoting the objectives of this protocol and avoiding duplication of work."

ARTICLES 10-11

29. The Government of Mexico considers it desirable to combine articles 10 and 11 in a single paragraph, as proposed in the draft optional protocol. It is suggested that the phase "exceptionally and for reasons given confidentially" should be deleted from paragraph 4 of the combined text.

ARTICLE 12

Paragraph 1

30. The Government of Mexico suggests that the sentence in square brackets, "Members of the delegation shall respect the national laws and regulations while undertaking the visits in the territory of the State party concerned.", should be retained, and therefore that the other sentence in square brackets "[National laws and regulations may not be used or interpreted as means or measures contravening the programme and purpose of the visits]" should therefore be deleted.

Paragraph 2

31. The Government of Mexico suggests that, in the Spanish version, the phrase "... todos los servicios necesarios ..." should be replaced by "... todas las facilidades necesarias ...", and that the phrase in square brackets should be retained. In subparagraphs (a) to (d) the word "place(s)" should be followed by the words "of detention". In subparagraph (b), the phrase in square brackets, "in article 1" should be deleted. In subparagraph (c), the phrase in square brackets "in article 1" should also be deleted and the phrase "in the detailed plan" should be retained instead.

32. It is suggested that the text of subparagraph (e) should be deleted, since its contents can be considered as covered in subparagraph (a). If necessary, it should be made clear that the "access" provided is to any person

mentioned in the detailed plan in any place mentioned in the plan, instead of referring to "persons ... in situations referred to in article 1" as that phrase is too broad and imprecise.

Paragraph 3

33. The Government of Mexico proposes that the first part of the paragraph, at present in square brackets, should be deleted and the second maintained, with the exception of the phrase "in article 1,", which should be replaced by the phrase "in the detailed plan". Paragraph 3 bis is acceptable.

Paragraph 4

34. The Government of Mexico considers this paragraph acceptable, provided the phrase in square brackets, "well-founded and reliable" is retained.

Paragraph 5

35. The Government of Mexico considers the scope of this paragraph to be vague, since it does not specify how to determine the "urgent cases" necessitating recommendations, which could therefore only be accepted after the corresponding visit had been made.

36. Concerning the procedures as reflected in articles 8, 10 and 12, the ACJ considers that before each visit, a delegation is established in which a minimum of two delegates from the Sub-Committee are present, to be assisted by experts, and interpreters, if the case be needed. The Member State does have the choice to not accept the visit of invited experts, but are under the obligation to allow Sub-Committee members to undergo the visit. The draft includes periodic and regular visits along with ad hoc visits, depending on the circumstances. The instrument is based on the realization of systematic preventive visits, including follow-up visits and/or urgent visits. The purpose of this method is to efficiently prevent torture and ill-treatment, signifying that a State ought to be open to criticism and cooperate in urgent situations.

37. In view of the ACJ, in order to ensure the cooperation and dynamic efficiency, a notification within a specific time period to the States in question is necessary, such as a warning immediately prior to the visit, communicating the date and time in which the delegation will be making their visit. In accordance with article 1 of the draft, the Sub-Committee will be able to visit all areas of detention where there is suspicion of the deprivation of an individual’s freedoms or ill-treatment without new

authorization (the State will have committed to a general authorization in the moment of ratifying the protocol). It is mentioned in the Working Group's report (E/CN.4/1995/38) that various States objected to the wording of "any place" and reserved the right to revert it in the light of future agreement. It is crucial that such wording not be modified but be maintained in order for such a system to function efficiently.

38. The ACJ considers that the delegation should be able to move around without restrictions and have access to any place in any territory under the jurisdiction of the State party. Also, the delegation should have the authority to undergo private interviews with the individuals deprived of their freedoms. An area which is not considered as an official area of detention should not be an obstacle in the delegation's regular procedure of visits, and it is crucial that the term "any place, in any territory under the jurisdiction of the State" be maintained within the text, thus allowing for the efficient function of a system of prevention. Additionally, the State is under the obligation to cooperate with the visiting delegation and to provide them with the necessary information.

ARTICLE 13

39. 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.

40. 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.

41. 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.

42. The International Federation of the Action of Christians for the Abolition of Torture (hereinafter referred to as IFACAT), believes that

paragraph 1 could be more concise and clearer, and proposes the following wording: "... against a visit to a particular place if serious disorder temporarily prevents access to it".

43. 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.

44. IFACAT considers that it is preferable to use the word "meet" for a person, rather than "visit", and suggests the following wording: "... any person whom the Sub-Committee proposed to meet. Until the meeting takes place, ...".

45. The Association for the Prevention of Torture pointed out that the last sentence of paragraph 1 of article 13 reading as "The existence or [formal] declaration of a state of emergency as such shall not be invoked by a State party as a reason to object to a visit" was not reproduced in the French copy of the report of the Working Group (E/CN.4/1995/38). It should be included in the next report of the Working Group.

46. As to articles 12.2, 12.5 and 13, the ACJ considers that the dialogue between the Sub-Committee and the States, which should continue prior to the visit, will allow for an evaluation of the conditions and criteria to be considered in the elaboration of the recommendations to be presented to the Sub-Committee. In extreme cases, the draft includes the possibility to postpone a determined visit, in such a case the authorities and the Sub-Committee arrange an alternative time and method of visit. This disposition appears sufficient to allow for extraordinary circumstances, while not cancelling the visit in its entirety. Concerning the access to the areas of visit, it would be important to add the following sentence to article 12.2 "including the judicial orders necessary to permit his access".

III. COMMENTS, OBSERVATIONS AND SUGGESTIONS CONCERNING THE REMAINING ARTICLES 14-21 OF THE DRAFT

47. With reference to article 14, paragraph 2, the Swiss Government is of the opinion that, under article 14, paragraphs 1 and 4, the report which the Sub-Committee draws up after each mission is confidential. However, if the State concerned does not cooperate with the Sub-Committee or refuses to

improve the situation in the light of the Sub-Committee's recommendations, the Committee against Torture may - at the request of the Sub-Committee and after the State concerned has had the opportunity to make known its views - make a public statement on the matter or publish the Sub-Committee's report (art. 14, para. 2). In keeping with article 18, paragraph 2 (b), of the Convention against Torture, which provides that decisions of the Committee shall be made by a majority vote of the members present, the Committee also takes the decision to make a public statement or to publish the Sub-Committee's report by a majority vote (art. 14, para. 2). In the opinion of the Swiss Government, it is essential for the protocol to retain the only sanction provided for in the draft namely the public statement, whose deterrent and preventive effect is undeniably such as to persuade any State to cooperate with the Sub-Committee and improve the situation in the light of its recommendations.

48. IFACAT feels that, although paragraph 1 is identical to article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, its wording could be improved. It proposes that, in the French version, the words "toutes observations" should be replaced by the expression "toutes les observations" or "toute observation". Concerning the distinction between observations (which would tend to be outside the report) and recommendations (which would be included in the report), it considers it preferable to refer to the latter in the first sentence, in connection with the drawing up of the report, rather than in connection with the transmission of the report.

49. In IFACAT's view the relevant part of paragraph 1 should be worded as follows: "... taking account of any observations which may have been submitted by the State party concerned and making to it any recommendations it considers necessary. It shall transmit this report to the State concerned and shall consult with it with a view to suggesting improvements in the protection of persons deprived of their liberty".

50. 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.

51. 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."

52. In the 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.

53. Regarding paragraph 4, IFACAT considers that the definition of a delegation given in article 10 should simplify the formulation of the rule of confidentiality. In its view the relevant part of the last sentence of paragraph 4 should read as follows: "Members of the Committee against Torture, of the Sub-Committee, and of delegations and any person assisting them or having assisted them are required ...".

ARTICLE 15

54. 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. 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 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.

55. 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."

56. 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.

57. Concerning paragraph 1, IFACAT feels that, in the light of the preceding articles, it would be preferable to continue referring only to the mission and to the associated report (in the singular), instead of to the reports (in the plural). Regarding the recommendations, IFACAT considers that, if the reference is to those which are included in the report, there is no need to say so, as consideration of the report will necessarily involve them. Furthermore, if the recommendations are those made by the Sub-Committee to the Committee, in other words, the requests mentioned in article 14, paragraph 2, it is pointless to say so again in this article. IFACAT proposes that the paragraph should read as follows: "The Sub-Committee shall transmit to the Committee against Torture a copy of the report sent to the State party concerned. The Committee shall examine it, respecting the rule of confidentiality, as long as no public statement has been made in accordance with article 14, paragraph 2, or as long as the report has not been published in accordance with article 14, paragraph 3 of this protocol."

ARTICLE 16

58. 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.

59. 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 rights 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.

60. 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".

61. With respect to the expenditure incurred by the implementation of the protocol, Egypt considered that special attention should be paid to the following issues:

(a) Funding should be provided by the State parties to the protocol.

(b) The expenditure of the Sub-Committee should be rationalized by specifying:

(i) The number of experts.

(ii) The number of annual field visits.

(iii) The mission taking part in the visit.

(c) The activities of the Sub-Committee should not overlap with those of the Committee against Torture.

(d) The protocol should include an article providing for the establishment of a special fund to assist developing countries to develop their penal institutions and to finance training courses for persons specializing in this field, in a manner consistent with the lofty objective of the concept of the protocol.

62. 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

63. No comments were made on this article.

ARTICLE 18

64. 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 ratifications or accessions as 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.

65. 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.

66. 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.

67. With regard to paragraph 2 of the article, the Swiss Government considers that a mechanism for the prevention of torture that is based on visits by the Sub-Committee to any place of detention might be totally ineffective if reservations to the provisions of the protocol were allowed. Article 18, paragraph 3, is therefore one of the essential provisions of the draft. However, to take account of exceptional circumstances that might arise in the context of a mission, a negotiated reservation has been introduced into the body of the draft, in article 13, which allows the competent authorities of the State party concerned to make representations to the Sub-Committee or its delegation against a particular visit (for the modalities, see art. 13, paras. 1 and 2). It is emphasized that the criteria for objections largely meet the concerns expressed by many delegations that participated in the work of the Working Group.

68. In view of the ACJ, it is essential that the States comply with all of the obligations in the optional protocol. This implies that the possibility of reservations should be excluded as covered under article 18. The reason

being that this protocol does not introduce any new standards; thus with reservations, the essential provisions would risk being excluded and could be an obstacle to the main objective of the protocol.

ARTICLES 19, 20, 21

69. No comments were made on these articles.

Additional suggestions

70. In the view of the Government of Egypt, the protocol should contain an article governing reservations in order to encourage a larger number of States to accede to the protocol by permitting them to express reservations concerning the articles that are inappropriate to their actual circumstances. As a precautionary measure, the validity of a reservation could also be restricted to a specific time-limit (10 years, for example), on the expiration of which it would automatically become null and void with a view to inducing the States which expressed the reservation to make the necessary changes in keeping with the aims of the protocol but without placing them under obligations that they might not be able to fulfil immediately.

71. 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".

72. The ACJ pointed out that as a result of the expert meeting of the Andean Commission of Jurists held in Santiago (see para. 12), it is urged that the Working Group on the draft optional protocol reflect upon the recognition of such a regional mechanism to complement the work of the instrument in question.
